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IRF21/1370

## Gateway Determination Report – PP-2021-3569

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Amendment to Blacktown Local Environmental Plan 2015 –  
Housekeeping amendments including amendments to clause 4.1A,  
4.1AA, 4.1C and Schedule 1.

July 21



Published by NSW Department of Planning, Industry and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

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# Contents

<b>1</b>	<b>Planning Proposal .....</b>	<b>2</b>
1.1	Overview.....	2
1.2	Objectives and intended outcomes .....	2
1.3	Explanation of Provisions.....	3
1.4	Site Description and Surrounding Area .....	5
1.5	Mapping.....	5
<b>2</b>	<b>Need for The Planning Proposal .....</b>	<b>5</b>
<b>3</b>	<b>Strategic Assessment .....</b>	<b>5</b>
3.1	Regional Plan .....	5
3.2	District Plan .....	5
3.3	Local Strategic Planning Statement .....	6
3.4	Local Planning Panel Recommendation.....	6
3.5	Section 9.1 Ministerial Directions .....	6
3.6	State Environmental Planning Policies.....	7
<b>4</b>	<b>Site-Specific Assessment .....</b>	<b>7</b>
4.1	Environmental.....	7
4.2	Social and Economic .....	7
<b>5</b>	<b>Consultation.....</b>	<b>8</b>
5.1	Community .....	8
5.2	Agencies.....	8
<b>6</b>	<b>Timeframe .....</b>	<b>8</b>
<b>7</b>	<b>Local Plan-Making Authority.....</b>	<b>8</b>
<b>8</b>	<b>Assessment Summary.....</b>	<b>8</b>
<b>9</b>	<b>Recommendation.....</b>	<b>9</b>

# 1 Planning Proposal

## 1.1 Overview

The planning proposal seeks to make various housekeeping amendments to the Blacktown Local Environmental Plan 2015 (Blacktown LEP 2015). It aims to address inconsistencies between minimum lot size clauses 4.1, 4.1AA and 4.1A, provide clarification in relation to the subdivision of dual occupancy developments on corner sites permitted under 4.1C, and amend inaccurate references to land in Schedule 1.

**Table 1: Planning Proposal Details**

<b>LGA</b>	Blacktown
<b>PPA</b>	Blacktown City Council
<b>NAME</b>	Housekeeping Amendment No.2 to Blacktown Local Environmental Plan 2015
<b>NUMBER</b>	PP-2021-3569
<b>LEP TO BE AMENDED</b>	Blacktown Local Environmental Plan 2015 (Blacktown LEP 2015)
<b>ADDRESS</b>	Land identified on the Land Application Map
<b>DESCRIPTION</b>	Land identified on the Land Application Map
<b>RECEIVED</b>	19 May 2021
<b>FILE NO.</b>	EF21/1151
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1.2 Objectives and intended outcomes

The planning proposal contains objectives and intended outcomes that explain the intent of the planning proposal.

The objectives of the planning proposal are:

- To resolve inconsistencies in the Local Environmental Plan (LEP) relating to minimum subdivision lot size requirements;
- To ensure consistency with Council's strategic position in relation to the subdivision of dual occupancy developments; and
- To ensure that specific land is accurately referred to in Schedule 1.

It is requested that Council expand on these objectives to describe the intent of the planning proposal more specifically, including the intended development and policy outcomes. This forms a condition of the gateway determination.

## 1.3 Explanation of Provisions

The planning proposal seeks to amend the Blacktown LEP 2015, as follows:

1. Amend clause 4.1AA by adding a new subclause (3B) that clarifies that clause 4.1AA applies despite clause 4.1(4) of the LEP;
2. Amend clause 4.1A by adding a new subclause (3A) that clarifies that clause 4.1A applies despite clause 4.1(4) of the LEP;
3. Deletion of the existing clause 4.1C and replacement with a new clause in relation to the subdivision of dual occupancy development which:
  - a. Provides an objective clause encouraging housing diversity by allowing the subdivision of dual occupancy development in certain circumstances;
  - b. Introduces provisions which allow subdivision of dual occupancy development where:
    - i. Subdivision creates separate titles of each dwelling which meet minimum lot size requirements shown in the minimum lot size map; or
    - ii. The land is on a corner lot that intersects at an angle of 110 degrees or less and the lot size for each resulting lot will be at least 300 square metres.
4. Amend Schedule 1, Item 9, to accurately reflected the registered lot and deposited plan associated with the land following amalgamation.

