

Planning Proposal

Rockdale Local Environmental Plan 2011 Attached and Semi-Detached Dwellings Amendment



18 October 2012

Contents

- Part 1 -** A statement of the Objectives or Intended Outcomes of the proposed LEP
- Part 2 -** An Explanation of the Provisions that are to be included in the proposed LEP
- Part 3 -** The Justification for those objectives, outcomes and provisions and the process for their implementation
- Part 4 -** Details of the Community Consultation that is to be undertaken on the planning proposal

Introduction

This Planning Proposal explains the intended effect of, and justification, for the proposed amendment to *Rockdale Local Environmental Plan (LEP) 2011*. It has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning and Infrastructure (DP&I) guides, including 'A Guide to Preparing Local Environmental Plans' and 'A Guide to Preparing Planning Proposals'.

Background

Recently, Council has received development applications (DAs) proposing **attached dwellings** on land zoned R2 Low Density Residential as per *Rockdale LEP 2011*. The DAs proposed lot sizes smaller than Minimum Lot Size Map as per clause 4.1 Minimum Lot Size in *Rockdale LEP 2011*.

Clarification on the **attached dwellings** definition was sought from the DP&I and subsequent advice confirmed that proponents are able to build **attached dwellings** on a strata lot or community title lot which are substantially smaller than the minimum lot size requirements for Torrens title lots (450 square metres) because of a loop-hole created by the revised definition.

The definitions of **attached dwellings** and **semi-detached dwellings** – both of which are permitted with consent in the R2 zone - were changed when the *Standard Instrument (Local Environmental Plan) Order 2006* was amended in February 2011. Prior to February 2011, both definitions included a component which explicitly excluded individual lots on a strata plan or community title scheme. This meant that clause 4.1 Minimum Lot Size was triggered and therefore, lot sizes for all types of residential development could not be less than 450 square metres.

After the exhibition of the comprehensive Draft Rockdale LEP 2011 in late 2010 and subsequent resolution of Council to adopt the draft LEP in February 2011, the DP&I took full carriage of the integration of the *Standard Instrument (Local Environmental Plan) Order 2006* amendments into draft Rockdale LEP 2011. The Draft LEP was amended accordingly by the DP&I and subsequently notified on 5 December 2011. This loop hole was not brought to Council's attention at the time the draft LEP was being finalised.

Council has undertaken urban design testing of possible development scenarios to determine the densities that can be achieved (refer to Appendix 1). Three scenarios were tested, all of which demonstrate that the densities are not consistent with Council's low density vision for the zone, or with a core zone objective. This analysis provides the evidence to restrict the lot sizes to a size which is compatible within the R2 zone.

Council has therefore looked at the DP&I's model local provision clause **4.1C Exceptions to minimum lot sizes for certain residential development** which allows Councils to restrict lot sizes for certain types of residential development in certain residential zones. Council can use this clause so that **attached dwellings** and **semi-detached dwellings** can be restricted to a lot size that is consistent with the zone's intent as well as the minimum lot size for **dual occupancy** development. Council has also prepared minor amendments to Rockdale Development Control Plan (DCP) 2011 in order to refine controls for the two development types. The draft DCP process will run concurrently with the Planning Proposal process.

Summary and recommended action

The introduction of medium density development in the R2 zone was not Council's intention when *Rockdale LEP 2011* was being prepared. Furthermore, Council's Capacity Analysis and Built Form Study (September 2012) prepared for the comprehensive LEP process identified that Council is well placed to meet its dwelling target of 7,000 dwellings by the year 2031. Therefore, it is remiss of Council to continue the current policy position without having appropriate strategic justification. As a result, this planning proposal seeks to restrict the minimum lot sizes for **attached dwellings** and **semi-detached dwellings** in the R2 zone.

Part 1 - Objectives or Intended Outcomes

The purpose of this Planning Proposal is to amend *Rockdale LEP 2011* to restrict the minimum lot sizes for **attached dwellings** and **semi-detached dwellings** in the R2 Low Density Residential zone.

Part 2 - Explanation of Provisions

A Exception model clause

Insert the DP&I's model clause **4.1C Exceptions to minimum lot sizes for certain residential development** in Part 4 of *Rockdale LEP 2011*, which is tailored to Council's needs - as follows:

Note: the blue font in the model clause below shows Council's requirements.

- (1) *The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (2) *This clause applies to development on land in the **R2 Low Density** zone.*
- (3) *Development consent may be granted to a single development application for development to which this clause applies that is both of the following:*
 - (a) *the subdivision of land into **2** or more lots,*
 - (b) *the erection of an attached dwelling and a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
 - i. *for the erection of an attached dwelling - **350** m²; or*
 - ii. *for the erection of a semi-detached dwelling - **350** m².*

Note: the proposed **350 m²** lot size is consistent with Council's existing policy for minimum lot sizes for **dual occupancy** development.

