



# Burwood Council

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## Planning Proposal

### Restricting the Subdivision of Dual Occupancies in the R2 Zone

September 2019

*A Planning Proposal is the first step in proposing amendments to Council's principle environmental planning instrument, known as the Burwood Local Environmental Plan (BLEP) 2012. A Planning Proposal explains the intended effect of the proposed amendment and also sets out the justification for making the change. The Planning Proposal is submitted to the NSW Department of Planning, Industry and Environment (DPIE) for its consideration, referred to as the Gateway Determination, and is also made available to the public as part of the community consultation process.*

#### Part 1 – Objectives or Intended Outcomes

The objectives and intended outcomes of the Planning Proposal (PP) are to:

- Prohibit Torrens Title, Community Title and Strata Title subdivision of dual occupancies within the R2 Low Density Residential zone. Nonetheless Torrens Title subdivision of a dual occupancy would be permitted if existing controls for the Torrens Title subdivision of land are satisfied;
- Explain Council's existing interpretation on the subdivision of dual occupancies, which is that the definition of a dual occupancy being '*two dwellings on one lot of land*' prohibits its subdivision, while the Low Rise Medium Density Housing Code allows for the subdivision of a dual occupancy;
- Protect the character and amenity of the R2 Low Density Residential areas; and
- Express concern that dual occupancy subdivision has not been planned for in the Burwood Local Government Area (LGA) given Council's existing interpretations, and that it would result in additional impacts to open space, community facilities, traffic and access.

## Part 2 – Explanation of Provisions

The PP's objectives and intended outcomes will be achieved by introducing a provision into the BLEP which will prohibit Torrens Title, Community Title and Strata Title subdivision of dual occupancies within the R2 Low Density Residential zone. Nonetheless, Torrens Title subdivision of a dual occupancy would be permitted if the following criteria are met:

- Each lot has a minimum lot size as specified in Clause 4.1 of the BLEP;
- Each dwelling would occupy its own lot; and
- Each lot has a minimum frontage of 12m.

The recent State Government amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP), comprising the new Low Rise Medium Density Housing Code (LRMDHC), and additions to the Subdivisions Code, will allow dual occupancies and their subdivision by Complying Development Certificate in the R1, R2 and R3 Residential zones.

Of particular concern is the potential subdivision of dual occupancies in the R2 Low Density Residential zone by way of Complying Development Certificate through the Codes SEPP. The subdivision of dual occupancies is contrary to Council's long-standing practice. The Burwood Development Control Plan (BDCP) provides that a Strata or Community Title subdivision of a dual occupancy will not be permitted. Also, Torrens Title subdivision may only be sought where the development is to be treated as two dwelling houses on separate lots, satisfying the minimum subdivision lot size in Clause 4.1 of the BLEP.

Council had taken the view that the Standard Instrument definition of a dual occupancy did not permit subdivision as that definition refers to '*two dwellings on one lot of land*'. It would seem that the new Code takes a different view and it would, therefore, be necessary for a legislative change to occur in order for Council to maintain its restriction on subdivision of dual occupancies.

## Part 3 – Justification

During the preparation of this PP, the DPIE sought justification for Council's long-standing approach to the restriction of subdivision of dual occupancies, and responses to other questions. The responses and further justification can be found at Appendix One.

### Section A – Need for the Planning Proposal

#### **1. *Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?***

Yes. This PP is in response to a Council resolution dated 27 November 2018 relating to the potential impacts of the recent amendments to the Codes SEPP. In accordance with Local Planning Panels Direction – Planning Proposals, the PP was considered by BLPP on 14 May 2019 and on 28 May 2019 the PP received Council endorsement.

Council is preparing its Local Strategic Planning Statement (LSPS) in accordance with NSW Government timeframes and guidance. The need to support liveability, housing supply and diversity, environmental amenity and other local needs will be considered and incorporated

into the draft Burwood LSPS and a local housing strategy. The LSPS will be informed by urban design, local character, traffic and transport, open space and community facility, and other supporting technical studies to ensure that planning for housing supply and diversity is based on evidence, in suitable locations and appropriate infrastructure.

The new Part 3B (Low Rise Medium Density Housing Code) (LRMDHC) of the Codes SEPP permits dual occupancies by Complying Development Certificates in the R1, R2 and R3 zones provided these are permissible in the BLEP. There are concerns regarding the application of this part of the Codes SEPP within the R2 zone as it could potentially threaten the character, amenity and integrity of these areas.

The amended Part 6 of the Codes SEPP will further permit the subdivision of dual occupancies (subject to the applicable development standards) as Complying Development provided subdivision is permitted in the BLEP.

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

In May 2019 Council wrote to DPIE, requesting that the Code be amended, such that the R2 zone in the BLEP is excluded from the Code provisions that allow approval of dual occupancies and their subdivision by Complying Development Certificates.

DPIE advised at the end of June 2019 that the LRMDHC has been deferred until 31 October 2019 for 45 Councils, including Burwood, to allow for an independent review, which will recommend to the Minister on implementation of the Code in the deferred council areas.

Depending on the Minister's decision on the implementation of the Code, there may be some minor amendments to what is proposed within this PP.

