

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Wollondilly
<b>PPA</b>	Wollondilly Shire Council
<b>NAME</b>	Proposal to introduce minimum lot size for dual occupancy in R2 Low Density, R3 Medium Density and B4 Mixed Use Zones
<b>NUMBER</b>	PP_2018_WOLLY_002_00
<b>LEP TO BE AMENDED</b>	Wollondilly LEP 2011
<b>ADDRESS</b>	All land zoned R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use Zones
<b>DESCRIPTION</b>	Multiple
<b>RECEIVED</b>	31 July 2018
<b>FILE NO.</b>	IRF18/4481
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## INTRODUCTION

### Description of planning proposal

The planning proposal responds to the introduction of the new Low Rise Medium Density Housing Code. Council is seeking to strengthen existing controls through the transfer of existing lot size controls for dual occupancy from the Wollondilly Development Control Plan 2016 (Wollondilly DCP) to the Wollondilly Local Environmental Plan 2011 (Wollondilly LEP).

The planning proposal seeks to amend the Wollondilly LEP to:

- Insert a new clause in 4.1A mandating minimum lot sizes for the construction of dual occupancy on land within the R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use Zones to reflect:
  - Attached dual occupancy – 800 square metres
  - Detached dual occupancy – 975 square metres,
- Prohibit dual occupancy on lots greater than 1,400 square metres; and
- Require compliance with both the minimum lot size shown on the Lot Size Map and the dual occupancy clause above.

The planning proposal has been prepared in response to the recently released Low Rise Medium Density Housing Code, which permits the development of dual occupancies, manor houses and multi dwelling houses as Complying Development.

### **Site description**

The planning proposal relates to all land zoned R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use under the Wollondilly LEP 2011.

### **Existing planning controls**

Wollondilly LEP clause 4.1A currently specifies a minimum lot size for dual occupancies in R2 Low Density Residential and R3 Medium Density Residential however this provision only applies to the subdivision of a dual occupancy development after it is constructed.

The Wollondilly DCP specifies the minimum lot size for the construction of a dual occupancy. These controls specify that:

*Dual occupancy development shall only be permitted on lots which:*

- *Have an area no less than 975m<sup>2</sup> and no greater than 1400m<sup>2</sup> where a detached dual occupancy is proposed.*
- *Have an area no less than 800m<sup>2</sup> and no greater than 1400m<sup>2</sup> where an attached dual occupancy is proposed.*

The introduction of the Low Rise Medium Density Housing Code would override the DCP provisions allowing dual occupancies on lots in R2 Low Density and R3 Medium Density Residential zones on lots with a minimum of 400m<sup>2</sup>.

### **Summary of recommendation**

The proposal is suitable to proceed to the next stage as:

- it maintains the local character of Wollondilly LGA;
- it strengthens existing controls contained in the Wollondilly DCP to consistently apply minimum lot sizes for dual occupancies across the Wollondilly LGA; and
- it has the potential to reduce the infrastructure burden on Council across the Wollondilly LGA.

However, it is considered that further information is required to demonstrate consistency with the above. It is recommended the planning proposal proceed subject to conditions.

## **PROPOSAL**

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### **Objectives or intended outcomes**

The planning proposal seeks to strengthen existing development controls for minimum lot sizes required for the construction of a dual occupancy in R2 Low Density, R3 Medium Density and B4 Mixed Use zones in order to maintain the local character, encourage orderly subdivision of larger lots and reflect the restricted capacity of infrastructure.

In addition, the planning proposal would prohibit the creation of dual occupancy on lots that have a minimum lot size shown on the Lot Size Map of less than 800m<sup>2</sup> (attached) and 975m<sup>2</sup> (detached) despite the size of the lot complying with the minimum lot size

cited under proposed clause 4.1A. Council states that this requirement provides certainty of planning outcomes by ensuring land is developed at the density intended by the LEP.