Part 3 - Justification

A Need for the planning proposal

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

No. The Planning Proposal is a result of a loop hole identified which arose from revisions to the definitions for **attached dwellings** and **semi-detached dwellings**. The loop hole permits medium density type development within the R2 Low Density Residential zone which is not consistent with one of the core zone objectives.

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

Yes. A planning proposal is the best means of achieving the objectives or intended outcomes.

A3 Is there a net community benefit?

The key community benefit brought about by restricting the lot sizes for **attached dwellings** and **semi-detached dwellings** in the R2 Low Density Residential zone is that inappropriate medium density development will not be able to continue within

Council's low density zone. This will remove any adverse impact on the residential amenity within the zone brought about by such development.

The following table (Table 2) addresses the evaluation criteria for conducting a net community benefit test within the Draft Centres Policy (2009) as required by the Department's guidelines.

Table 2 - Consistency with Net Community Benefit Evaluation Criteria

Evaluation Criteria	Comment
Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?	Not applicable. The Planning Proposal (PP) seeks to reinstate the a policy framework it believed it had when it prepared the comprehensive <i>Rockdale LEP 2011</i>
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?	No.
Is the LEP likely to create a precedent or create or change the expectations of the landowners or other landholders?	No. The PP seeks to create consistency across the types of residential uses permissible in the R2 zone. It also seeks to remove adverse impact on residential amenity in the R2 zone brought about by medium density development
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Not applicable
Will the LEP facilitate a permanent employment generating activity or result in a loss of employments lands?	No
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	Not applicable
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposal site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?	No additional impact is envisaged on existing public infrastructure or public transport across land zoned R2
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	Not applicable
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact	Not applicable
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	Not applicable
Will the LEP be compatible / complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	The PP ensures consistency of residential uses across the R2 zone and removes the adverse impact of medium density development in the R2 zone
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	Not applicable

If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	Not applicable
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	The PP seeks to remove a loop hole in the R2 zone that could have an adverse impact on the character and amenity of the zone. The implications of not proceeding means that Rockdale City Council will continue to receive development applications for medium density development (ie. attached dwellings and semi-detached dwellings) in the R2 zone, which once built, would undermine the objectives of the zone and adversely impact residential amenity

B Relationship to strategic planning framework

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)?

Metropolitan Plan For Sydney 2036

Objective D2: To produce housing that suits our expected future needs:

Council has not undertaken an appropriate detailed strategic analysis of its residential land which supports medium density housing in the R2 zone. It is therefore remiss of Council to continue this current policy position.

Sydney South Draft Subregional Strategy

C2 Plan for a housing mix near jobs, transport and services

C2.3 Provide for a mix of housing:

As per response above, Council has not undertaken an appropriate detailed strategic analysis of its residential land which supports medium density housing in the R2 zone. It is therefore remiss of Council to continue this current policy position.

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

Rockdale City Community Strategic Plan

Council's Vision is: One Community, Many Cultures, Endless Opportunity. The blueprint for the Rockdale community for 2025 is to be achieved through five community outcomes:

1. A vibrant, healthy and socially connected City of many cultures
2. A sustainable City
3. A strong economy
4. Appropriate infrastructure
5. A leading organisation

Table 3 below identifies the Planning Proposal's consistency with the Plan's relevant community outcomes.

Table 3 – Consistency with Rockdale City Community Strategic Plan

Outcome	Strategy	Consistency
2	2.1 Strategic planning for a sustainable future Protect, preserve and promote the City's built and natural environment	Consistent. The PP seeks to remove a loop hole that allows medium density type housing in the R2 zone. This ensures the uses within the zone are consistent with a zone objective

2	2.5 Land Planning and Management Promote high quality, well designed and sustainable development that enhances the City.	The PP supports this Strategy by improving community sustainability (by removing inappropriate development from the land use table)
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B3 Is the planning proposal consistent with applicable state environmental planning policies?

Consistency with the State Environmental Planning Policies is provided in Table 4, below.

Table 4 - Consistency with State Environmental Planning Policies

No.	Title	Consistency with Planning Proposal
1	Development Standards	(Repealed by <i>RLEP 2011</i>)
4	Development Without Consent and Miscellaneous Exempt and Complying Development	(Clause 6 and Parts 3 and 4 repealed by <i>RLEP 2011</i>). Consistent with remainder
6	Number of Storeys in a Building	Not applicable
14	Coastal Wetlands	Not applicable
15	Rural Landsharing Communities	Not applicable
19	Bushland in Urban Areas	Not applicable
21	Caravan Parks	Not applicable
22	Shops and Commercial Premises	Not applicable
26	Littoral Rainforests	Not applicable
29	Western Sydney Recreation Area	Not applicable
30	Intensive Aquaculture	Not applicable
32	Urban Consolidation (Redevelopment of Urban Land)	Not applicable
33	Hazardous and Offensive Development	Not applicable
36	Manufactured Home Estates	Not applicable
39	Spit Island Bird Habitat	Not applicable
41	Casino Entertainment Complex	Not applicable
44	Koala Habitat Protection	Not applicable
47	Moore Park Showground	Not applicable
50	Canal Estate Development	Not applicable
52	Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable
55	Remediation of Land	Consistent. The PP does not hinder the application of this SEPP
59	Central Western Sydney Regional Open Space and Residential	Not applicable
60	Exempt and Complying Development	(Repealed by <i>RLEP 2011</i>)
62	Sustainable Aquaculture	Not applicable
64	Advertising and Signage	Not applicable
65	Design Quality of Residential Flat Development	Not applicable
70	Affordable Housing (Revised Schemes)	Not applicable
71	Coastal Protection	Not applicable
	(Affordable Rental Housing) 2009	Consistent. The PP does not hinder the application of this SEPP
	(Building Sustainability Index: BASIX) 2004	Consistent. The PP does not hinder the application of this SEPP
	(Exempt and Complying Development Codes) 2008	Consistent. The PP does not hinder the application of this SEPP

