

Planning Services

Gateway Determination Report

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|---------------------------------|--|
| LGA | Georges River |
| PPA | Georges River Council |
| NAME | To prohibit multi-dwelling housing in the R2 Low Density Residential zone and increase the minimum lot size for dual occupancies under Hurstville LEP 2012, and repeal Items 17, 18 or 19 of Schedule 1 – Additional Permitted Uses under the Kogarah LEP 2012 |
| NUMBER | PP_2018_GRIVE_003_00 |
| LEPS TO BE AMENDED | Hurstville LEP 2012 and Kogarah LEP 2012 |
| ADDRESS | Land zoned R2 Low Density Residential under Hurstville LEP 2012 and specified land under Items 17,18 and 19 Schedule 1 of Kogarah LEP 2012 |
| RECEIVED | 26 June 2018 |
| FILE NO. | IRF18/4058 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal |

INTRODUCTION

Description of planning proposal

The planning proposal seeks to make the following amendments to the Hurstville Local Environmental Plan (LEP) 2012:

- prohibit multi-dwelling housing in the R2 Low Density Residential zone; and
- increase the minimum lot size for dual occupancies from 630m² to 650m².

The planning proposal also seeks to amend the Kogarah Local Environmental Plan (LEP) 2012 to repeal Items 17, 18 or 19 of Schedule 1 – Additional Permitted Uses.

The planning proposal seeks to amend the Environmental Planning and Assessment Regulation 2000, the Standard Instrument – Principal Local Environmental Plan and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). These amendments fall outside the scope for planning proposals seeking to amend environmental planning instruments for local areas. Council notes that if this cannot be achieved then the LEP amendments listed above should proceed.

A condition of Gateway is included requiring that the planning proposal be updated to remove references relating to amending the Environmental Planning and Assessment Regulation 2000, the Standard Instrument – Principal LEP and the Codes SEPP.

The planning proposal has been prepared in response to the recently released Low Rise Medium Density Housing Code under the Codes SEPP. This permits various forms of multi-dwelling housing as complying development on land where multi-dwelling housing is permitted. It also permits to obtain a complying development certificate approval for construction and subdivided dual occupancy development where this fully complies the Code.

The Department's letter dated 24 May 2018 (**Attachment F**) outlined that to seek deferral in the commencement of the Code for Georges River LGA until 1 July 2019 the planning proposal needed to address the following:

- the area of land zoned R2 Low Density Residential, R1 General Residential and R3 Medium Density Residential;
- the number of lots eligible for manor house or multi-dwelling housing development as complying development under the code in the R2, R1 and R3 zone;
- the number of multi-dwelling housing developments approved by the council in the R2, R1 and R3 zone in the past 5 years; and
- whether the proposal is supported by a housing strategy that has been developed in consultation with the community.

On 6 July 2018, Georges River Council was granted deferral of the Code until 1 July 2019.

Site description

The planning proposal relates to all land zoned R2 Low Density Residential under the Hurstville LEP 2012 and land referred to in Items 17, 18 and 19 of Schedule 1 of the Kogarah LEP 2012. **Attachment E** shows the affected lots across the local government area (LGA).

Summary of recommendation

It is recommended that the planning proposal proceed subject to the following conditions:

- remove references relating to amending the Environmental Planning and Assessment Regulation 2000, the Standard Instrument – Principal LEP and the Codes SEPP;
- Georges River Council should provide further information in relation to:
 - the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential in the LGA;
 - the number of multi dwelling housing and dual occupancy developments approved in the R2 Low Density Residential and R3 Medium Density Residential zoned in the LGA in the past five years; and
 - whether the proposal is supported by a housing strategy that has been developed in consultation with the community;
- provide mapping that demonstrates the proposed amendments; and
- Council should write to all affected landowners about the exhibition of the proposal.