Notwithstanding, the PP is considered to be the best means of achieving the objectives and intended outcomes as stated earlier.

**Section B – Relationship to Strategic Planning Framework**

**3. *Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy?***

Yes. The PP is consistent with metropolitan, subregional and district strategies.

The State Government has prepared the *Eastern City District Plan* (to which Burwood LGA belongs) to manage growth for the next 20 years in the context of economic, social and environmental matters at a district level, to contribute towards the 20-year vision for Greater Sydney. It contains the planning priorities and actions for implementing the Greater Sydney Region Plan, *A Metropolis of Three Cities*, at a district level, and is a bridge between local and regional planning.

Planning Priority E5 of the *Eastern City District Plan* focusses on '*providing housing supply, choice and affordability, with access to jobs, services and public transport*'. As discussed in the report to Council regarding this PP, the potential future subdivision of dual occupancies in the R2 zone could potentially threaten the character, amenity and integrity of these areas. It is

considered that there is no sustainable justification for allowing the subdivision of dual occupancies in terms of housing supply, choice or affordability.

Burwood LGA is aiming to meet the housing supply targets identified in the *Eastern City District Plan* in the next 0-5 years, with any shortfalls to meeting the short term targets projected to be met in the next 6-10 years. There is considered to be no planning justification to allow the subdivision of dual occupancies in the R2 zone. The LSPS and subsequent Local Housing Strategy will identify suitable locations for housing supply and diversity to meet State government targets and projections.

In addition, the *Eastern City District Plan* states that Councils are in the best position to investigate and confirm which parts of their LGAs are suited to additional medium density opportunities. Council is aiming to meet the housing supply targets identified in the *District Plan* with approved and proposed residential developments in the next 0-5 years, and will address any shortfall of meeting the target in the 6-10 year period. This will be informed by the preparation of the LSPS and associated Local Housing Strategy in accordance with the Greater Sydney Commission (GSC) directions. The potential subdivision of dual occupancies would likely result in substantial, unplanned new dual occupancy developments, resulting in additional impacts to open space, community facilities, traffic and access.

Over time, the subdivision of dual occupancies could potentially threaten the character, liveability, amenity and integrity of areas zoned R2 Low Density Residential. Burwood has the lowest ratio of public open space per person in Sydney, with 1,020 people per hectare of public space. The concern with the complying development process is it does not take these concerns into account and will consequently add to existing issues. It is considered that there is no sustainable justification for allowing these subdivisions in terms of housing supply, choice or affordability.

**4. Will the planning proposal give effect to a Council endorsed local strategic planning statement or another endorsed local strategy or strategic plan?**

Yes. The subdivision of dual occupancies is contrary to Council's long-standing practice. The BDCP provides that a Strata or Community Title subdivision of a dual occupancy will not be permitted. Council seeks to formalise this position by amending the BLEP to include a clause which reflects the BDCP's position on the subdivision of Strata and Community Title subdivisions.

The Burwood 2030 Community Strategic Plan (CSP) recognises the need for providing a well-connected, innovative, sustainable and safe community. The Burwood 2030 CSP describes Council's role in enhancing '*the visual appearance of our neighbourhoods, streetscapes and town centre*', as well as the Community's desire for '*high quality urban design*' and '*the best outcomes for the community*' when considering planning and infrastructure. The PP is consistent with the objectives of the CSP in finding a balance between enabling housing choice, and maintaining neighbourhood amenity.

A local housing strategy is being prepared by Council to determine an appropriate balance between respecting and enhancing the local character of an area, while identifying and accommodating the community's future housing, infrastructure and social needs.

The strategy to meet 0-5 year and 6-10 year housing supply targets and projections will be addressed within the Burwood LSPS. The majority of future dwellings within this period are

expected to be delivered as apartments within the Burwood and Strathfield Town Centre areas, as high density residential or mixed use development. Longer term needs to provide other types of housing choice including low to medium density housing will be addressed in the local housing strategy and the LSPS.

There are a number of other related studies related to the LSPS that have been commissioned, including traffic and transport and open space / community infrastructure. Opportunities and constraints relating to these aspects need to be better understood as part of strategic planning for Burwood LGA, and the PP would support minimising social and environmental impacts while promoting appropriate and orderly development in accordance with the CSP. It would also bring the BDCP and BLEP into alignment.

#### **5. *Is the planning proposal consistent with applicable State Environmental Planning Policies?***

All SEPPs applicable to the Burwood LGA are set out in the table below, together with a comment regarding the PP's consistency:

<b>SEPP</b>	<b>Comment</b>
SEPP No. 1 – Development Standards	Not relevant. BLEP 2012 contains a clause which replaces this SEPP in relation to variations to development standards.
SEPP No. 19 – Bushland in Urban Areas	Not relevant.
SEPP No. 21 – Caravan Parks	Not relevant.
SEPP No. 30 – Intensive Agriculture	Not relevant.
SEPP No. 33 – Hazardous and Offensive Development	Not relevant.
SEPP No. 50 – Canal Estate Development	Not relevant.
SEPP No. 55 – Remediation of Land	Not relevant.
SEPP No. 64 – Advertising and Signage	Not relevant.
SEPP No. 65 – Design Quality of Residential Apartment Development	Not relevant. Only applicable to development of three storeys or more.
SEPP No. 70 – Affordable Housing (Revised Schemes)	Not relevant.
SEPP (Building Sustainability Index: BASIX) 2004	Not relevant.
SEPP (Housing for Seniors or People with a Disability) 2004	Not relevant.
SEPP (Major Developments) 2005	Not relevant.
SEPP (Infrastructure) 2007	Not relevant.
SEPP (Miscellaneous Consent Provisions) 2007	Not relevant.
SEPP (Mining, Petroleum and Extractive Industries) 2007	Not relevant.
SEPP (Repeal of Concurrence and Referral Provisions) 2008	Not relevant.
SEPP (Exempt and Complying Development Codes) 2008	The PP does not propose to change the Codes SEPP in itself. The Codes SEPP is written in such a way that would restrict the subdivision of dual occupancies if a Council's LEP already prohibits or restricts subdivision. Council therefore seeks to transfer the restriction

SEPP	Comment
	regarding the subdivision of dual occupancies (which it has long had in its DCP) to the BLEP.
SEPP (Affordable Rental Housing) 2009	Not relevant.
SEPP (Vegetation in Non-Rural Areas) 2017	Not relevant.
SEPP (Educational Establishments and Child Care Facilities) 2017	Not relevant.
Draft Coastal Management SEPP	Not relevant.

**6. Is the planning proposal consistent with applicable Ministerial Directions (s. 9.1 directions)?**

Yes. Consistency with the list of Directions by the Minister for Planning (pursuant to section 9.1 of the Act) is set out in the following table.

Direction	Issue Date / Date Effective	Comment
<b>1. Employment and Resources</b>	1 July 2009 (Except for new Direction 1.2 effective 14 April 2016 and 1.1 effective 1 May 2017 and new Direction 1.5 effective 28 February 2019)	
1.1 Business and Industrial Zones		Not relevant.
1.2 Rural Zones		Not relevant.
1.3 Mining, Petroleum Production and Extractive Industries		Not relevant.
1.4 Oyster Aquaculture		Not relevant.
1.5 Rural Lands		Not relevant.
<b>2. Environment and Heritage</b>	1 July 2009 (Except for new Direction 2.5 effective 2 March 2016, Direction 2.1, 2.2 and 2.4 effective 14 April 2016)	
2.1 Environment Protection Zones		Not relevant.
2.2 Coastal Protection		Not relevant.
2.3 Heritage Conservation		Not relevant.
2.4 Recreation Vehicle Areas		Not relevant.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs		Not relevant.
<b>3. Housing, Infrastructure and Urban Development</b>	1 July 2009 (Except for new Direction 3.6 effective 16 February 2011, Direction 3.1, 3.2, 3.4 and 3.5 effective 14 April 2016, Direction 3.7 effective 15 February 2019)	
3.1 Residential Zones		Clause 6 of the Direction states a PP may be inconsistent with the terms of this Direction if the relevant

Direction	Issue Date / Date Effective	Comment
		<p>authority can satisfy the Director-General (or a nominated officer within the Department), that the provisions of the PP that are inconsistent with the direction and can be justified by a strategy or study that gives consideration to the objectives of this direction.</p> <p>The objectives of the direction are:</p> <ul style="list-style-type: none"> <li>(a) To encourage a variety and choice of housing types to provide for existing and future housing needs</li> <li>(b) To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</li> <li>(c) To minimise the impact of residential development on the environment and resource lands.</li> </ul> <p>It is not Council's intention to prohibit dual occupancies. The PP does not restrict this housing type. Instead, the PP seeks to restrict the subdivision only. Council has, and continues, to support dual occupancies where these present as two dwellings on one parcel of land. This form of development is popular for extended family accommodation and/or supplementing household income through rental. This has been Council's practice for over 20 years and Council has approved many dual occupancies in that time without subdivision.</p> <p>In consideration of objective (b), the existing infrastructure and services have the potential to be overburdened by the introduction of dual occupancies on smaller sized lots than what has previously been permitted. Council is aiming to meet the 0-5 year housing supply target and any shortfalls will be addressed in the 6-10 year timeframe. Housing supply to meet population projections and need to provide</p>

Direction	Issue Date / Date Effective	Comment
		<p>housing variety will be suitably addressed in the LSPS and a local housing strategy. In the meantime, the PP is needed to mitigate against significant implications on existing open space, community infrastructure, traffic, access and amenity. The PP will safeguard the appropriateness of existing infrastructure and services.</p> <p>Dual occupancies on smaller sized lots have the potential to impact the environment (character, amenity and integrity of the environment) and the PP will maintain the minimal impact that development has on the environment in consideration of objective (c).</p>
3.2 Caravan Parks and Manufactured Home Estates		Not relevant.
3.3 Home Occupations		Not relevant.
3.4 Integrating Land Use and Transport		Not relevant.
3.5 Development Near Licensed Aerodromes		Not relevant.
3.6 Shooting Ranges		Not relevant.
3.7 Reduction in non-hosted short term rental accommodation period		Not relevant.
<b>4. Hazard and Risk</b>	1 July 2009 (Except for new Direction 4.2 effective 14 April 2016)	
4.1 Acid Sulfate Soils		Not relevant.
4.2 Mine Subsidence and Unstable Land		Not relevant.
4.3 Flood Prone Land		Not relevant.
4.4 Planning for Bushfire Protection		Not relevant.
<b>5. Regional Planning</b>	1 July 2009 (Except for new Direction 5.2, effective 3 March 2011, Direction 5.9 effective 30 September 2013, Direction 5.4 effective 21 August 2015, Direction 5.8 and 5.10 effective 14 April 2016, Direction 5.1 and 5.3 effective 1 May 2017, Direction 5.11 effective 6 February 2019)	
5.1 (Revoked 17 October 2017)		Not relevant.
5.2 Sydney Drinking Water Catchments		Not relevant.
5.3 Farmland of State and		Not relevant.