	(Housing for Seniors or People with a Disability) 2004	Consistent. The PP does not hinder the application of this SEPP
	(Infrastructure) 2007	Consistent. The PP does not hinder the application of this SEPP
	(Kosciuszko National park Alpine Resorts) 2007	Not applicable
	(Kurnell Peninsula) 1989	Not applicable
	(Major Development) 2005	Not applicable
	(Mining, Petroleum Production and Extractive Industries) 2007	Not applicable
	(Penrith Lakes Scheme) 1989	Not applicable
	(Rural Lands) 2008	Not applicable
	(Sydney Drinking Water Catchment) 2011	Not applicable
	(Sydney Region Growth Centres) 2006	Not applicable
	(Temporary Structures) 2007	Not applicable
	(Urban Renewal) 2010	Not applicable
	(Western Sydney Employment Area) 2009	Not applicable
	(Western Sydney Parklands) 2009	Not applicable

Consistency with deemed State Environmental Planning Policies is provided in Table 5, below.

Table 5 - Consistency with deemed State Environmental Planning Policies

No.	Title	Consistency with Planning Proposal
5	(Chatswood Town Centre)	Not applicable
8	(Central Coast Plateau Areas)	Not applicable
9	Extractive Industry (No.2 – 1995)	Not applicable
16	Walsh Bay	Not applicable
18	Public Transport Corridors	Not applicable
19	Rouse Hill Development Area	Not applicable
20	Hawkesbury-Nepean River (No.2 – 1997)	Not applicable
24	Homebush Bay Area	Not applicable
25	Orchard Hills	Not applicable
26	City West	Not applicable
28	Parramatta	Not applicable
30	St Marys	Not applicable
33	Cooks Cove	Not applicable
	(Sydney Harbour Catchment) 2005	Not applicable

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

Consistency with the Ministerial Directions for LEPs under section 117 of the *Environmental Planning and Assessment Act 1979* is provided by Table 6, below.

Table 6 - Consistency with applicable Ministerial Directions

1. Employment and Resources

No.	Title	Consistency with Planning Proposal
1.1	Business and Industrial Zones	Not applicable
1.2	Rural Zones	Not applicable
1.3	Mining, Petroleum Production & Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable
1.5	Rural Lands	Not applicable

2. Environment and Heritage

No.	Title	Consistency with Planning Proposal
2.1	Environmental Protection Zones	Not applicable
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Not applicable
2.4	Recreation Vehicle Areas	Not applicable

3. Housing, Infrastructure and Urban Development

No.	Title	Consistency with Planning Proposal
3.1	Residential Zones	Justifiably inconsistent The PP which seeks to restrict the minimum lot sizes for attached dwellings and semi-detached dwellings in the R2 zone is considered of minor significance because: • Council is seeking to return the policy it intended when it prepared the comprehensive <i>RLEP 2011</i> • The retainment of the current policy is contrary to Council's Capacity Analysis and Built Form Study (September 2012) which identified that Council is well placed to meet its dwelling target of 7,000 dwellings by the year 2031. Therefore, it is remiss of Council to continue the current policy position without having appropriate strategic justification
3.2	Caravan Parks and Manufactured Home Estates	Not applicable
3.3	Home Occupations	Not applicable
3.4	Integrating land use and Transport	Not applicable
3.5	Development near Licensed Aerodromes	Not applicable
3.6	Shooting ranges	Not applicable

4. Hazard and Risk

No.	Title	Consistency with Planning Proposal
4.1	Acid Sulfate Soils	Not applicable
4.2	Mine Subsidence and Unstable Land	Not applicable
4.3	Flood Prone Land	Not applicable
4.4	Planning for Bushfire Protection	Not applicable

5. Regional Planning

No.	Title	Consistency with Planning Proposal
5.1	Implementation of Regional Strategies	Consistent
5.2	Sydney Drinking Water Catchments	Not applicable
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.5	Development on the vicinity of Ellalong...	(Revoked)
5.6	Sydney to Canberra Corridor	(Revoked)
5.7	Central Coast	(Revoked)
5.8	Second Sydney Airport: Badgerys Creek	Not applicable

6. Local Plan Making

No.	Title	Consistency with Planning Proposal
6.1	Approval and Referral Requirements	Consistent
6.2	Reserving land for Public Purposes	Not applicable
6.3	Site Specific Provisions	Consistent

7. Metropolitan Planning

No.	Title	Consistency with Planning Proposal
7.1	Implementation of the Metropolitan Plan for Sydney 2036	Consistent

C Environmental, social and economic impact

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?