### **Explanation of provisions**

The following amendments are sought to the Wollondilly LEP 2011:

- Amend clause 4.1A to introduce minimum lot size for the construction of dual occupancy on R2 Low Density, R3 Medium Density and B4 Mixed Use zones to require:
  - 800m<sup>2</sup> for attached dual occupancy;
  - 975m<sup>2</sup> for detached dual occupancy;
  - Maximum lot size for dual occupancy of 1,400m<sup>2</sup>; and
  - Compliance with both the Lot Size Map and proposed clause 4.1A

The Department considers that the outcome of requiring compliance with both the Lot Size Map and clause 4.1A would be that dual occupancy development could not occur on lots where the minimum lot size on the Lot Size Map was less than 800m<sup>2</sup> (attached) and 975m<sup>2</sup> (detached) despite the actual size of that lot. This is discussed in more detail below.

### **Mapping**

No mapping has been provided with the planning proposal. While mapping the controls is not necessary it will be a condition of gateway to prepare explanatory maps to show the land that would be affected by the proposal.

### **NEED FOR THE PLANNING PROPOSAL**

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The planning proposal is not the result of any strategic study or report. The proposal responds to the new Low Rise Medium Density Housing Code which forms part of the State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008.

The code allows dual occupancy to occur on lots no less than 400m<sup>2</sup> or as otherwise stated in an environmental planning instrument connected to the land.

The Wollondilly LEP does not currently contain controls for minimum lot sizes for the construction of dual occupancy dwellings. The controls are contained in the DCP as such the SEPP controls would apply.

The proposal would transfer minimum lot size controls for the construction of a dual occupancy currently set at 800m<sup>2</sup> for attached and 975m<sup>2</sup> for detached and a maximum lot size that prohibits dual occupancy on lots greater than 1,400m<sup>2</sup> from the DCP to the LEP.

In addition, Council also proposed compliance with the minimum lot size shown on the Lot Size Map. The LEP contains existing Lot Size maps that indicate the minimum lot size required for the construction of a dwelling and/or Torrens title subdivision however, the Lot Size maps do not relate to construction of a dual occupancy. Seeking compliance with both the proposed clause 4.1A and the Lot Size Map would effectively prohibit dual occupancy on lots mapped as allowing lot sizes less than 800m<sup>2</sup> (attached) and 975m<sup>2</sup> (detached) despite the lots complying with or being larger than that specified for a dual occupancy. For example, a lot that is mapped as requiring a

minimum lot size of 600m<sup>2</sup> on the Lot Size Map in the LEP would not be able to construct a dual occupancy even if the lot has a total area/size of 1,000m<sup>2</sup> (i.e, complying with clause 4.1A).

Council is concerned that dual occupancies on lots of 400m<sup>2</sup> would substantially impact the local character of the towns and villages and is thereby contrary to the principle of in the Western City District Plan of creating great places and retaining existing character.

Council is also concerned that the Code would increase the amount of growth in Wollondilly beyond the capacity of existing infrastructure. There are areas in the Wollondilly LGA that are zoned for residential where the infrastructure is not capable of supporting increased growth. A Codes approval removes the ability of the Council to require infrastructure be upgraded i.e. kerb and gutter construction and other civil works. These factors combined increase the infrastructure burden on Council.

Council notes there is limited capacity in Sydney Waters reticulated sewer network to service additional growth and some residential areas in the Wollondilly LGA do not have sewers. Sewer capacity is not a consideration under the Code. A lot size of 400m<sup>2</sup> is considered by Council too small to accommodate a dual occupancy and a suitably sized area for on-site waste water treatment system.

Lastly Council is concerned that the Code impacts areas of development that were master planned and approved based on a capped number of dwellings such as Bingara Gorge.

A proposal seeking to amend the LEP is the most effective way of providing certainty for Council and the local community. This would not prevent code assessable dual occupancies but rather control the amount of growth that occurred.