Proposals 1 and 2 above are intended to address a legal drafting inconsistency whereby clauses 4.1AA and 4.1A relate to community and strata titles respectively while clause 4.1(4) specifies they do not so relate. It is noted that clause 4.1A relates only to IN2 Light Industrial zoned land in Huntingwood Estate. Council's intent is that clause 4.1(4) continues to apply to community and strata title subdivisions in zones other than the R2 – Low Density Residential zones.

Proposal 3 is to encourage greater diversity of housing in outlining circumstances where subdivision of dual occupancy development is allowed. Proposal 4 is a certificate of title update.

**Table 2 Current and Proposed controls**

Clause	Existing	Proposed
4.1AA Minimum subdivision lot size for community title schemes	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to ensure that community title schemes maintain minimum lot sizes in low density residential areas,</p> <p>(b) to ensure that development is compatible with the dwelling density and character of the surrounding area,</p> <p>(c) to ensure that lots in community title schemes are appropriate for the capacity of infrastructure and services.</p> <p>(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the <i>Community Land Development Act 1989</i> of land in Zone R2 Low Density Residential.</p> <p>(3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the <i>Community Land Development Act</i></p>	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to ensure that community title schemes maintain minimum lot sizes in low density residential areas,</p> <p>(b) to ensure that development is compatible with the dwelling density and character of the surrounding area,</p> <p>(c) to ensure that lots in community title schemes are appropriate for the capacity of infrastructure and services.</p> <p>(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the <i>Community Land Development Act 1989</i> of land in Zone R2 Low Density Residential.</p> <p>(3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the <i>Community Land Development Act</i></p>

Clause	Existing	Proposed
	<p>1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</p> <p>(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.</p>	<p>1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</p> <p>(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.</p> <p>(3B) This clause applies despite Clause 4.1(4)</p>
Clause 4.1A Minimum subdivision lot size for strata schemes	<p>(1) The objective of this clause is to ensure that the land to which this clause applies is not fragmented by subdivision that would be inconsistent with the prevailing character of large floor plate development.</p> <p>(2) This clause only applies to land in Zone IN2 Light Industrial in the Huntingwood Estate, as identified as “Area A” on the Lot Size Map.</p> <p>(3) The size of any lot resulting from a subdivision of land to which this clause applies under the <i>Strata Schemes (Freehold Development) Act 1973</i> is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</p>	<p>(1) The objective of this clause is to ensure that the land to which this clause applies is not fragmented by subdivision that would be inconsistent with the prevailing character of large floor plate development.</p> <p>(2) This clause only applies to land in Zone IN2 Light Industrial in the Huntingwood Estate, as identified as “Area A” on the Lot Size Map.</p> <p>(3) The size of any lot resulting from a subdivision of land to which this clause applies under the <i>Strata Schemes (Freehold Development) Act 1973</i> is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</p> <p>(3A) This clause applies despite Clause 4.1(4).</p>
4.1C Subdivision of dual occupancies	<p>(1) Development consent must not be granted for a subdivision that would create separate titles for each of the dwellings comprising a dual occupancy unless –</p> <p>(a) each of the dwellings has a frontage to a different road, and</p> <p>(b) the site of each lot resulting from the subdivision is not less than 300 square metres</p> <p>(2) Nothing in this clause or any other provision of this plan prevents a subdivision that would create separate titles for each of the 2 dwellings comprising a dual occupancy of a detached dual occupancy development if the 2 resulting lots would meet the minimum size shown on the lot size map in relation to the land,</p>	<p>(1) The objective of this clause is to encourage housing diversity by allowing the subdivision of a lawfully constructed dual occupancy development in certain circumstances.</p> <p>(2) Development consent must not be granted for a subdivision that would create separate titles for each of the 2 dwellings comprising a dual occupancy unless –</p> <p>(a) a subdivision creates separate titles for each of the 2 dwellings comprising a dual occupancy of a detached dual occupancy development if the 2 resulting lots would meet the minimum lot size shown on the Lot Size Map in relation to that land, or</p> <p>(b) the land is on a corner lot, but only if:</p> <p>(i) there is a dual occupancy on the land that was lawfully erected, and</p> <p>(ii) each of the dwellings has frontage to a road, and</p> <p>(iii) the lot size for each resulting lot will be at least 300 square metres.</p> <p>(3) For the purposes of this clause, a corner lot means a lot that has 2 connected boundaries with a road or roads (other than a lane) that intersect at an angle of 110 degrees or less (whether or not the lot has any other boundaries with a road).</p>