No. The Planning Proposal seeks to reduce the intensity of development in the R2 zone by restricting the minimum lot sizes. This proposed policy amendment simply returns the original policy council intended when it adopted the *Rockdale LEP 2011*. There are no environmental impacts envisaged from this policy change.

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

No. (See comment above in Section C1, above).

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

Not applicable. (See response at Section C1, above).

D State and Commonwealth interests

D1 Is there adequate public infrastructure for the planning proposal?

Consultation pursuant to former Section 62 of the *Environmental Planning and Assessment Act 1979* was undertaken during the preparation of *Rockdale LEP 2011* and via the draft LEP's exhibition. At those times, it was not communicated to government infrastructure stakeholders that medium density style development was being proposed in the R2 zone, because at those times, they were triggered by clause 4.1 Minimum Lot size.

The Planning Proposal seeks to reinstate the densities that were thought to be in place at the time the draft LEP was signed off by government infrastructure stakeholders. Thus, the Planning Proposal will not create additional demand for infrastructure.

D2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Consultation with appropriate State and Commonwealth public authorities has not yet been undertaken. The level of consultation will be determined by the DP&I when it determines its Gateway determination. However, because the impacts of this Planning Proposal are considered to be negligible, it is considered that consultation with public authorities is not required.

Part 4 - Community Consultation

The Planning Proposal seeks to restrict the minimum lot size for **attached dwellings** and **semi-detached dwellings** in the R2 Low Density Residential zone. Council proposes a 28 day exhibition period with the following targeted consultation mechanisms:

1. **Public exhibition material** to be made available at the Rockdale Library for the 28 day exhibition period.
2. **Public notice** in the *St George and Sutherland Leader*.
3. **Council's website** – all exhibition material will be made available on Council's website for the duration of the exhibition period.

These consultation mechanisms are considered sufficient for the purposes of the Planning Proposal.

Note: minor amendments to Rockdale Development Control Plan (DCP) 2011 are also proposed to support the LEP amendment. The draft DCP will be exhibited concurrently with the Planning Proposal should the DP&I grant its Gateway Determination).

Appendix 1

Urban Design Analysis – Envelope and Layout Study

Attached Dwelling envelope and layout study

Purpose

This study was undertaken to inform the planning proposal to add minimum lot size requirements for Attached Dwellings and Semi-detached Dwellings in the R2 low density residential zone in Rockdale LEP 2011.

The purpose of this study is to illustrate the potential impacts of Attached Dwellings, as defined by the Standard Instrument, on a low density residential setting when lot size is not restricted.

Methodology

Development scenarios were prepared for a range of amalgamation permutations of typical lots. These lots are based on an investigation of lot sizes in the R2 zone.

The development scenarios were designed to comply with the Rockdale DCP 2011 Multi-Dwelling Housing controls where possible, as well as the Rockdale LEP 2011 building height and FSR controls.

Each scenario includes a discussion on potential compliance issues as well as other possible development outcomes.

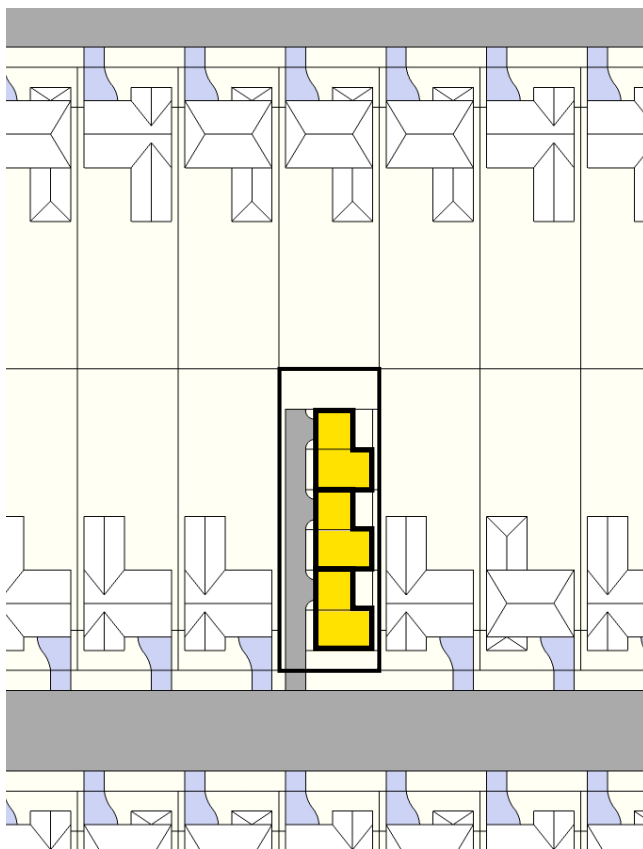
Findings

The scenarios explored in this study demonstrate that without restrictions on lot size, medium density development can occur in the R2 Low Density Residential Zone.