## **STRATEGIC ASSESSMENT**

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### **The Greater Sydney Region Plan**

The Greater Sydney Region Plan provides a 40-year vision for the Greater Sydney region. The following objectives are considered relevant for the proposal:

- Objective 10: Greater housing supply; and
- Objective 11: Housing is more diverse and affordable.

Council's planning proposal seeks to transfer the controls currently in the DCP to LEP ensuring consistent assessment of dual occupancy. The larger lot size requirement is reflective of the character and density of the towns in Wollondilly LGA.

The proposal is primarily about retaining existing controls that reflect Councils ability to service with adequate infrastructure. The Gateway Determination will be conditioned to require the removal of compliance with the Lot Size map as this is inconsistent with the intent of the planning proposal and the existing planning framework.

## **Western City District Plan**

The following planning priority of the Western City District Plan is relevant to the proposal:

- Planning Priority W1: Planning for a city supported by infrastructure, and
- Planning Priority W5: Providing housing supply, choice and affordability with access to jobs, services and public transport.

Further, Council states that the proposal is supported by W6: Creating and renewing great places and local centres, and respecting the District's heritage. It does so through respecting and retaining the local character of the towns.

However, the planning proposal needs to provide evidence demonstrating the implications of the minimum and maximum lot size controls.

## **Local**

The proposal is consistent with the Wollondilly Community Strategic Plan in that it:

- manages growth – Strategy EN2,
- manages development and land use – Strategy EC4, and
- manages the impact on road networks – Strategy IN2.

The proposal is consistent with the Wollondilly Growth Management Strategy 2011 in that it does not intend to change expected growth.

## **Section 9.1 Ministerial Directions**

The planning proposal is consistent with all section 9.1 Directions, except Direction 3.1 Residential Zones where there is a minor inconsistency.

The objectives of this Direction are to encourage a variety of housing types, make efficient use of existing infrastructure and services, ensure that new housing has appropriate access to infrastructure and services, and minimise the impact of residential development on the environment and resource land.

The planning proposal is inconsistent with this Direction to the extent that it may reduce dwelling potential for dual occupancy with a minimum lot size for dual occupancy set to double or more. However, infrastructure limitations do impact the ability to deliver increased housing within Wollondilly given the rural and dispersed nature of the LGA.

To understand the impact on dwelling potential, a Gateway condition is included requiring Council to:

- provide the total number of lots in the LGA that are capable of accommodating dual occupancies under:
  - a 400m<sup>2</sup> minimum lot size scenario under the Low Rise Medium Density Housing Code; and
  - Council's current controls.
- provide a summary of the number of dual occupancy developments approved under Council's current 800m<sup>2</sup> (attached), 975m<sup>2</sup> (detached) controls in the past five years, the minimum development lot size and the number of dual occupancies produced.

Additionally, the Department considers that the requirement for future development to comply with both the Lot Size Map and proposed clause 4.1A would reduce development potential compared to what is currently allowed under the existing planning and development controls. As such the Department considers that the explanation of provisions in the planning proposal should be updated to remove the requirement to comply with both the Lot Size Map and proposed clause 4.1A.

It is considered suitable to allow the proposal to progress with the inconsistency with this Direction remaining unresolved. This will allow further consultation and quantitative analysis, which can then be considered prior to plan-making and will determine if the inconsistency is of minor significance.

### **State environmental planning policies**

#### **State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

The new Low Rise Medium Density Housing Code of the Codes SEPP came into effect on 6 July 2018.

The Code aims to provide greater housing choice and facilitate faster housing approvals. It will allow one-storey and two-storey dual occupancies, manor houses and terraces to be carried out under a complying development approval.

In relation to the planning proposal, the Code allows for the development of dual occupancy housing where dual occupancies are currently permitted.

On 5 July 2018 Council was granted a deferral of the implementation of the Code until 1 July 2019.

A deferral from the commencement of the Code for Wollondilly LGA provides Council with the opportunity to review its residential zones in closer detail and amend the LEPs, as required.

A Gateway condition is recommended requiring Council to consider the consistency of the planning proposal with densities proposed under the Code by confirming the total potential number of lots that could be delivered under the Code and Council's current controls.

