



PLANNING PROPOSAL

Proposed amendment to Randwick Local
Environmental Plan 1998 Consolidation:
Clarifying the definition of '*dwelling house*' and
'*attached dual occupancy*'

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Introduction

This planning proposal has been prepared in response to legal advice that under the Randwick Local Environmental Plan (RLEP), semi-detached dwellings fall within the definition of attached dual occupancy development. This legal interpretation is contrary to the RLEP intentions which never intended for development standards for dual occupancy development to apply to semi-detached dwellings.

The majority of semi-detached dwellings in Randwick City which are located on their own Torrens Title lots were built in early to mid 20th Century. These dwellings are generally located on small allotments and many of them already exceed the FSR standard for attached dual occupancy in RLEP which was introduced in 1998.

Under State Government requirements any SEPP 1 variations over 10% require the Council's determination and cannot be determined under delegations. This in turn has resulted in a number of unnecessary delays in the processing of semi-detached housing development applications, and additional costs to applicants as these have to be reported to the Council.

It is acknowledged that the Standard LEP Instrument's standardised definitions for semi-detached dwellings and other residential development provides greater clarity about this form of land use. However the inclusion of the standardised definition for semi-detached dwellings may not be suitable in the RLEP as it is unclear about the potential impacts of such on the operation of the RLEP, in particular impacts on other land zones, definitions and planning controls. The comprehensive suite of Standard Instrument residential definitions are currently being reviewed for inclusion in the Comprehensive LEP; (preparation is underway but is at least 24 months from implementation).

The proposed amendments to the definitions of RLEP will result in greater clarity as to what constitutes a semi detached dwelling.

Planning Proposal

Part 1 – Objectives/ Intended Outcomes

To amend the definitions of 'dwelling house' and 'attached dual occupancy' in the Randwick Local Environmental Plan (LEP) 1998 (Consolidation), to provide that semi-detached dwellings (where each attached dwelling is on a separate lot) falls within the definition of 'dwelling house'.

Part 2 – Explanation of Provisions

Part 5 of the Randwick LEP 1998 contains the following definitions for 'dwelling house' and 'attached dual occupancy':

'dwelling house means a building containing one (but not more than one) dwelling'

'attached dual occupancy means a building containing two (but not more than two) dwellings'

This planning proposal seeks to amend the definitions of 'dwelling house' and 'attached dual occupancy' to:

"dwelling house means a dwelling which is the only dwelling erected on an allotment of land (not being an individual lot in a strata plan) and which may or may not be attached to another dwelling on the immediately adjoining allotment by a common wall on the common boundary of the allotments"

"attached dual occupancy means a building containing two (but not more than two) dwellings erected on the same allotment of land (not being an individual lot in a strata plan)"

This will clarify that semi-detached dwelling (where each attached dwelling is on a separate lot) falls within the 'dwelling house' definition. The proposed wording reflects legal advice the Council obtained on this matter.

Part 3 – Justification

A1. Is the planning proposal the result of any strategic study or report?

There has not been a formal planning study prepared in relation to this proposal.

A2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

As the existing definitions for dwelling house and attached dual occupancy are contained within the Randwick LEP 1998, an amendment to the LEP is the only option available. Changes to the definition cannot be achieved via a DCP, guidelines or conditions of consent.

The Council has sought the Department's consideration of varying its SEPP 1 delegations for reporting to the Council as a potentially alternative approach.

A3. Is there a net community benefit?

This proposal does not involve a rezoning and therefore the Net Community Benefit Test is not applicable.

B1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is consistent with the vision, land use strategy, policies, outcomes or actions of the Metropolitan Strategy or the draft East Subregional Strategy.

B2. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The Randwick City Plan (adopted in 2006 and updated in 2010) establishes a strategic framework for the next 20 years. This planning proposal is consistent with the vision 'a sense of community' and the relevant key outcomes, being:

Outcome 4: Excellence in urban design and development.