This is an undesirable outcome because medium density development not only creates more dwellings within a smaller area, but also has greater impacts on neighbouring properties as a result of the orientation of units and extent of building footprint. This is not appropriate in a low density residential setting, and is not consistent with the objectives of the R2 Low Density Residential Zone.

The findings of this study suggest that minimum lot size and subdivision requirements are needed for Attached Dwellings and Semi-detached Dwellings in the R2 Low Density Residential zone. This would ensure that the density of future redevelopment is consistent with the City's low density residential areas and the R2 zone objectives, and the amenity of neighbours is protected.

Scenario 1 - No amalgamation (single lot)



Site Information

Lots:	1
Lot size:	675m ² (15m x 45m)
Site Dimensions:	15m x 45m
Site Area:	675m ²

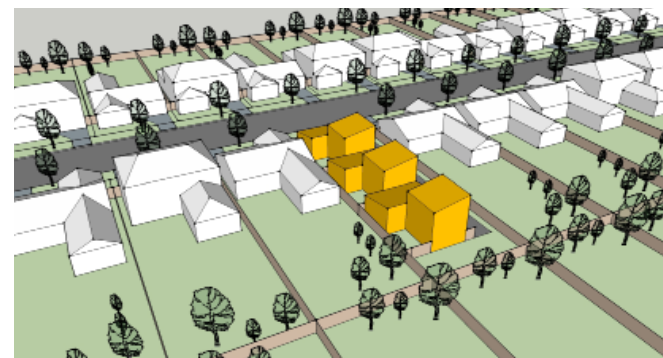
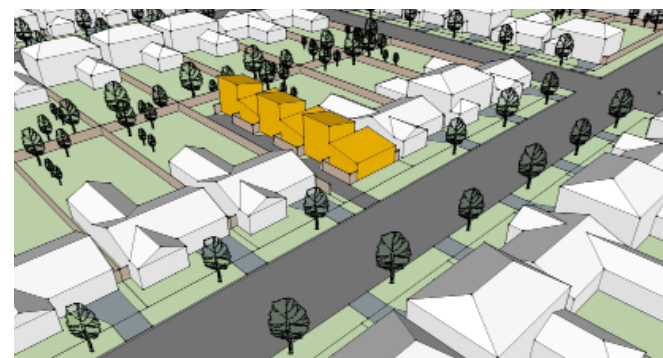
Development Information

Units:	3
Typical Unit Area:	117m ²
Building Footprint:	252m ²
Gross Floor Area:	351m ²
FSR:	0.52:1

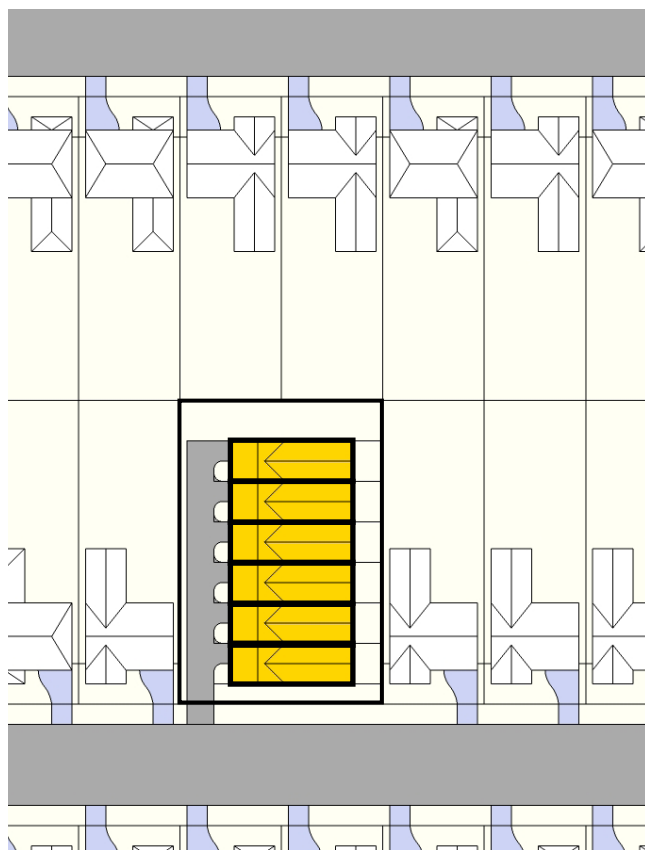
Indicative Building Layout
N.T.S

Comments

Due to the width of a single lot, the proposed development scenario does not comply with the DCP multi-dwelling housing side setback controls. It does however comply with the DCP side setback controls for dwelling houses.