### **SITE-SPECIFIC ASSESSMENT**

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#### **Social**

The proposal aims to retain the existing character of residential zones and ensures that development approvals for dual occupancy remain consistent and reduces the burden of infrastructure costs on the Council and therefore the community.

#### **Environmental**

The planning proposal is not anticipated to have any adverse impacts on critical habitats or threatened species.

Council has concerns that the redevelopment of allotments goes against the intended low-density nature and local character of the area and the additional concern relating to the limited capacity of infrastructure within the towns and villages, including but not limited to lack of kerb and gutter, paths, and sewer.

The Department considers there is merit in affording a place-based approach to applying minimum lots sizes for dual occupancies based on local character.

## **Economic**

The planning proposal seeks introduces planning controls that would reduce the development potential for dual occupancies on lots that are suitably sized because the Lot Size Map specifies a lesser minimum lot size.

It is recommended that this provision be removed from the planning proposal prior to exhibition and that affected land owners be informed about the proposal and its exhibition and given suitable time to make their own assessment.

## **CONSULTATION**

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### **Community**

A Gateway condition is recommended requiring that Council write to all affected landowners about the exhibition of the proposal explaining details on how to make a submission, proposed amendments and how they may affect future development of residential land.

An exhibition period of 28 days is considered acceptable to allow all affected landowners to review the material, seek their own advice and make a submission to Council.

### **Agencies**

Given the nature and availability of sewer in the LGA it is recommended that Sydney Water is consulted. General consultation with other State agencies is not considered necessary.

## **TIME FRAME**

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The LEP is to be made by 1 July 2019.

## **LOCAL PLAN-MAKING AUTHORITY**

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Council has requested to be plan making authority. Given the implications this Planning Proposal may have on state policy, it is recommended that Council not be granted plan-making authority in this instance.

## **CONCLUSION**

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Subject to conditions of Gateway, the planning proposal has merit and is supported to proceed as it has the potential to:

- maintain the local character of Wollondilly LGA;
- strengthen existing controls contained in the Wollondilly DCP and provide a consistent approach to applying minimum lot sizes for dual occupancies across the Wollondilly LGA; and
- reduce the infrastructure burden on Council across the Wollondilly LGA.

However, it is considered that further information is required to demonstrate consistency with the above.



## RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Directions 3.1 Residential Zones is unresolved and will require justification.

It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
  - (a) remove the need for compliance with the Lot Size Map;
  - (b) provide a quantitative analysis in relation to land under Wollondilly LEP 2011 to assess the impacts of the proposal on housing diversity and supply as follows:
    - i. the total number of lots within the LGA eligible for dual occupancies applying the 400m<sup>2</sup> minimum lot size scenario under the Low Rise Medium Density Housing Code;
    - ii. the total number of lots within the LGA eligible for dual occupancies applying Council's proposed controls; and
    - iii. the number of dual occupancy developments approved in the R2 Low Density Residential and R3 Medium Density Residential zones in this area in the past five years.
  - (c) include a new savings transition clause to ensure that proposed amendments do not affect any development applications or appeal processes.
2. The revised planning proposal is required to be updated in accordance with condition 1 and forwarded to the Department for review and approval prior to exhibition.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of 28 days;
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016); and
  - (c) Council is to write to all affected landowners providing notice of the proposal and public exhibition.
4. Consultation with Sydney Water is required under section 3.34(2)(d) of the Act.
5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).



6. The LEP is to be completed by 1 July 2019.

A handwritten signature in black ink, appearing to read 'Edith Barnes', enclosed within a faint, light-colored diamond-shaped border.

**Edith Barnes**  
**Technical Specialist,**  
**Sydney Region West**

A handwritten signature in black ink, appearing to read 'Ann-Maree Carruthers', written in a cursive style.

**Ann-Maree Carruthers**  
**Director Regions, Sydney Region**  
**West**  
**Planning Services**

5/09/2018