The planning proposal is supported to proceed to public exhibition because:

- the recently released Low Rise Medium Density Housing Code permits additional uses, such as manor houses and multi-dwelling housing (terraces), which have not been anticipated in the R2 Low Density Residential zone under the Hurstville LEP 2012;
- it responds to the Department's letter to Council dated 24 May 2018 and the recent deferral of the Code until 1 July 2019;
- the proposal seeks to provide consistency in the application of a minimum lot size for dual occupancies between the Hurstville LEP 2012 and the Kogarah LEP 2012; and
- Council has commenced drafting a principal LEP for the new Georges River LGA and has begun reviewing the planning controls and maps that apply to the area, which will assist Council to better understand the housing needs of the community and consider what housing types should be permitted in low-rise residential areas.

PROPOSAL

Objectives or intended outcomes

The proposal states that the objectives of the proposed LEP changes are to:

- protect and maintain the low-density character of the R2 Low Density Residential zone under the Hurstville LEP 2012;
- ensure that social, environmental and economic factors are considered prior to identifying areas suitable to permit multi-dwelling housing; and
- ensure the community can have their say on the future of the Georges River LGA.

Prior to exhibition, Council is required to remove reference to seeking exemption and amendments to Environmental Planning and Assessment Regulation 2000, the Standard Instrument – Principal LEP and the Codes SEPP.

Explanation of provisions

The following amendments are proposed to the Hurstville LEP 2012:

- prohibit multi-dwelling housing in the R2 Low Density Residential zone; and
- increase the minimum lot size for dual occupancies from 630m² to 650m².

Once this amendment is finalised, manor houses and multi-dwelling houses (terraces) will not be permitted in the R2 Low Density Residential zone as the Codes SEPP only permits this type of development in zones where multi-dwelling housing is permissible.

The planning proposal also seeks to repeal Items 17, 18 or 19 of Schedule 1 – Additional Permitted Uses under the Kogarah LEP 2012. This amendment will prohibit multi-dwelling housing on sites listed under Items 17, 18 and 19 of Schedule 1. This amendment will affect 51 identified sites. Repealing Item 19 of Schedule 1 will not preclude dual occupancy developments on these sites as these are zoned R2 Low Density Residential, which permits this type development.

Mapping

The proposal includes maps to support the identification of lots affected by the proposal, but does not include maps showing the proposed amendments. A condition of Gateway requires that the planning proposal be updated to include the proposed map amendments.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the direct result of a strategic study or report.

The recently released Low Rise Medium Density Housing Code permits dual occupancies and various forms of multi-dwelling housing as complying development on all land where these uses are also permitted.

On 6 July 2018, Georges River Council was granted deferral of the Code until 1 July 2019.

Council has commenced drafting a principal LEP for the new Georges River LGA and has begun reviewing the planning controls and maps that apply to the area. As part of this work, Council is undertaking several strategic studies, including a housing strategy, which will inform the new principal LEP. Council expects the first of these studies to be completed in late 2018. Council wants to ensure that any social, environmental and economic factors are adequately considered when identifying what housing types are permitted in low-rise residential areas.

Multi-dwelling housing is not permitted in the R2 Low Density Residential zone under the Kogarah LEP 2012. The proposed amendments pertaining to Items 17, 18 and 19 of Schedule 1 of this LEP generally relate to sites that are zoned R2 Low Density Residential. This would mean that this type of development would be prohibited, as is the case for other R2 zoned land under the Kogarah LEP 2012.

The amendment to repeal Item 19 of Schedule 1 of the Kogarah LEP 2012 does not preclude dual occupancies from being permitted on the sites listed under Schedule 1 as these sites are zoned R2 Low Density Residential, and dual occupancies are permitted under this zone. Rather, Item 19 seeks to regulate how dual occupancy development is carried out on these sites.

It is considered that these amendments to the Hurstville LEP 2012 and Kogarah LEP 2012 through a planning proposal are the best ways to achieve these objectives.

The planning proposal does not address any amendments to Council's LEPs to address its concerns with the dual occupancy requirements for complying development under the Code. However, Council raised concerns with the floor space ratio (FSR) controls for dual occupancies under the Code and would like these to be consistent with Council's requirements. The planning proposal is not able to give effect to changes to the code controls for dual occupancies. Council can, however, consider what amendments it may wish to make to the minimum allotment size for dual occupancies under its respective LEPs to correspond to the requirements of the code, which rely on Council's LEPs.

