

Item No:	R5 Recommendation to Council
Subject:	UPDATE - PLANNING PROPOSAL TO INTRODUCE AN 800SQM MINIMUM LOT SIZE FOR ATTACHED DUAL OCCUPANCIES
Author:	Kelly McKellar, Team Leader Strategic Planning
Approvers:	Anne White, Manager - Strategic Planning Nick Economou, Acting Director Planning & Development
File No:	21/4597
Reason for Report:	To report the advice from the Department of Planning, Industry and Environment regarding Council's planning proposal seeking to introduce an 800sqm minimum lot size for attached dual occupancies.

Recommendation:

- A. THAT the report on the planning proposal to introduce an 800sqm minimum lot size for attached dual occupancies to the Environmental Planning Committee meeting of 1 February 2021 be received and noted.
- B. THAT a written request is sent to the Minister for Planning and Public Spaces to formally withdraw the planning proposal seeking to introduce an 800sqm minimum lot size for attached dual occupancies.

1. Summary

Council has received correspondence from the Department of Planning, Industry and Environment (DPIE) in relation to our planning proposal to introduce a minimum lots size of 800sqm for dual occupancy (attached) development into the *Woollahra Local Environmental Plan (LEP) 2014*.

DPIE has raised concerns with the potential for the proposal to impact on housing supply. In their correspondence they have requested additional information to address the concerns raised (see **Annexures 3 and 4**). This report provides information on the correspondence from DPIE and research undertaken by staff.

2. Background

The *Low Rise Housing Diversity Code* commenced in the Woollahra LGA on 1 July 2020 (it was previously known as the *Low Rise Medium Density Housing Code*). The Code is contained in [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#). Council was previously granted a deferral from the Code when it was introduced in 2018.

Council has consistently raised concerns about the loss of a merit assessment for medium density development which will be permitted by the Code. A summary of Council's correspondence with DPIE and the Minister in relation to the Code and other relevant events is contained in **Annexure 1**.

The Code allows complying development for certain housing types in residential zones

The Code allows dual occupancies, manor houses and terraces that are no more than two storeys in height to be approved under the fast track complying development process. Exclusions to the Code apply for heritage items, heritage conservation areas, foreshore areas, class 1 or 2 acid sulfate soils, unsewered land and battle-axe lots.

Development under the Code may be undertaken in the following zones in the Woollahra LGA:

- *R2 Low Density Residential zone* - dual occupancies (attached) and dual occupancies (detached)
- *R3 Medium Density Residential zone* - dual occupancies (attached), dual occupancies (detached), manor houses and multi dwelling housing (terraces).

Amendments to the Woollahra LEP 2014 and Woollahra DCP 2015 in response to the Code

In response to the Code, Council initiated the following proposals to amend the Woollahra LEP 2014 and the *Woollahra Development Control Plan (DCP) 2015*. The table below identifies these proposals, and their current status.

Proposal	Status
A. Planning Proposal to amend the Woollahra LEP 2014 to introduce a 800sqm minimum lot size for dual occupancies (attached).	Planning proposal is the subject of this report.
B. Planning proposal to amend the Woollahra LEP 2014 to introduce a 700sqm minimum lot size for manor houses and multi dwelling housing (terraces).	These provisions were incorporated into changes to the Code which commenced on 1 July 2020.
C. Woollahra DCP 2015 (Amendment No. 5) to apply development controls for residential flat buildings and multi dwelling houses to two of the new housing types introduced by the Code, manor houses and terraces.	Having been the subject of public exhibition in mid-2020, these amendments commenced on 7 December 2020.

Additionally, as noted above, Council and Council staff have repeatedly raised concerns about the Code with DPIE and the Minister as summarised in **Annexure 1**.

3. The planning proposal

On 8 July 2019, in response to a Notice of Motion, Council resolved:

THAT Council:

- Receives a report, as a matter of urgency, in relation to amending its current Local Environmental Plan 2014 ("LEP") to provide a minimum lot size of 800 square metres or other for dual occupancy (attached) developments in R2 Low Density Residential zones within the municipality.*
- Considers other amendments to its planning and development controls to give effect to the above, as soon as reasonably practicable, given the introduction of the Low Rise Medium Density Housing Code (part of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008) ("Code") on 1 July 2019.*

On 4 November 2019, the Environmental Planning Committee (EPC) considered a report identifying options to amend the current Woollahra LEP 2014 controls. On 11 November 2019, Council resolved, in part:

- THAT a planning proposal be prepared to increase the minimum lot size of attached dual occupancies in the R2 zone to 800m².*
- THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.*

Subsequently, Council staff prepared a planning proposal to amend the Woollahra LEP 2014 to introduce a minimum lot size of 800sqm for dual occupancies (attached) in the R2 Low Density Residential Zone.