Direction 4b: Develop and implement effective processes and strategies to manage the impact of new and existing development.

B3. Is the planning proposal consistent with applicable state environmental planning policies?

This planning proposal is consistent with all applicable state environmental planning policies. Refer to Appendix 1.

B4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

This planning proposal is consistent with all applicable s.117 directions. Refer to Appendix 2. The relevant directions are:

Direction 3.1 Residential Zones

As this planning proposal is a minor technical amendment to the definitions it will not impact on the variety and design of housing, use of existing infrastructure and services or reduce the consumption of land for housing.

Direction 7.1 Implementation of the Metropolitan Strategy

The planning proposal is consistent with the vision, land use strategy, policies, outcomes or actions of the Metropolitan Strategy or the draft East Subregional Strategy.

C1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Amending the definitions for 'dwelling house' and 'attached dual occupancy' has no impact on any ecological community.

C2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Amending the definitions for 'dwelling house' and 'attached dual occupancy' has no other environmental impact.

C3. How has the planning proposal adequately addressed any social and economic effects?

Amending the definitions for 'dwelling house' and 'attached dual occupancy' will have positive economic effects in that it is likely to reduce delays caused by unnecessary application of SEPP 1. It will also have positive social effects as it will reduce public confusion on the increase in DA's for semis being reported to the Council.

D1. Is there adequate public infrastructure for the planning proposal?

The proposal has no impact on public infrastructure.

D2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?

Given the nature of this planning proposal, it is not intended that any other State or Commonwealth agency will be directly consulted.

Part 4 – Community Consultation

Council proposes that the planning proposal will be exhibited in accordance with the requirements of section 57 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and/ or any other requirements as determined by the Gateway process under section 56 of the EP&A Act.

This is considered a 'low impact planning proposal' requiring an exhibition period of 14 days. Public notification of the exhibition will include a notice in the local newspaper and a notice on Council's website.

Given the minor nature of the planning proposal, it is not intended to directly notify any business, land owner or other State or Commonwealth agency.

During the exhibition period, the planning proposal, gateway determination and other relevant documentation will be available on Council's website and hard copies will be available at Council's Administration Building and libraries.

Appendix 1: State Environmental Planning Policies (at 1 February 2011)

Policy	Comment
SEPP (Affordable Rental Housing) 2009	N/A
SEPP (Exempt and Complying Development Codes) 2008	N/A
SEPP (Infrastructure) 2007	N/A
SEPP (Temporary Structures and Places of Public Entertainment) 2007	N/A
SEPP (Major Development) 2005	N/A
SEPP (Building Sustainability Index: BASIX) 2004	N/A
SEPP (Housing for Seniors or People with a Disability) 2004	N/A
SEPP No. 71 - Coastal Protection	N/A
SEPP No. 65 - Design Quality of Residential Flat Development	N/A
SEPP No. 64 - Advertising and Signage	N/A
SEPP No. 55 - Remediation of Land	N/A
SEPP No.32 - Urban Consolidation (Redevelopment of Urban Land)	N/A
SEPP No.19 - Bushland in Urban Areas	N/A
SEPP No.33 - Hazardous and Offensive Development	N/A
SEPP No.4 - Development Without Consent (Clause 5B)	N/A
SEPP No.1 - Development Standards	Consistent
Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment Area)	N/A

Appendix 2: Section 117 (2) Directions (at February 2011)