Given the Minister has granted Council a one-year deferral of the Code until 1 July 2019, dual occupancies will not be permitted to be developed or subdivided under Complying Development in accordance with the Code until then. Council can therefore consider separate and additional amendments to its LEPs for dual occupancies that may then work in the Code once it comes into effect on 1 July 2019.

It is requested that the information and discussion requesting amendments to the dual occupancy controls under the Code (and the Regulation and Codes SEPP) be removed from the planning proposal as the planning proposal cannot give effect to these amendments. Therefore, a condition is attached to the Gateway reflecting this.

STRATEGIC ASSESSMENT

Greater Sydney Region Plan

The Greater Sydney Region Plan was released by the Greater Sydney Commission on 18 March 2018. It provides a 40-year vision for Greater Sydney and is designed to inform district and local plans and the assessment of planning proposals.

While the plan's primary focus is on growth management, the directions within it relate to providing interconnected infrastructure, productivity, liveability and sustainability benefits to all residents.

Although the removal of multi-dwelling housing from the R2 zone will potentially reduce housing diversity in the zone, the proposal seeks to reflect and protect the current low-density character of the areas this zone is applied to. This approach is consistent with directions in the plan.

South District Plan

The Greater Sydney Commission released the South District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the South District while improving the district's social, economic and environmental assets.

The plan sets a five-year housing target of 4800 dwellings in the Georges River LGA. Council states that it is on track to deliver beyond its current housing target. Council notes that significant housing is being delivered in its centres, transport corridors and the Kogarah North precinct. The proposal states that the housing target will be exceeded with the development of the Kogarah town centre and the Kogarah North, South Hurstville and Princes Highway, Carlton precincts.

Promoting housing diversity, including a mix of dwelling types in appropriate locations, is a key objective of the plan. This is to be predominantly led by councils and informed by local housing strategies. Council will be required to prepare a local housing strategy for its LGA, which is required to address housing diversity.

Local

The former Hurstville Council did not have a housing strategy. It adopted a strategy in July 2014; however, this policy document was not developed in consultation with the community. The planning proposal is consistent with the objectives of this strategy as it seeks to maintain and protect the low-density character of the R2 Low Density Residential zones under the respective LEPs.

Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all section 9.1 Directions, except for Direction 3.1 Residential Zones.

This Direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs. It also seeks to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services. The Direction ensures that the impacts of residential development on the environment and resource lands are minimised.

Council has included a brief analysis of multi-dwelling housing applications it received in the 2017 calendar year and expects to receive in the 2018/19 and 2019/2020 financial years. Council has also included details on the number of lots that are eligible for Complying Development that will be permitted under the new Low Rise Medium Density Housing Code under existing controls, taking into account the Codes SEPP exclusions (see **Table 1** below).

The planning proposal is inconsistent with this Direction as it seeks to reduce dwelling diversity and potential across the R2 Low Density Residential zone. Although Council has included some quantitative analysis, it has not provided commentary on how the proposed changes will affect the current levels of approvals or how many lots will be eligible to use the code once the proposed changes have been implemented.

To understand the impact on dwelling potential, a Gateway condition is included requiring Council to provide further information in relation to:

- the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential in the LGA; and
- the number of multi dwelling housing and dual occupancy developments approved in the R2 Low Density Residential and R3 Medium Density Residential zoned in the LGA in the past five years; and
- whether the proposal is supported by a housing strategy that has been developed in consultation with the community.

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.