Scenario 2 - Amalgamation of 2 lots



Site Information

Lots:	2
Lot size:	675m ² (15m x 45m)
Site Dimensions:	30m x 45m
Site Area:	1350m ²

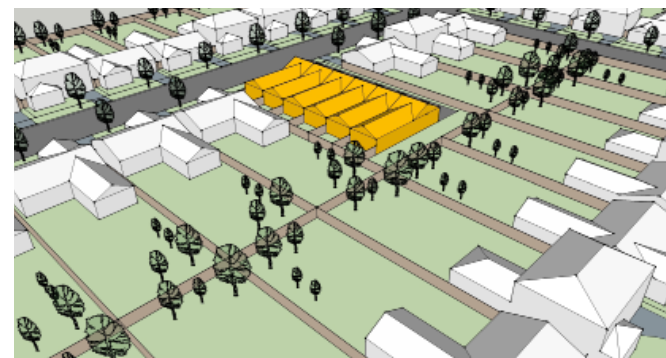
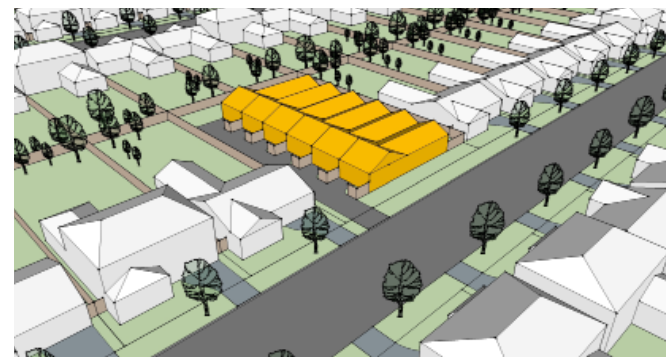
Development Information

Units:	6
Typical Unit Area:	108m ²
Building Footprint:	648m ²
Gross Floor Area:	648m ²
FSR:	0.48:1

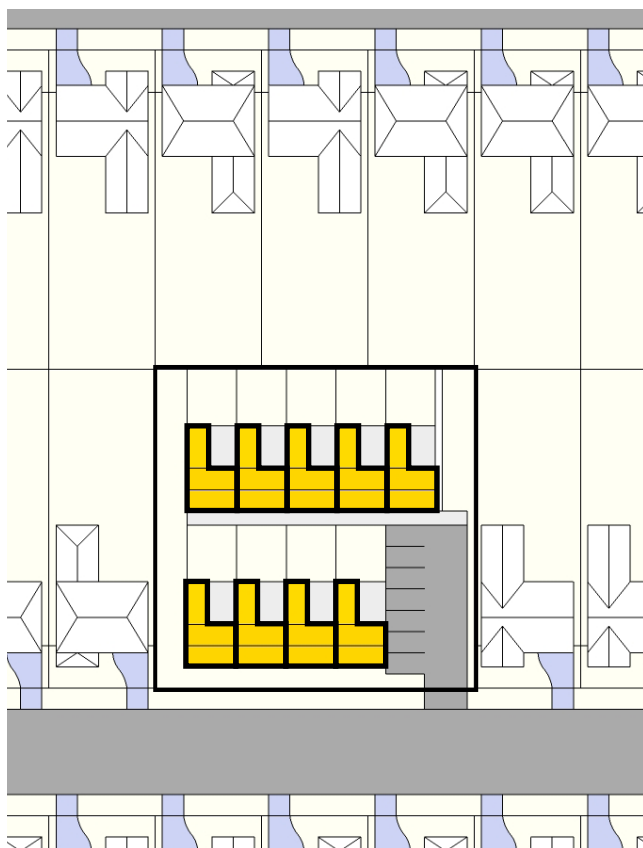
Indicative Building Layout
N.T.S

Comments

The scenario illustrated is only single storey in height and demonstrates the potential extent of building footprint permissible. However, this configuration would not comply with the DCP private open space requirements. These could be achieved by reducing the footprint and adding a second storey.



Scenario 3 - Amalgamation of 3 lots



Site Information

Lots:	3
Lot size:	675m ² (15m x 45m)
Site Dimensions:	45m x 45m
Site Area:	2025m ²

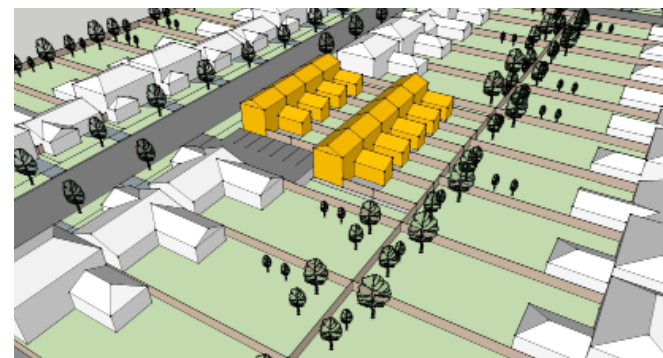
Development Information

Units:	9
Typical Unit Area:	102m ²
Building Footprint:	498m ²
Gross Floor Space:	942m ²
FSR:	0.46:1

Indicative Building Layout
N.T.S

Comments

Although the scenario illustrated shows at grade parking visible from the street, it would also be possible to incorporate this to the rear of the site or in a basement carpark.