On 30 January 2020 the planning proposal was reported to the Woollahra Local Planning Panel (LPP) for advice.

THAT the Woollahra Local Planning Panel advises Council that:

- A. It supports the planning proposal to amend clause 4.1A of the Woollahra Local Environmental Plan 2014 to increase the minimum lot size required for dual occupancy (attached) development in the R2 Low Density Residential Zone from 460 square metres to 800 square metres.*
- B. The planning proposal should proceed.*
- C. In the planning proposal include as appropriate reference to Item 2 of the opportunities listed in Section 8.3 minimum Lot size amendment in the report to the Environmental Planning Committee meeting on 4 November 2019.*
- D. Carry out an analysis of options for a range of lot sizes for dual occupancy development (attached) in order to support the justification for the minimum lot size of 800m² and, if beneficial, provide those options to the Department of Planning, Industry and Environment as part of the planning proposal.*

In response to this advice, Council staff analysed conceptual built forms for a variety of lot sizes in the LGA. The lots used for comparison were based on the size and dimensions of real examples in the R2 zone. The conceptual built form analysis allowed the calculation of the maximum potential number of mature trees and the maximum achievable number of mature trees

The built form analysis illustrated that on lots smaller than 800sqm, the maximum achievable number of mature trees is reduced due to the insufficient deep soil area dimensions required to sustain mature trees. This was found to adversely impact the capacity for dual occupancy (attached) development to achieve the desired future character of the R2 zone and maintain and enhance a mature tree canopy. Furthermore, smaller lot sizes have reduced side setbacks, resulting in less space to plant screening trees which could reduce potential amenity impacts on privacy and noise.

The advice of the Woollahra LPP and the further staff analysis was reported to EPC on 2 March 2020 and on 9 March 2020 Council resolved:

- A. THAT Council note the advice provided by the Woollahra Local Planning Panel on 30 January 2020.*
- B. THAT the planning proposal attached as Annexure 1 of the report to the Environmental Planning Committee meeting on 17 February 2020 be forwarded to the Department of Planning, Industry and Environment with a request for a gateway determination to allow public exhibition.*
- C. THAT Council request the Minister for Planning and Public Spaces authorise Council as the local plan-making authority in relation to the planning proposal, to allow it to make the local environmental plan, under section 3.36 of the Environmental Planning and Assessment Act 1979.*

The planning proposal was submitted to DPIE on 16 May 2020. A copy of the planning proposal is contained in **Annexure 2**.

4. Correspondence from the DPIE

In correspondence dated 10 August 2020 and 6 October 2020, the DPIE expressed concerns that the planning proposal would reduce the number of lots eligible for attached dual occupancy development via both the development application (DA) and complying development certificate (CDC) pathways, thereby reducing the capacity of housing supply. Copies of the correspondence from the DPIE are contained in **Annexures 3 and 4**.

DPIE has requested the following additional information and research to support the planning proposal which, in summary, should address the following:

- How the proposal fits in with Council's overall strategy to meet future housing needs in the LGA, the Department considers that a Local Housing Strategy (LHS) is required to guide the consideration of the proposal. Without a completed LHS, the potential effects on housing needs and delivery could not be ascertained by DPIE.
- The inconsistency with *Ministerial Direction 3.1 Residential Zone*⁴, due to the proposal's impact on housing growth and choice. The proposal in its current form has not provided adequate analysis to demonstrate that a variety of housing types will be provided for existing and future housing needs.
- Further analysis, including design modelling, is required to determine the most appropriate minimum lot size for attached dual occupancies, having regard to the objective of the proposal to protect the environment, residential amenity and local character.

Administrative changes to the planning proposal were also identified in the correspondence from DPIE to rectify minor errors and omissions.

5. Further testing

After receiving the DPIE's request for further analysis, Strategic Planning staff carried out further research and site testing to build on the work originally undertaken for the planning proposal. This testing took into consideration the existing controls, recent developments, development standards in the Code, and the work undertaken for the FSR and Urban Greening project⁵. In particular, staff were looking for possible correlations between site area and the bulk and scale of dual occupancy (attached) development.

In summary, the preliminary site testing and analysis of existing controls, the Code and recent development did not produce any correlation between the proposed 800sqm site area and outcomes for site coverage, driveway area of deep soil area for dual occupancy (attached) development.

Subsequently, staff considered the work undertaken for the FSR and Urban Greening project which principally seeks to introduce a 0.5:1 maximum FSR for dwelling houses and dual occupancies in the R2 Low Density Residential and R3 Medium Density Residential zones.