Table 1: Number of lots by zone that could permit for medium density development in accordance with the Low Rise Medium Density Housing Code (*Source: Georges River Council*)

| Type | LEP | Zone | Lot Area | Frontage | Planning notes | Estimated No. of Land |
|-----------------------|--------|------|-----------|----------|------------------------------|-----------------------|
| Dual Occ | HLEP12 | R2 | | | | |
| (attached & detached) | | | ≥ 630sqm | ≥ 12m | Count within LSZ Area G only | 3130 |
| | | | ≥ 1000sqm | ≥ 12m | Count within LSZ Area K only | 170 |
| | | R3 | | | | |
| | | | ≥ 630sqm | ≥ 12m | Count within LSZ Area G only | 640 |
| | | | ≥ 1000sqm | ≥ 12m | No LSZ Area K in R3 | 0 |
| | KLEP12 | R2 | | | | |
| | | | ≥ 650sqm | ≥ 12m | Count within LSD Area O only | 2950 |
| | | | ≥ 1000sqm | ≥ 12m | Count within LSD Area U only | 70 |
| | | R3 | | | | |
| | | | ≥ 650sqm | ≥ 12m | Count within LSD Area O only | 800 |
| | | | ≥ 1000sqm | ≥ 12m | Count within LSD Area U only | 1 |
| Dual Occ | HLEP12 | R2 | | | | |
| (2 storey) | | | ≥ 630sqm | ≥ 15m | Count within LSZ Area G only | 2350 |
| | | | ≥ 1000sqm | ≥ 15m | Count within LSZ Area K only | 150 |
| | | R3 | | | | |
| | | | ≥ 630sqm | ≥ 15m | Count within LSZ Area G only | 610 |
| | | | ≥ 1000sqm | ≥ 15m | No LSZ Area K in R3 | 0 |
| | KLEP12 | R2 | | | | |
| | | | ≥ 650sqm | ≥ 15m | Count within LSD Area O only | 2230 |
| | | | ≥ 1000sqm | ≥ 15m | Count within LSD Area U only | 60 |
| | | R3 | | | | |
| | | | ≥ 650sqm | ≥ 15m | Count within LSD Area O only | 730 |
| | | | ≥ 1000sqm | ≥ 15m | Count within LSD Area U only | 1 |
| Manor House | HLEP12 | R2 | | | | |
| | | | ≥ 600sqm | ≥ 15m | Count land within R2 Zone | 4030 |
| | | R3 | | | | |
| | | | ≥ 600sqm | ≥ 15m | Count land within R3 Zone | 650 |
| | KLEP12 | R3 | | | | |
| | | | ≥ 600sqm | ≥ 15m | Count land within R3 Zone | 810 |
| Terraces | HLEP12 | R2 | | | | |
| | | | ≥ 600sqm | ≥ 18m | Count within LSZ Area G only | 1460 |
| | | | ≥ 1500sqm | ≥ 18m | Count within LSZ Area K only | 10 |
| | | R3 | | | | |
| | | | ≥ 600sqm | ≥ 18m | Count within LSZ Area G only | 510 |
| | | | ≥ 1500sqm | ≥ 18m | No LSZ Area K in R3 | 0 |
| | KLEP12 | R3 | | | | |
| | | | ≥ 800sqm | ≥ 18m | Count land within R3 Zone | 570 |

State environmental planning policies (SEPPs)

State Environmental Planning Policy (Affordable Rental Housing) 2009

The intent of the Affordable Housing SEPP is to increase the supply and diversity of affordable rental housing.

Under the SEPP, a multi-dwelling housing development that is used for affordable housing and complies with the requirements of the SEPP may be subject to a bonus FSR.

The removal of multi-dwelling housing from the R2 Low Density Residential zone under the Hurstville LEP 2112 would preclude this type of development from being carried out under the Affordable Housing SEPP.

The planning proposal will not limit the potential for other affordable housing under the SEPP elsewhere in the LGA.

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

On 6 April 2018, the new Low Rise Medium Density Housing Code was published and came into effect on 6 July 2018.

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

The code allows for the development of manor houses, terraces and multi-dwelling housing where multi-dwelling dwelling housing is currently permitted. As such, the proposal to remove multi-dwelling housing from the R2 Low Density Residential zone under the Hurstville LEP 2012 and Items 17, 18 and 19 of Schedule 1 of the Kogarah LEP 2012 will preclude these other types of developments from being carried out pursuant to the Codes SEPP.

A Gateway condition is recommended requiring Council to provide further quantitative analysis to understand the potential impact of prohibiting multi-dwelling housing from the R2 Low Density Residential zone under the Hurstville LEP 2012 and those sites listed under Items 17, 18 and 19 of Schedule 1 of the Kogarah LEP 2012.