Appendix 2

Council report and Minutes from Council Meeting, 17 October 2012 Item – ORD10

Council Meeting

Meeting Date 17/10/2012

Item Number:	ORD10
Subject:	PROPOSED AMENDMENT TO ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011 AND ROCKDALE DEVELOPMENT CONTROL PLAN 2011 - ATTACHED AND SEMI-DETACHED DWELLINGS
File Number:	F12/308
Report by:	Coordinator Urban Strategy (Jacky Wilkes)
Contributors:	
Community Engagement	Yes - Consult
Financial	Yes
Implications:	

Precis

It has been brought to Council's attention that changes by the Department of Planning and Infrastructure to the definitions of **attached dwellings** and **semi-detached dwellings** in the *Standard Instrument (Local Environmental Plan) Order 2006* have created a loop-hole in the *Rockdale Local Environmental Plan 2011 (Rockdale LEP 2011)*. The loop-hole allows town house (medium density) style development to be permissible within the R2 Low Density Residential zone. This can occur because the definition of these terms no longer excludes subdivision by strata or community title and there is no restriction on the minimum subdivision area. This is contrary to Council's intent for the R2 Low Density Zone when it exhibited and subsequently adopted the draft LEP for notification.

Accordingly, a planning proposal has been prepared to amend *Rockdale LEP 2011* to restrict the minimum lot sizes for **attached dwellings** and **semi-detached dwellings** in the R2 Low Density Residential zone to 350 square metres to address this anomaly (see Planning Proposal at Attachment 1) . A draft development control plan (DCP) amendment is also proposed to provide clarity on certain aspects of **attached dwellings** and **semi-detached dwellings** development.

Council Resolution

MOTION moved by Councillors Saravinovski and Nagi

1 The the report on the proposed amendment to Rockdale Local Environmental Plan 2011 and Draft Rockdale Development Control Plan 2011 regarding attached dwellings and semi-detached dwellings be received and noted.

2 That Council endorse the Planning Proposal (Attachment 1) and submit the Planning Proposal to the Department of Planning and Infrastructure in accordance with Section 55 of the Environmental Planning and Assessment Act

1979.

3 That Council endorse the Draft Amendments to the Rockdale Development Control Plan 2011 (Attachment 2) and support its exhibition should the Department of Planning and Infrastructure grant its Gateway Determination for the Planning Proposal.

DIVISION

DIVISION on the MOTION called for by Councillors Saravinovski and Nagi

FOR THE MOTION

Councillors O'Brien, Macdonald, P Sedrak, Awada, Barlow, L Sedrak, Saravinovski, Nagi, Mickovski, Ibrahim, Hanna, Tsounis and Poulos

AGAINST THE MOTION

Nil

The MOTION was ADOPTED unanimously.

Officer Recommendation

1. That voting on this matter be by way of a Division.
2. The the report on the proposed amendment to Rockdale Local Environmental Plan 2011 and Draft Rockdale Development Control Plan 2011 regarding attached dwellings and semi-detached dwellings be received and noted.
3. That Council endorses the Planning Proposal (Attachment 1) and submit the Planning Proposal to the Department of Planning and Infrastructure in accordance with Section 55 of the Environmental Planning and Assessment Act 1979.
4. That Council endorses the Draft Amendments to the Rockdale Development Control Plan 2011 (Attachment 2) and support its exhibition should the Department of Planning and Infrastructure grant its Gateway Determination for the Planning Proposal.

Report Background

In February 2011, the Department of Planning and Infrastructure (DP&I) made changes to the *Standard Instrument (Local Environmental Plan) Order 2006* ('Standard Instrument') which resulted in unintended consequences for *Rockdale LEP 2011*. The definitions of **attached dwellings** and **semi-detached dwellings**, both of which are permitted with consent in the R2 Low Density Residential zone, were changed by removing a component which explicitly excluded individual lots on a strata plan or community title scheme. Prior to February 2011, these development types could only be subdivided by Torrens title, which meant that clause 4.1 Minimum Lot Size was triggered and therefore, lot sizes for most types of residential development could not be less than 450 square metres (in the case of **dual occupancy** development - 350 square metres).