Direction	Issue Date / Date Effective	Comment
Regional Significance on the NSW Far North Coast		
5.4 Commercial and Retail Development along the Pacific Highway, North Coast		Not relevant.
5.5 (Revoked 18 June 2010)		Not relevant.
5.6 (Revoked 10 July 2008)		Not relevant.
5.7 (Revoked 10 July 2008)		Not relevant.
5.8 Second Sydney Airport: Badgerys Creek		Not relevant.
5.9 North West Rail Link Corridor Strategy		Not relevant.
5.10 Implementation of Regional Plans		Not relevant.
5.11 Development of Aboriginal Land Council land		Not relevant.
<b>6. Local Plan Making</b>	1 July 2009	
6.1 Approval and Referral Requirements		The PP does not contain provisions which require the concurrence, referral or consultation of other public authorities, nor identify any use as designated development.
6.2 Reserving Land for Public Purposes		Not relevant.
6.3 Site Specific Provisions		Not relevant.
<b>7. Metropolitan Planning</b>	14 January 2015 (Except for Direction 7.2 effective 22 September 2015)	
7.1 Implementation of A Plan for Growing Sydney		<p><i>Greater Sydney Regional Plan – A Metropolis of Three Cities</i> (March 2018) is the relevant Sydney regional plan. This is further broken down in to district plans, with the relevant district plan for the Burwood LGA being the <i>Eastern City District Plan</i>.</p> <p>The <i>District Plan</i> contains a number of Planning Priorities and Actions to enact the State Government's Vision for the area.</p> <p>The PP is not inconsistent with any of the Plan's Priorities and Actions. The PP does not seek to prohibit the dual occupancy housing type, nor restrict housing choice.</p>
7.3 Parramatta Road Corridor Urban Transformation Strategy	9 December 2016	The Parramatta Road Corridor Urban Transformation Strategy does not provide any guidance on dual occupancies, and indeed it is likely that a higher density form of housing would be provided in the Corridor.
7.4 Implementation of North	15 May 2017	Not relevant.

<b>Direction</b>	<b>Issue Date / Date Effective</b>	<b>Comment</b>
West Priority Growth Area Land Use and Infrastructure Implementation Plan		
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	25 July 2017	Not relevant.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	5 August 2017	Not relevant.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	22 December 2017	Not relevant.
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	20 August 2018	Not relevant.
7.9 Implementation of Bayside West Precincts 2036 Plan	25 September 2018	Not relevant.
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	25 September 2018	Not relevant.

## **Section C – Environmental, Social and Economic Impact**

**7. *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?***

No. There is no known critical habitat or threatened species, populations or ecological communities, or their habitats, which will be affected by the PP.

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

The PP is expected to reduce environmental impacts by maintaining the amenity of low density residential areas, and maintaining the integrity of the existing subdivision pattern into the future. By limiting the subdivision of existing parcels into smaller parcels, it ensures that these parcels – and the land uses permitted thereupon - are more flexible and adaptable into the future.

The LSPS and associated local housing strategy will identify strategies to provide housing supply and diversity to meet growth projections and community needs. Once the LSPS is finalised, this will inform changes to the BLEP and BDCP with amendments to planning controls that permit additional housing supply and choice in suitable locations.

Unplanned growth resulting from the Code will have impacts on Council infrastructure in areas such as stormwater and traffic. Council has a \$20 million infrastructure backlog and has proposed a Special Rate Variation to improve infrastructure. Unplanned growth will exasperate existing issues and increase negative environmental impacts such as stormwater overflows and pollution.

**9. *Has the planning proposal adequately addressed any social and economic effects?***

The PP does not prohibit dual occupancies and will continue to allow dual occupancies for extended family accommodation, a source of rental income, and an alternative form of housing as planned for under relevant environmental planning instruments. While dual occupancies are typically more affordable than a larger, single detached dwelling-house in the Burwood area, dual occupancies are not generally considered a form of “affordable housing” serving low-income or key worker residents.

The PP would enable minimising impacts to open space, community infrastructure, traffic, access and amenity of Burwood LGA while promoting orderly development of dual occupancies on land that is able to meet existing relevant BDCP requirements.