Direction	Comment
1. <i>Employment and Resources</i>	
1.1 Business and Industrial Zones	N/A
1.2 Rural Zones	N/A
1.3 Mining, Petroleum Production and Extractive Industries	N/A
1.4 Oyster Aquaculture	N/A
1.5 Rural Lands	N/A
2. <i>Environment and Heritage</i>	
2.1 Environment Protection Zones	N/A
2.2 Coastal Protection	N/A
2.3 Heritage Conservation	N/A
2.4 Recreation Vehicle Areas	N/A
3. <i>Housing, Infrastructure and Urban Development</i>	
3.1 Residential Zones	Consistent
3.2 Caravan Parks and Manufactured Home Estates	N/A
3.3 Home Occupations	N/A
3.4 Integrating Land Use and Transport	N/A
3.5 Development Near Licensed Aerodromes	N/A
4. <i>Hazard and Risk</i>	
4.1 Acid Sulfate Soils	N/A
4.2 Mine Subsidence and Unstable Land	N/A
4.3 Flood Prone Land	N/A
4.4 Planning for Bushfire Protection	N/A
5. <i>Regional Planning - Not applicable to the Randwick City LGA</i>	
6. <i>Local Plan Making</i>	
6.1 Approval and Referral Requirements	N/A
6.2 Reserving Land for Public Purposes	N/A
6.3 Site Specific Provisions	N/A
7. <i>Metropolitan Planning</i>	
7.1 Implementation of the Metropolitan Strategy	Consistent

Director City Planning Report No. CP8/11



Subject: Planning Proposal - Semi-Detached Dwelling Houses
Folder No: F2007/00569
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Introduction

This report details a planning proposal to amend the definitions of 'dwelling house' and 'attached dual occupancy' under Randwick Local Environmental Plan 1998 (RLEP), to provide that semi-detached dwellings (where each attached dwelling is on a separate lot) falls within the definition of 'dwelling house'.

The planning proposal has been prepared in response to legal advice that under the RLEP, semi-detached dwellings fall within the definition of attached dual occupancy development in the 2A Zone. This legal interpretation is contrary to the RLEP intentions which never intended for development standards for dual occupancy development to apply to semi-detached dwellings.

The majority of semi-detached dwellings which are located on their own Torrens Title lots were built in early to mid 20th Century. These dwellings are generally located on small allotments and many of them already exceed the FSR standard for attached dual occupancy in RLEP which was introduced in 1998.

Under State Government requirements any SEPP 1 variations over 10% require the Council's determination. This in turn has resulted in a number of unnecessary delays in the processing of semi-detached housing development applications, as these have to be reported to the Council.

The proposed amendments to the definitions will result in greater clarity as to what constitutes a semi detached dwelling.

Existing definitions

The Randwick Local Environmental Plan (RLEP) does not contain a specific definition for semi-detached dwellings.

The terms 'dwelling house' and 'dual occupancy' are presently defined in Clause 49 of RLEP as follows:

"dwelling house means a building containing one (but not more than one) dwelling"

'attached dual occupancy' means a building containing two (but not more than two) dwellings"

Legal advice

Given the ambiguity with respect to how semi-detached dwellings are defined, the Council received legal advice in 2010 which confirmed that semi-detached dwelling houses in the Residential 2A Zone falls within the classification of attached dual occupancy in accordance with the aforementioned definitions.

This advice relies on the fact that 'semis' tend to be constructed with a common dividing wall between two dwellings and as such are not structurally independent of

each other. Furthermore the lack of reference to 'allotment' in the land use definitions means that the fact that two dwellings are constructed within the one building is determinant in the classification of semi-detached housing as attached dual occupancy development.

The legal advice is based on a Court of Appeal decision by Justice Tobias that remains the relevant authority with respect to *Calleja vs Botany Bay City Council (2005)*.

SEPP 1 Objections

The aforementioned legal interpretation is contrary to the intent of the RLEP in that development standards pertaining to dual occupancy development were never intended to apply to semi-detached housing. The FSR standard of 0.5:1 for attached dual occupancy development under RLEP is far more restrictive than the performance based FSR control relating to dwelling houses in the *Dwelling House and Attached Dual Occupancy DCP*.

Further, most 'semis' are on small Torrens title allotments constructed prior to the second World War, and already exceed the FSR standard in the RLEP for dual occupancy. The FSR exceedence for such dwellings is often well over 10% in their existing form, which has resulted in the requirement for SEPP 1 objections to be lodged for a large number of DAs which are often for very minor changes to these dwellings, and at an additional cost to the community.