Clause	Existing	Proposed
4.1 (4) Minimum subdivision lot size	This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.	No change. Provided for context and reference.
Schedule 1, Item 9	<p>(1) This clause applies to land at 22 and 24 John Hines Avenue, Minchinbury, being Lots 1 and 2, DP 1193931.</p> <p>(2) Development for the purpose of office premises is permitted with development consent.</p>	<p>(1) This clause applies to land at 22 and 24 John Hines Avenue, Minchinbury, being Lot 12, DP 1232060.</p> <p>(2) Development for the purpose of office premises is permitted with development consent.</p>

## 1.4 Site Description and Surrounding Area

The planning proposal relates to land shown on the Blacktown LEP 2015 Land Application Map.

## 1.5 Mapping

The planning proposal does not include any mapping. Blacktown LEP 2015 mapping will not change as a result of the planning proposal.

## 2 Need for The Planning Proposal

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

The planning proposal seeks to make housekeeping amendments to the Blacktown LEP 2015 to ensure that inconsistencies between various clauses are addressed, Council's strategic position in relation to subdivision of dual occupancies is captured, and to ensure references to land within Schedule 1 of the LEP are accurate.

The planning proposal is the best means of achieving the objectives and intended outcomes of the planning proposal.

## 3 Strategic Assessment

### 3.1 Regional Plan

The amendments proposed are minor, or administrative in nature, and will not have an adverse impact on the ability to achieve the objectives and actions contained in the Greater Sydney Region Plan.

### 3.2 District Plan

The 'Central City District Plan' (District Plan) applies to the planning proposal. The District Plan was released on 18 March 2018 by the GSC and contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). In particular, the proposal will achieve consistency with Priority C5 as it will assist in facilitating a diversity of housing in appropriate locations.

### 3.3 Local Strategic Planning Statement

The Blacktown Local Strategic Planning Statement (LSPS) sets out a 20-year vision for the future of Blacktown City as it grows and changes and has been prepared in accordance with section 3.9 of the EP&A Act.

The Department is satisfied that the planning proposal is consistent with the relevant planning priorities and actions in the LSPS, as the planning proposal will make amendments to the Blacktown LEP 2015 which will facilitate housing diversity and supply (Local Planning Priority 5).

However, the Department notes the planning proposal provides an assessment against the Draft LSPS and therefore requires updating prior to exhibition to be consistent with the final endorsed version of the LSPS.

Updating the planning proposal to address the final endorsed LSPS forms a condition of the gateway determination.

### 3.4 Local Planning Panel Recommendation

The planning proposal was referred to the Blacktown Local Planning Panel (the Panel) at its meeting on 12 March 2021.

The Panel supported Council's recommendation to progress the planning proposal for Gateway determination as it was considered that the planning proposal would resolve and clarify the intent of the minimum lot size and subdivision of dual occupancy provisions within the Blacktown LEP 2015.

### 3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed in **Table 3**.

**Table 3: 9.1 Ministerial Direction Assessment**

Directions	Consistent/Inconsistent	Reasons for Consistency or Inconsistency
<b>Direction 3.1:</b> Residential Zones	Consistent	<p>The planning proposal will encourage a diversity of housing being provided within the Blacktown LGA in outlining circumstances where subdivision of dual occupancy development is allowed.</p> <p>The planning proposal clarifies the intended operation of the existing LEP clauses to ensure consistent minimum lot sizes for Torrens title and community title subdivisions. The controls will provide good urban design outcomes by ensuring adequate private outdoor space and landscaping and not impact on the capacity of land to deliver housing.</p> <p>The planning proposal will need to be updated to provide more specific details about the development outcomes resulting from this proposal and confirm if there are any unintended impacts on development capacity as a result of this amendment.</p>



## 3.6 State Environmental Planning Policies

The Department is satisfied that the planning proposal does not result in an inconsistency with any State Environmental Planning Policies (SEPPs), with the exception of SEPP (Exempt and Complying Development Codes) 2008 (the Codes SEPP), which is discussed in the table below.