## **Section D – State and Commonwealth Interests**

**10. *Is there adequate public infrastructure for the planning proposal?***

The PP is not expected to generate demand for any infrastructure or services. This PP will prevent unplanned growth resulting from the Code in areas where infrastructure is currently inadequate. The LSPS process will initiate studies that will investigate public infrastructure and identify areas in which infrastructure is adequate for growth and which areas are

unsuitable. Council will be commissioning a whole of LGA traffic and transport study to further understand and verify the infrastructure carrying capacity for now and the 20 year vision of the LSPS. Council is also in the process of updating its open space and community facility strategy as a priority to mitigate against the current provision deficiencies.

**11. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?***

There are no State Government authorities with a specific interest in dual occupancies (other than the DPIE). Therefore, no government authorities have been consulted on the PP beyond initial discussions and written correspondence with DPIE representatives.

## **Part 4 – Mapping**

No changes to the BLEP mapping are required in respect to the proposed PP.

## **Part 5 – Community Consultation**

In view of the minor nature of the PP and its application to one development type, the PP is considered to be of low-impact. As such, Council proposes that the PP be placed on public exhibition for a period of 14 days.

The Gateway Determination will confirm and specify the community consultation that must be undertaken on the PP.

## **Part 6 – Project Timeline**

Anticipated date of Gateway Determination	October 2019
Anticipated timeframe for the completion of required technical information	October 2019
Timeframe for government agency consultation	November 2019
Commencement and completion dates for the public exhibition period	November 2019
Dates for public hearing	Not applicable
Timeframe for consideration of submissions	November 2019
Timeframe for the consideration of a proposal post exhibition	December 2019
Anticipated date RPA will make the plan (if delegated)	December 2019
Anticipated date RPA will forward to the department for notification (if delegated)	Early 2020

## **Supporting Documentation**

## **Appendix One**

- Further Justification and Responses to DPIE Questions

## **Appendix Two**

- Delegation Checklist

## **Links to Supporting Material**

- Council Meeting Agenda of 27 November 2018 is available on Council's website:  
[http://www.burwood.nsw.gov.au/verve/\\_resources/CM\\_27112018\\_AGN\\_AT.pdf](http://www.burwood.nsw.gov.au/verve/_resources/CM_27112018_AGN_AT.pdf)
- Council Meeting Minutes of 27 November 2018 is available on Council's website:  
[http://www.burwood.nsw.gov.au/verve/\\_resources/Council\\_Meeting\\_Minutes\\_27\\_11\\_18.pdf](http://www.burwood.nsw.gov.au/verve/_resources/Council_Meeting_Minutes_27_11_18.pdf)

# Appendix One

## Further Justification and Responses to DPIE Questions

In an email dated 22 February 2019, the DPIE sought justification for Council's long-standing approach to the restriction of subdivision of dual occupancies, and responses to other questions. Council's responses are copied here:

***1. The reasons Council is seeking to exclude the approval of both the construction and subdivision of dual occupancies in the R2 zone via CDCs***

For the avoidance of doubt, Council seeks only to restrict the subdivision of dual occupancies, not the construction of dual occupancies on a single lot.

The reasons are as follows:

- Burwood planning controls do not currently permit the subdivision of dual occupancies. In this respect, Burwood is like other Councils including The Hills and Hornsby.
- The construction and the concurrent subdivision of dual occupancies are inconsistent with the existing development pattern in the R2 zone. Over time this could potentially threaten the character of, and the streetscape in, the low density residential areas in the LGA.
- The construction and concurrent subdivision of dual occupancies represent a denser style of housing compared with single dwelling houses and a dwelling house with a secondary dwelling or granny flat on one lot. As such, they are more likely to threaten the amenity of R2 zones.
- Allowing the subdivision of dual occupancies under the LRMDHC is likely to threaten the integrity of the subdivision pattern by permitting smaller and narrower parcels.
- Smaller parcels will have less development potential, as their sizes are more likely to restrict further redevelopment. Consolidation of land parcels would be necessary before redevelopment can take place.
- Burwood planning controls still permit dual occupancies as a housing choice, which contributes to the housing supply. Current controls restrict the subdivision of dual occupancies unless each resulting lot meets the minimum lot size development standard for dwelling houses in the BLEP.

***2. The reasons Council excludes Strata subdivision of dual occupancies and Torrens Title subdivision where the minimum lot size is not met, on lots where the construction of dual occupancies is permitted***

As stated above, the subdivision of dual occupancies in the R2 zone, by way of either Torrens Title or Strata Title has the potential to threaten the existing and desired streetscape, character, amenity and integrity of the low density residential areas.

Council's purpose and direction for allowing dual occupancies is generally to facilitate living space for an extended family where the principle dwelling may not be large enough for all concerned. Should subdivision of these dual occupancies be permitted where the Minimum Lot Size for each resulting dwelling and lot is not met, each dwelling and lot could be sold separately from the other dwelling, effectively creating individual dwellings on separate lots and negating the purpose and objectives of the minimum lot size development standard of the BLEP.

To reiterate, Council has no issue with allowing dual occupancies in the R2 zone. Council's concerns are as follows:

- The concurrent subdivision of dual occupancies would see a change in the subdivision pattern and would be more likely to affect the streetscape of, and the character in, the low density residential areas.
- The subdivision of dual occupancies would negate Council's purpose of facilitating living space for extended families.
- The definition of a dual occupancy under the Standard Instrument refers to '*two dwellings on one lot of land*'. In other words, if subdivided, a dual occupancy is no longer in the form of a dual occupancy and effectively becomes separate dwellings on separate lots.