The amendment to the definitions in the Standard Instrument occurred after the exhibition of the comprehensive Draft Rockdale LEP 2011 in late 2010. As a result, the DP&I took full carriage of the integration of the Standard Instrument amendments into draft Rockdale LEP 2011. The Draft LEP was amended accordingly by the DP&I and subsequently notified on 5 December 2011. This loop hole, created by the changes to the definition, was not brought to Council's attention by the DP&I at the time the draft LEP was being finalised. In effect, the loophole allows medium density development in Council's low density zone which is contrary to a core zone objective and contrary to Council's intentions when it adopted the draft LEP.

Clarification on the **attached dwellings** and **semi-detached dwellings** definitions was sought from the DP&I. Subsequent DP&I advice confirmed that proponents are able to build **attached dwellings** and **semi-detached dwellings** on strata title or community title lots.

To fully understand the potential intensity of development, Council staff have undertaken testing of possible development scenarios (refer to Appendix 2 in the Planning Proposal held at Attachment 1). Three development scenarios were tested, all of which demonstrate that the densities are not consistent with Council's low density intent for the zone. The scenarios also result in significant impact on privacy and on amenity of Council's low density residential areas. Furthermore, the R2 Low Density Residential zone contains a primary objective "To provide for the housing needs of the community within a low density residential environment". This zone objective is mandatory and cannot be amended. In short, permitting medium density development within the R2 zone is in conflict with this zone objective.

The introduction of two storey medium density development in the R2 Low Density Residential zone was not Council's intention when *Rockdale LEP 2011* was being prepared. Council's analysis provides the evidence to support a restriction on the minimum lot sizes for **attached dwellings** and **semi-detached dwellings** within the R2 zone. Furthermore, Council's Capacity Analysis and Built Form Study (September 2010) prepared for the comprehensive LEP process identified that Council is well placed to meet its dwelling target of 7,000 dwellings by the year 2031. Therefore, it is remiss of Council to continue the current policy position without having appropriate strategic justification.

As a result, the attached planning proposal (Attachment 1) seeks to restrict the minimum lot sizes for **attached dwellings** and **semi-detached dwellings** in the R2 Low Density Residential zone to 350 square metres. This restriction will ensure consistency with the zone's intent as well as consistency with the minimum lot size for **dual occupancy** development which is 350 square metres.

Minor amendments are also proposed to Rockdale DCP 2011 (attachment 1) which will clarify controls pertaining to private open space, setbacks and minimum lot frontages across Sections 4.3 and 5.1 of the Rockdale DCP 2011. Specifically, the amendments seek to provide more certainty to applicants of **attached dwellings** and **semi-detached dwellings** about which controls apply. These amendments constitute Draft Rockdale DCP 2011 (Amendment No.2) which is held at Attachment 2 of this report. The amendment extracts only the relevant sections of the DCP. However, a fully copy of the DCP will be provided as part of the exhibition material when it is exhibited.

Council has already received development applications (DAs) proposing **attached dwellings** on land zoned R2 Low Density Residential as per *Rockdale LEP 2011*. It is anticipated that unless this loop-hole is closed, DAs will continue to be lodged and the amenity of low density areas will be negatively impacted.

Conclusion

A planning proposal and draft DCP amendment are considered the best ways to resolve this matter. Attachment 1 to this report comprises the Planning Proposal that seeks to resolve the LEP matters contained in this report whilst

Attachment 2 comprises the Draft DCP Amendment which seek to provide more certainty to applicants of **attached dwellings** and **semi-detached dwellings** about which controls apply. Council staff are seeking:

- endorsement of the Planning Proposal so it can be forwarded to the DP&I under the Gateway process pursuant to the *Environmental Planning and Assessment Act 1979*. (Note: under the new Part 3 of the *Environmental Planning and Assessment Act 1979*, should the DP&I grant its Gateway Determination, then the Planning Proposal is able to go straight to exhibition without coming back to Council).
- endorsement of the Draft DCP amendment along with its exhibition so it can be exhibited concurrently with the Planning Proposal (should the DP&I grant its Gateway Determination).

Community Engagement

A community engagement approach is proposed. Refer to Part 4 in the attached Planning Proposal.

Community Strategy

The proposal is consistent with Council's Community Outcome "A Sustainable City" and Community Outcome objective:

- A city with a high quality natural and built environment that reflects the aspirations of the community, now and for future generations.

and is also consistent with the (or is a nominated) strategy in the Community Strategic Plan being:

- Strategic planning for a sustainable future - Protect, preserve and promote the City's built and natural environment.

Financial Implications

Due to the consultation process now required as part of this Planning Proposal, it is anticipated that up to \$2,000 will be spent on promotion and advertising of the exhibition of the proposed changes, should it proceed to exhibition.

Documents, Links & Action Items

2 Attachment(s) (5724 Kbytes)

 [Attachment 1 - Planning Proposal - Rockdale LEP 2011 attached dwellings and semi-detached dwelling amendment.pdf](#) 1213 (Kbytes) |  [Attachment 2 - draft Rockdale DCP 2011 Amendment No2 Attached Dwelling and Semi-detached Dwelling.pdf](#) 4511 (Kbytes)