Once this information has been provided, further assessment will be undertaken at the plan-making stage to understand the impacts of the planning proposal on the Codes SEPP to determine the acceptability of the proposal.

SITE-SPECIFIC ASSESSMENT

Social

The proposal aims to retain the low-density character of the R2 Low Density Residential zones and ensure that development remains consistent with the level of access to social and utility infrastructure.

Environmental

There are no known critical habitats, threatened species or ecological communities that would be impacted by the proposal.

Economic

It is recommended that affected landowners be informed of the planning proposal and its exhibition, and be given suitable time to make their own assessment on the matter.

The issues raised will then be considered as part of the finalisation of the planning proposal, including reconsideration of section 9.1 Direction 3.1 Residential Zones and the impacts of the Low Rise Medium Density Housing Code.

CONSULTATION

Community

A Gateway condition is included requiring Council to write to all affected landowners at exhibition of the proposal explaining the proposed changes and what they mean for the landowner.

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

Consultation with other state agencies is not considered necessary. The proposal will not increase demands on infrastructure, nor does it have the potential to impact on the natural environment or heritage values.

TIME FRAME

The proposal indicates a time frame of 12 months to finalise the plan. The LEP should be completed by 1 July 2019, as this time frame is considered appropriate to allow sufficient time to prepare any additional information that may be required and place the proposal on public exhibition.

LOCAL PLAN-MAKING AUTHORITY

Council has stated that it does not wish to be the plan-making authority in relation to this proposal. Given the implications this planning proposal may have on state policy, it is recommended that Council not be granted plan-making authority.

It is recommended the Gateway determination require the proposal to be updated to include a transitional savings provision clause. This will ensure the planning proposal does not impact any current development application or appeal processes.

SAVINGS AND TRANSITIONAL PROVISIONS

A condition should be included in the gateway determination that requires a savings and transition provision for any development applications lodged and not determined to ensure the proponents are not adversely impacted on by the changes proposed.

CONCLUSION

The planning proposal is supported because:

- the recently released Low Rise Medium Density Housing Code permits additional uses, such as manor houses and multi-dwelling housing (terraces), which have not been anticipated in the R2 Low Density Residential zone under the Hurstville LEP 2012;
- it responds to the Department's letter to Council dated 24 May 2018 and the recent deferral of the Code until 1 July 2019;
- the proposal seeks to provide consistency in the application of a minimum lot size for dual occupancies between the Hurstville LEP 2012 and the Kogarah LEP 2012; and
- Council has commenced drafting a principal LEP for the new Georges River LGA and has begun reviewing the planning controls and maps that apply to the area, which will assist Council to better understand the housing needs of the community and consider what housing types should be permitted in low-rise residential areas.

It is considered that the conditions of the Gateway will provide the quantitative information required for the planning proposal to proceed to the next stage of the plan-making process when further assessment will take place.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Direction 3.1 Residential Zones is unresolved.

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 should be updated to:
 - (a) remove reference to amending the Environmental Planning and Assessment Regulation 2000, the Standard Instrument – Principal LEP and the Codes SEPP;
 - (b) remove references to amendments to controls relating to dual occupancy development under the Codes SEPP;
 - (c) provide additional quantitative analysis to assess the impacts of the proposal on housing diversity and supply as follows, but not limited to:
 - i. the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential in the LGA; and
 - ii. the number of multi dwelling housing and dual occupancy developments approved in the R2 Low Density Residential and R3 Medium Density Residential zoned in the LGA in the past five years;
 - (d) explain whether the proposal is supported by a housing strategy that has been developed in consultation with the community;
 - (e) include a new savings transition clause to ensure that proposed amendments do not affect any development applications or appeal processes; and
 - (f) provide mapping that demonstrates the proposed amendments.
2. The revised planning proposal should be forwarded to the Department for review and approval prior to exhibition.
3. Council should write to all affected landowners about the exhibition of the proposal outlining the effect of the proposed changes.
4. The LEP is to be completed by 1 July 2019.



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