### **3. A comparison of development standards for dual occupancies in Council's LEP and DCP with those in the Code**

The following table provides a comparison of development standards.

<b>Development Standard / Control</b>	<b>BLEP</b>	<b>BDCP</b>	<b>Codes SEPP: Part 3B - MDLRHC / Part 6 – Subdivision</b>
Minimum Lot Size for Dual Occupancy	Clause 4.1A: 500m <sup>2</sup> (for attached) 600m <sup>2</sup> (for detached)	n/a	As per BLEP
Minimum Lot Width		Section 4.4.3.2:  P38 – front boundary width of: <ul style="list-style-type: none"> <li>• 15m for duplex (side by side) development,</li> <li>• 24m for duplex (side by side) development involving Torrens Title subdivision</li> </ul>	3B.8(2):  12m (measured at building line)
Maximum Building Height	Clause 4.3:  As per Height of Building Map BLEP 8.5m	n/a	3B.9:  8.5m
Maximum Gross Floor Area (all building)	Clause 4.4:  Floor Space Ratio 0.55:1	Section 4.4.3.2:  P8 - Maximum Built Area of 67%	3B.10:  <ul style="list-style-type: none"> <li>• Lot area 400m<sup>2</sup> - 2,000m<sup>2</sup>: 25% of lot area + 300m<sup>2</sup></li> <li>• Lot area &gt; 2,000m<sup>2</sup>: 800m<sup>2</sup></li> </ul>
Minimum Landscaped Area	n/a	Section 4.4.3.2:  P14 - A minimum 30% of the front setback (i.e. front yard) is to consist of soft landscaping  P15 - Rear yards will not be	3B.15:  -50% of lot area minus 100m <sup>2</sup> -A min. 25% of area forward of building line -1.5m minimum length and width

Development Standard / Control	BLEP	BDCP	Codes SEPP: Part 3B - MDLRHC / Part 6 – Subdivision		
		permitted to be dominated by hard landscaping  Section 4.4.3.3 P1:  Each dwelling is to be provided with a clearly identifiable area of private open space of at least 50m2 adjacent to living areas to ensure the amenity of the dwelling in terms of privacy and recreation.			
Concurrent Subdivision	4.1(3):  The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land  400m2 for all R zones	Section 4.4.3.3 P47 & P48:  Subdivision not permitted, unless satisfying the standards/controls for single dwelling houses on two separate Torrens Title lots.	6.4(1)(d)(ii):  200m2 for each resulting Torrens Title Lot  6.2(c) ground floor area of both dwellings is not less than 180m2		
Primary Road Setback	n/a	Section 4.4.3.2 P9:  The average of the localised existing building line for ground floor  9m to the upper level of a two storey building, and the first floor level must be setback at least 3m beyond the ground floor façade	3B.11(1), (2) & (3):  Average of the front setback of the two closest existing dwellings / dual occupancies on same side of the road and within 40m of the development.  If no dwelling / dual occupancy within 40m on the same side of the road as the development, minimum setback is as follows: Lot area 400m2-900m2: 4.5m Lot area >900m2-1,500m2: 6.5m Lot area >1,500m2: 10m		
Side Setbacks	n/a	Section 4.4.3.2 P10:  900mm to ground floor or single storey elevation  1.5m to the upper level of a two storey building	3B.11(4):		
			Lot width	Building height	Minimum setback
			12m-24m	0m-4.5m	0.9m
				>4.5m-8.5m	(Building height – 4.5m) / 4 +0.9m
			>24m-36m	0m-4.5m	1.5m
>4.5m-8.5m	(Building height – 4.5m) / 4 +1.5m				
>36m	0m-8.5m	2.5m			
Rear Setback	n/a	Section 4.4.3.2 P11:  3m to ground floor  6m to upper level of a two storey building	3B.11(5)		
			Lot width	Building height	Minimum setback
			400m2-900m2	0m-4.5m	3m
				>4.5-8.5m	8m
			>900m2-1,500m2	0m-4.5m	5m
				>4.5-8.5m	12m
>1,500m2	0m-4.5m	10m			
>4.5m-8.5m	15m				



**4. Quantifiable data or mapping to support the request – including the total area of land zoned R2, the number of lots zoned R2, the number of lots on which dual occupancies could be carried out and subdivided under the Code compared to the current controls (with relevant exclusions noted and included), and the number of dual occupancies approved and the number subdivided in the LGA for at least the past 5 years**

The data is as follows:

- Total area of land zoned R2 (excluding road / road reserve areas): 369.35 Ha
- Number of lots zoned R2: 6,268
- Number of lots on which dual occupancy and concurrent subdivision could be carried out in the R2 zone under the LRMEHC / Codes SEPP: 2,082
- Number of lots on which dual occupancy and concurrent subdivision could be carried out in the R2 zone under Council controls: 76
- Number of duplex (side by side) dual occupancies approved in past 5 years: 2 (Note: Controls were only inserted in the BDCP in December 2016 to allow this type of dual occupancies)
- Number of duplex (side by side) dual occupancies and subdivisions approved in past 5 years: 1 (Note: This Strata subdivision was approved by way of Council resolution)

The vast difference between the number of lots on which dual occupancy and subdivision could be carried out under the LRMDHC (2082) and that under Council controls (76) suggests that the LRMDHC could dramatically alter the subdivision pattern and the character of Burwood's low density areas.