⁴ This Direction seeks to encourage a variety and choice of housing types to meet existing and future housing needs. To comply with this direction a planning proposal must not reduce the permissible density of land. The Ministerial Directions are published on the DPIE website: <https://www.planning.nsw.gov.au/plans-for-your-area/local-planning-and-zoning/policy-directions-for-plan-making>

⁵⁵ On 23 November 2020, Council resolved, in part, to submit an amended planning proposal to the DPIE seeking a Gateway Determination for an amendment to the Woollahra LEP 2014 to introduce an FSR of 0.5:1 for low density residential development in the R2 Low Density Residential Zone and R3 Medium Density Residential Zone and to insert urban greening provisions.

Whilst this analysis identified differences between the development outcomes facilitated by Council's proposed FSR and what is permitted by the Code, there is no direct relationship to the proposed 800sqm minimum lot size.

However, the testing did reveal a relationship between the proposed 0.5:1 FSR and urban greening provisions and site area. As shown in **Table 1** below, a key finding was that to achieve a dual occupancy (attached) development with a maximum FSR of 0.5:1 based on the development standards in the Code, the minimum site area should be 1,200sqm.

The Code does not contain a FSR standard for dual occupancy development but relies on a range of provisions such as setbacks to influence the design of the development. This creates a greater range of FSR outcomes when these provisions are applied to different site areas.

Table 1: FSR development outcomes based on site area, and the development standards in the Code

Site area (sqm)	Maximum FSR permissible under the Code
450	0.92
600	0.75
800	0.63
1000	0.55
1200	0.5
1400	0.46
1600	0.44
1800	0.42
2000	0.4

In summary, the preliminary testing has not identified any grounds to specifically support the proposed 800sqm minimum lot size for dual occupancies (attached). This conclusion was based on analysing controls such as site coverage, landscaped area, bulk and scale. However, the testing did find a relationship between site area and density, and a minimum site area of 1200sqm is required to achieve a maximum FSR of 0.5:1 (consistent with the Council resolution of 23 November 2020).

6. Potential impacts on housing supply

In their correspondence, the DPIE raised concerns about the impacts of the proposed 800sqm minimum lot size for dual occupancies (attached) development on housing supply and delivery of housing diversity.

The existing minimum lot size is 460sqm and it is acknowledged that introducing a minimum lot size of 800sqm or 1200sqm will significantly reduce the capacity for dual occupancy development in the R2 Low Density Residential Zone. As shown in **Table 2** below, based on the existing subdivision pattern there are 1,420 lots 800sqm or greater and 336 lots greater than 1200sqm. Introducing a minimum lot size of 800sqm or 1200sqm would result in a capacity reduction of 85% and 96% respectively.

Table 2: R2 Low Density Residential lots by site size

Lot size sqm)	Number of lots
Less than 460	5,411
460-800	2,426
800-930	582
930-1200	502
Greater than 1200	336

Staff note that due to the concerns expressed by the DPIE in relation to the proposed minimum lot size of 800sqm, it is unlikely that a minimum lot size of 1200sqm would be supported. Therefore, as we are unable to address the concerns raised in the correspondence from the DPIE, staff recommend that Council resolve to withdraw the planning proposal at this time.

The local housing strategy

The local housing strategy will consider supply and demand of housing, including different housing types such as dual occupancies. It must set out how we plan to facilitate housing and residential that will:

- meet the needs of our community now and in the future
- best fit with our local character, heritage, infrastructure capacity and scenic landscape
- contribute to housing targets for the Eastern City District
- implement the Woollahra LSPS 2020.

Notwithstanding staff's recommendation to withdraw the planning proposal, should Council resolve to proceed with the planning proposal, the local housing strategy will need to respond to the introduction of a minimum lot size for dual occupancies. Specifically, it will need to identify how the reduction in housing capacity will be offset to ensure that the LGA can provide new and diverse housing that meets demand and District housing supply targets.

The local housing strategy will also address other important considerations for housing including, but not limited to, heritage, local character and landscape.

The local housing strategy will be prepared in 2021 and a draft is expected to be reported to Council mid-2021 prior to public exhibition.

7. Conclusion

On 8 July 2019, in response to a Notice of Motion, Council resolved to investigate introducing an 800sqm or other minimum lot size for dual occupancy development, primarily in response to the LRHD Code.

On 4 November 2019, the EPC considered a report identifying options to amend the current Woollahra LEP 2014 controls. On 11 November 2019, Council resolved, in part to prepare a planning proposal to amend the Woollahra LEP 2014 to introduce a minimum lot size of 800sqm for dual occupancy (attached) developments in R2 Low Density Residential zones within the municipality. On 16 May 2020 the planning proposal was submitted to the DPIE requesting a gateway determination.

Correspondence from the DPIE raises concerns with the potential for the proposal to impact on housing supply. In their correspondence they have requested that additional justification be provided to support the planning proposal and address the concerns raised.