**Table 4: Assessment of proposal against relevant SEPPs**

SEPPs	Proposal	Complies
SEPP (Exempt and Complying Development Codes) 2008	<p>The planning proposal does not consider the Codes SEPP.</p> <p>The Department note that the replacement clause 4.1C provided by Council defines a corner lot as “<i>a lot that has 2 connected boundaries with a road or roads (other than a lane) that intersect at an angle of 110 degrees or less (whether or not the lot has any other boundaries with a road).</i>”</p> <p>This definition conflicts with the definition of a corner lot within clause 1.5 of the Codes SEPP, which states a: “<i>corner lot means a lot that has 2 contiguous boundaries with a road or roads (other than a lane) that intersect at an angle of 135 degrees or less (whether or not the lot has any other boundaries with a road).</i>”</p> <p>A condition of gateway has been included to revise 4.1C to align with the definition of corner lot provided within the Codes SEPP. Furthermore, a condition has also been recommended requiring Council to update the planning proposal to address the Codes SEPP prior to exhibition.</p>	No

## 4 Site-Specific Assessment

### 4.1 Environmental

There are no potential adverse environmental impacts associated with the proposal.

The planning proposal will have a largely positive impact as it will enable a clearer understanding of subdivision requirements for certain community title and strata schemes on land identified within the Land Application Map of the Blacktown LEP 2015.

In addition, it will provide clarification in relation to when the subdivision of dwellings which comprise a dual occupancy development is permitted.

### 4.2 Social and Economic

The planning proposal is likely to have largely positive social and economic impacts as it will foster an environment of greater certainty in relation to planning decisions.

The amendments proposed will ensure that the LEP provides clearer requirements in relation to minimum lot size and subdivision criteria for dual occupancies.

Furthermore, it will improve the accuracy of the Blacktown Local Environmental Plan 2015 by correcting references to land no longer accurate.

## 5 Consultation

### 5.1 Community

Council propose a public exhibition period of 28 days, which is considered appropriate by the Department and forms a condition of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. Given the nature of the proposal, no agency consultation is considered necessary during the public exhibition period.

## 6 Timeframe

The Department recommends a time frame of 6 months to complete the LEP to ensure it is completed in line with the commitment to reduce processing times; several key milestone deadlines will be included. A condition to the above effect is recommended in the Gateway determination.

## 7 Local Plan-Making Authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

Given the nature of the planning proposal, the Department recommends that Council be authorised to be the local plan-making authority as requested.

## 8 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It is the best means of achieving the objectives and intended outcomes, as they cannot be achieved without amendment to the LEP;
- It will provide clarity in relation to minimum lot size and subdivision of dual occupancy provisions within the LEP;
- It will reduce uncertainty associated with planning decisions by more clearly articulating planning requirements within the LEP;
- It is consistent with the Region Plan, District Plan and the Local Strategic Planning Statement;
- It is consistent with all relevant Section 9.1 Directions; and
- It is, or can be amended to be, consistent with relevant SEPPs.

The proposal must be updated before public exhibition to:

- Amend the planning proposal to ensure it references the final endorsed LSPS;
- Update the planning proposal to demonstrate consistency with the Codes SEPP; and
- Amend the replacement clause 4.1C proposed to ensure it is consistent with the definition of a corner lot as defined in 1.5 of the Codes SEPP.

## 9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to:
  - Update the planning proposal Objectives and intended outcomes to more specifically refer to the proposed LEP changes and development outcomes;
  - Update the planning proposal to ensure it references the final endorsed version of the Blacktown Local Strategic Planning Statement;
  - Update the planning proposal to demonstrate consistency with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008; and
  - Amend the replacement clause 4.1C proposed to ensure it is consistent with the definition of a corner lot as defined under clause 1.5 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
2. The planning proposal must be made available for public exhibition for a minimum of 28 days.
3. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.
4. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination. To ensure this timeframe can be met, public exhibition is to commence by September 2021 and the planning proposal is to be reported to Council by November 2021.



9 July 2021

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12 July 2021

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