**5. Evidence regarding housing diversity, affordability and tenure currently being achieved in the LGA**

Burwood's community profile statistics are shown below:

- Greater than 50% of households had a weekly income of between \$800 and \$4,000. The median household income was \$1,398.
- Burwood's weekly household income was similar to the Greater Sydney area. The challenge of affordable housing delivery would therefore be similar to that of surrounding councils.
- There were a higher proportion of low income households (those earning less than \$650 per week) in the Burwood LGA. Overall, 19% were low income households, compared with 15.1% for Greater Sydney.



- Approximately 40% of the residents rented, 28.8% fully owned their dwelling, and 22.7% on mortgage.

**Housing tenure** export reset

Burwood Council area - Households (Enumerated)		2016			2011			Change
Tenure type		Number	%	Greater Sydney %	Number	%	Greater Sydney %	2011 to 2016
<b>a</b> Fully owned		3,634	28.8	27.7	3,657	32.5	29.1	-23
<b>a</b> Mortgage		2,857	22.7	31.5	2,776	24.7	33.2	+81
Renting - Total		5,054	40.1	32.6	3,986	35.5	30.4	+1,068
<b>a</b> Renting - Social housing		428	3.4	4.6	395	3.5	5.0	+33
<b>a</b> Renting - Private		4,557	36.1	27.6	3,518	31.3	25.0	+1,039
Renting - Not stated		69	0.5	0.4	73	0.6	0.5	-4
Other tenure type		122	1.0	0.8	70	0.6	0.8	+52
Not stated		939	7.4	7.4	750	6.7	6.5	+189
Total households		12,606	100.0	100.0	11,239	100.0	100.0	+1,367

Source: Australian Bureau of Statistics, Census of Population and Housing 2011 and 2016. Compiled and presented by .id, the population experts.

Please refer to specific data notes for more information

**a** Dominant tenure type

- The majority of households who rent pay a rent of between \$400 and \$749 per week. The median weekly rental payment is \$520.






Weekly housing rental payments			
Burwood Council area - Households (Enumerated)		2016	
Weekly rental amount	Number ±	% ±	Greater Sydney % ±
\$99 or less	191	3.8	3.8
\$100 - \$149	204	4.0	5.1
\$150 - \$199	133	2.6	3.5
\$200 - \$249	139	2.8	3.5
\$250 - \$299	134	2.7	4.0
\$300 - \$349	187	3.7	6.9
\$350 - \$399	253	5.0	10.1
\$400 - \$449	431	8.5	11.8
\$450 - \$549	1,349	26.7	19.0
\$550 - \$649	856	17.0	12.2
\$650 - \$749	580	11.5	7.1
\$750 - \$849	202	4.0	3.8
\$850+	187	3.3	5.9
Not stated	219	4.3	3.2
Total households renting	5,045	100.0	100.0

Source: Australian Bureau of Statistics, [Census of Population and Housing 2016](#). Compiled and presented in profile.id by [id](#), the population experts.

[Please refer to specific data notes for more information](#)

The LRMDHC's allowance of dual occupancies with concurrent subdivision is unlikely to assist the low income household group as the dual occupancy housing type typically rents for \$600-\$700 a week in and around the Burwood LGA.

- 31.8% of household mortgage repayments are between \$2,600 and \$5,000 per month. The median monthly mortgage repayment is \$2,167 per month.

Monthly housing loan repayments		export  reset 	
Burwood Council area - Households (Enumerated)		2016	
Monthly repayment amount	Number 	% 	Greater Sydney % 
\$299 or less	231	8.1	5.1
\$300 - \$599	84	2.9	2.8
\$600 - \$999	157	5.5	5.2
\$1,000 - \$1,199	110	3.8	4.3
\$1,200 - \$1,399	125	4.4	5.1
\$1,400 - \$1,599	117	4.1	5.3
\$1,600 - \$1,799	129	4.5	6.5
\$1,800 - \$1,999	101	3.5	5.0
\$2,000 - \$2,199	299	10.4	11.0
\$2,200 - \$2,399	101	3.5	4.5
\$2,400 - \$2,599	120	4.2	4.4
\$2,600 - \$2,999	211	7.4	8.7
\$3,000 - \$3,999	484	16.2	14.8
\$4,000 - \$4,999	236	8.2	6.7
\$5,000 and over	223	7.8	6.4
Not stated	156	5.4	4.4
Total	2,864	100.0	100.0

Source: Australian Bureau of Statistics, [Census of Population and Housing 2016](#). Compiled and presented in profile.id by [.id](#), the population experts.

[Please refer to specific data notes for more information](#)

Council's GIS information suggests that there are approximately 8,500 dwelling houses (some of which may have a secondary dwelling or a granny flat, or may be used for non-residential uses, e.g. a child care centre) and 6,500 dwelling units in the Burwood LGA. There are also 44 registered boarding houses, containing 474 rooms, housing approximately 700 residents in the LGA.