The new classification has resulted in increased processing delays for applications that would otherwise be relatively straight forward. The Department of Planning Circular on the use of SEPP 1 requires that applications relying on development standard variations of over 10% are to be determined at a Council meeting. The new classification of semi-detached housing has therefore resulted in a marked increase of applications dealt by the Council given that up to 95% of these applications have a variation greater than 10%.

Departmental Advice

In recognition of this issue the Council wrote to the Department of Planning (DoP) in December 2010 requesting an exemption from the directive in the Circular on SEPP 1 so that applications for alterations and additions to semi-detached housing in Randwick City are not required to be reported to the Council for determination. A response is yet to be received.

The DoP had previously informally advised that the preparation of an amendment to RLEP would be suitable given the aforementioned issues relating to increased reporting on semi-detached dwelling applications and the fact that the new Comprehensive LEP is likely to take at least 12 months and up to two years to complete including gazettal.

Standard Instrument

The Standard LEP Instrument introduces standardised definitions for all Councils in NSW to incorporate into their new Comprehensive LEPs.

While the Standard Instrument's definitions for semi-detached dwellings and other residential development provides greater clarity about this form of land use, it is not recommended that this definition be included in the RLEP at this time as it is unclear about what the impacts it would have on the operation of the RLEP in particular impacts on other land zones, definitions and planning controls.

The Strategic Planning Department are currently undergoing a review of the planning framework for Randwick City which will result in a Comprehensive LEP and DCP. As part of this process land use permissibility and implications of specific land uses will be considered for each zone including semi-detached dwellings. It is considered

appropriate that consideration of semi-detached and all other dwellings be undertaken at that time such that all residential land uses are reviewed in a comprehensive approach.

Proposed definitions

In consideration of the aforementioned issues and to ensure that semi-detached dwellings falls within the definition of a 'dwelling house', the Council sought legal advice which highlighted that both the dwelling house and attached dual occupancy definitions in RLEP would need to be amended to change the focus from the 'building' in which the dwelling is contained to 'allotment'.

Accordingly the following amendments to the definitions are proposed:

"dwelling house means a dwelling which is the only dwelling erected on an allotment of land (not being an individual lot in a strata plan) and which may or may not be attached to another dwelling on the immediately adjoining allotment by a common wall on the common boundary of the allotments"

"attached dual occupancy means a building containing two (but not more than two) dwellings erected on the same allotment of land (not being an individual lot in a strata plan)"

It is recommended that the attached planning proposal which incorporates the aforementioned definition amendments be forwarded to the DoP for Gateway determination (to determine if the Council can proceed). This would create greater clarity in the development and planning process and furthermore is likely to result in a reduction in processing time for certain semi-detached housing alterations and additions applications.

Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 6: A Liveable City.

Direction 6d: A strategic land use framework that provides for our lifestyle changes or a continuing yet low rate of growth across our City.

Financial impact statement

There is no direct financial impact for this matter.

Conclusion

The proposed amendments to the definitions for dwelling house and attached dual occupancy, will result in greater clarity in RLEP and address its intentions as to what constitutes a semi-detached dwelling and the relevant applicable standards. This is also likely to result in a considerable reduction in SEPP1 objections and time saving in the application and reporting process.

Recommendation

That:

- a) the process to prepare a local environmental plan as an amendment to the Randwick LEP 1998 (Consolidation) to amend the definitions of 'dwelling house' and 'attached dual occupancy' in accordance with s.54 of the Environmental Planning and Assessment Act 1979 (the Act), be commenced;

- b) the Planning Proposal (attachment 1) in accordance with s.55 of the Act be adopted; and
- c) the Planning Proposal be forwarded to the Minister of Planning requesting a Gateway determination in accordance with s.56 of the Act.

Attachment/s:

1. Planning Proposal