Preliminary testing undertaken by staff has not identified any grounds to support the proposed 800sqm minimum lot size for dual occupancies (attached) with regard to development outcomes including site coverage, landscapes area or bulk and scale. However, the testing did find a relationship between larger site areas and compliance with the proposed FSR of 0.5:1. Staff note that due to the concerns expressed by the DPIE in relation to the proposed minimum lot size of 800sqm, it is unlikely that a larger minimum lot size would be supported.

A local housing strategy for the Woollahra LGA will be prepared in 2021 and a draft is expected to be reported to Council mid-2021 to allow public exhibition. It will establish the basis for strategic planning for housing and residential development in the LGA consistent with statutory requirements and to meet housing demand and District housing supply targets.

It is noted that introducing a minimum lots size of 800sqm or 1200sqm will significantly reduce the capacity for dual occupancy development in the R2 Low Density Residential Zone, by 85% and 96% respectively. Notwithstanding staff's recommendation to withdraw the planning proposal, should Council resolve to proceed with the planning proposal, the local housing strategy will need to respond to the introduction of a minimum lot size for dual occupancies.

Staff recommend that Council resolve to withdraw the planning proposal at this time.

Annexures

1. Summary of Council correspondence and key events for LRHD Code [↓](#) 
2. Planning Proposal [↓](#) 
3. Response from DPIE dated 10 August 2020 [↓](#) 
4. Further response from DPIE dated 6 October 2020 [↓](#) 

Low Rise Housing Diversity (LRHD) Code

Brief summary of key correspondence and events



1 March 2016	Council submission sent to DPIE in response to the 2015 'Missing middle' discussion paper objecting to introducing complying development for medium density housing.
9 December 2016	Council submission sent to DPIE objecting to the proposed 'Medium Density Housing' Code and 'Draft Medium Density Design Guide'.
31 May 2018	Council wrote to the Minister for Planning requesting a deferral from the Code until Council had an opportunity to review its LEP to ensure development is in-line with community expectations
8 July 2019	In response to a Notice of Motion, Council resolved: <i>THAT Council:</i> <i>A. Receives a report, as a matter of urgency, in relation to amending its current Local Environmental Plan 2014 ("LEP") to provide a minimum lot size of 800 square metres or other for dual occupancy (attached) developments in R2 Low Density Residential zones within the municipality.</i> <i>B. Considers other amendments to its planning and development controls to give effect to the above, as soon as reasonably practicable, given the introduction of the Low Rise Medium Density Housing Code (part of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008) ("Code") on 1 July 2019.</i>
23 July 2019	Council submission to Professor Roberta Ryan for consideration in the Independent Review of the Code commissioned by the Minister. The report on the review was released September 2019. A key recommendation of the review that was implemented was the deferral of the Code until 1 July 2020.
4 November 2019 11 November 2019	On 4 November 2019, the Environmental Planning Committee (EPC) considered a report identifying options to amend the current Woollahra LEP 2014 controls. On 11 November 2019, Council resolved, in part: <i>C. THAT a planning proposal be prepared to increase the minimum lot size of attached dual occupancies in the R2 zone to 800m2.</i> <i>D. THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.</i>

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12 December 2019	<p>Mayoral letter to the Minister for planning:</p> <ol style="list-style-type: none">1. Requests that the State Government exempt the Woollahra LGA from the Code as it will not deliver an increased diversity of housing.2. Does not agree with the independent review of the Code undertaken by Professor Roberta Ryan, that there is strong community support for new multi-dwelling housing in low density R2 zones, particularly within the Woollahra LGA.
20 January 2020	<p>Letter from the Minister of Planning advising that DPIE staff can meet Council staff to discuss options for "local approach" to medium density housing.</p>
30 January 2020	<p>Two planning proposals reported to Woollahra LPP for Advice seeking to amend the Woollahra LEP 2014 to introduce:</p> <ol style="list-style-type: none">A. Minimum lots size of 800m2 for dual occupancies (attached)B. Minimum lot size of 700m2 for manor houses and multi dwelling housing (terraces)
9 March 2020	<p>Council resolution to forward planning proposal to DPIE requesting gateway determination. The planning proposals were submitted to DPIE on 16 May 2020.</p>
3 June 2020	<p>Letter from the Minister of Planning and Public Spaces advising that the Code would commence on 1 July 2020.</p>
1 July 2020	<p>LRHD Code commenced in the Woollahra LGA.</p> <p>Consistent with our planning proposal, the commencement of the Code included an amendment to Clause 4.1A of Woollahra LEP 2014 to introduce a 700 m2 minimum lot size for manor houses and multi dwelling housing (terraces) making our planning proposal for this redundant (subsequently withdrawn on 16 July 2020).</p>
16 July 2020	<p>Letter from DPIE advising that a preliminary assessment had identified some issues with the planning proposal to introduce a minimum lot size of 800m2 for dual occupancies (attached).</p>
20 July 2020	<p>DPIE confirmed that no further deferrals or exemptions to the Code would be issued.</p>