Council will commence the preparation of a Local Housing Strategy in August 2019. A step in the process is to analyse data on dwelling types, number of bedrooms and tenure. The information on housing diversity will become more available as the study progresses.

## 6. How Council is meeting its housing targets

A review of Council's development approvals granted, development applications (DAs) and planning proposals (PPs) under assessment has suggested the following statistics:

- More than 1,800 dwellings have been completed or are under construction since 2012
- The DAs currently under assessment include more than 700 units in total
- The (amended) PP for Burwood Place currently under assessment has proposed approximately 1,300 dwellings. The original PP, which received the Gateway

Determination in 2017, proposed approximately 1,000 dwellings

The abovementioned approvals, DAs and the PP are all for land in the Burwood Town Centre. The statistics indicate that approximately over 3,600 dwellings will have been added to the housing supply between 2012 and 2019.

The Eastern City District Plan sets a 5 year housing target for the Burwood LGA to provide an additional 2,600 dwellings by 2021. The assurance letter from the GSC for Council's 5 year target suggests Burwood will deliver 2,030 additional dwellings in this timeframe, however this does not take into account the PP for Burwood Place which is anticipated to provide an additional 1,100 dwellings, which suggests that the Burwood LGA should be able to address any shortfall in housing supply for the period ending 2021 in the next period ending 2029.

Further details of 10 and 20 year targets will be provided in Council's Local Housing Strategy.

***7. Evidence that other options have been explored other than a request to amend the Codes SEPP, such as changes to Council's LEP***

Council considered a report at its meeting on 27 November 2018 on the implications of the LRMDHC, whereupon the Council resolved to request an amendment of the Codes SEPP so that the R2 zone in the BLEP is exempt from the provision of the LRMDHC that allows the approval of dual occupancies and their subdivision via CDCs. Council also resolved to prepare a PP to amend the BLEP to prohibit the Strata and Community Title subdivision of dual occupancies in the R2 zone while providing development standards (for Torrens Title subdivision of dual occupancies) that are similar to those which exist for dwelling houses.

Feedback from the DPIE was that Council can pursue both approaches, each of which requires justification under the eight headings provided by the DPIE.

***8. Evidence that the proposed exclusion represents the broader views of the local community***

The BLEP came into force in 2012. Its preparation was based on the principle of focusing business, jobs and housing growth in the Burwood and Strathfield Town Centres, while protecting the high quality residential areas and streetscapes outside the town centres. This principle accounts for over approximately 70% of dwelling approvals (including apartments, secondary dwellings and boarding houses) granted being for land within the town centres and less than 30% being for land outside the town centres. This principle has been frequently mentioned by the elected Councillors at Council meetings when deliberating on planning matters.

Council resolutions to seek an amendment to the LRMDHC / Codes SEPP and to prepare a PP to restrict the subdivision of dual occupancies in the R2 zone are consistent with this principle. It therefore can be said that the proposed exclusion represents the broader views of the local community.

Community consultation was conducted by way of public exhibition, surveys, focus groups etc. when the Burwood Community Strategic Plan "*Burwood 2030*" was

prepared in 2018. It was evident from that community consultation that the local community was well aware that Burwood is a Strategic Centre, that the community had expressed its desire to locate higher density development in town centres and to retain areas outside the town centres for lower density to balance the diversity of housing in the Burwood LGA.

Council is preparing a draft Local Strategic Planning Statement (LSPS). The LSPS will set out the special characteristics which contribute to local identity and shared community values to be maintained and enhanced. The abovementioned principle is expected to be reiterated in the draft LSPS. The views of the community on the draft LSPS will be sought during the public exhibition period in August 2019.

# Appendix Two

## Delegation Checklist and Evaluation Criteria

Checklist for the review of a request for delegation of plan making functions to councils
Local Government Area:
<b>Burwood.</b>
Name of draft LEP:
<b>Restricting the subdivision of dual occupancies in the R2 zone.</b>
Address of Land (if applicable):
<b>Whole LGA.</b>
Intent of draft LEP:
<b>To prohibit the Community and Strata Title subdivision of dual occupancies, and place controls on the Torrens Title subdivision of dual occupancies similar to dwelling houses.</b>
Additional Supporting Points/Information:
<b>Please refer to the PP.</b>



Evaluation criteria for the issuing of an Authorisation				
(NOTE - where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y*			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		N/A		
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
<b>Heritage LEPs</b>	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/A		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		N/A		
<b>Reclassifications</b>	Y/N			
Is there an associated spot rezoning with the reclassification?		N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		N/A		
Is the planning proposal proposed to rectify an anomaly in a classification?		N/A		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?		N/A		

\* Several councils have been permitted to restrict the subdivision of dual occupancies in their LEPs (e.g. The Hills, Hornsby and Auburn). Council seeks to transfer its existing restrictions from its DCP to its LEP.



If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		N/A		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		N/A		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		N/A		
<b>Spot Rezoning</b>	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the planning proposal create an exception to a mapped development standard?	N			
<b>Section 73A matters</b>				
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? <b>(NOTE - the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</b>		N/A		
<b>NOTES</b> <ul style="list-style-type: none"> <li>Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.</li> <li>Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.</li> </ul>				