

**Item No:** R3 Recommendation to Council  
**Subject:** **PLANNING PROPOSAL - MINIMUM LOT SIZE FOR DUAL OCCUPANCY (ATTACHED) DEVELOPMENT**  
**Author:** Jorge Alvarez, Strategic Planner  
**Approvers:** Anne White, Team Leader - Strategic Planning  
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Allan Coker, Director - Planning & Development  
**File No:** 20/14279  
**Reason for Report:** To report the advice made to Council by the Woollahra Local Planning Panel.

To obtain Council's approval to proceed with 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.

**Recommendation:**

- 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*.

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**1. Background**

On 4 November 2019, the Environmental Planning Committee (EPC) of Council considered a report to amend the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014), to increase the existing minimum lot size controls for dual occupancy (attached) developments in R2 Low Density Residential Zone (R2 zone) to 800 sqm (**Annexure 2**).

On 11 November 2019, Council resolved, in part:

- C. *THAT a planning proposal be prepared to increase the minimum lot size of attached dual occupancies in the R2 zone to 800m<sup>2</sup>.*
- D. *THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.*
- E. *THAT the advice of the Woollahra Local Planning Panel be reported back to the Environmental Planning Committee.*

## **2. Woollahra Local Planning Panel advice**

On 30 January 2020 the Woollahra Local Planning Panel (Woollahra LPP) considered a report which included the planning proposal to amend clause 4.1A of the Woollahra LEP 2014 to increase the minimum lot size required for dual occupancy (attached) development in the R2 zone from 460 square metres to 800 square metres.

The planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the two documents prepared by the NSW Department of Planning, Industry and Environment titled *A Guide to Preparing Planning Proposals* (December 2018) and *A Guide to Preparing Local Environmental Plans* (December 2018).

At that meeting the Woollahra LPP provided the following 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 800m<sup>2</sup> and, if beneficial, provide those options to the Department of Planning, Industry and Environment as part of the planning proposal.*

## **3. Staff response to the Woollahra LLP advice**

Staff response to the Woollahra LLP advice is included below.

### **3.1. Point C of the Woollahra LPP advice**

The 4 November 2019 report to the EPC included a discussion of different topics which relate to the potential commencement of the *Low Rise Medium Density Housing Code* (the Code) in the Woollahra Local Government Area (LGA). Discussion of the Code is relevant to this planning proposal because the minimum lot size for dual occupancies (attached) approved as complying development under the Code cannot be less than the minimum lot size for dual occupancies (attached) in LEP applying to that lot. Therefore, any amendment to the minimum lot size in the Woollahra LEP 2014 will also apply to complying development in the Woollahra LGA. The report states that one argument that could be used to justify the planning proposal for a minimum lot size of 800sqm for dual occupancies (attached) is 'Item 2' below.

‘Item 2’ referred to in point C states:

2. *Development permitted by the Code will undermine Council’s role as a planning authority responsible for meeting community expectations for the desired future character of residential precincts such as Bellevue Hill, Rose Bay and Vauchuse.*

The topic discussed in this item is addressed in the planning proposal in section 1.2.1, dot point 4 of the background notes to the Council notice of motion of 8 July 2019, which states:

- *Council’s role as a planning authority is to accommodate the required level of growth in a balanced way. Growth needs to be carefully managed so that it responds to community expectations and is consistent with the desired future character of neighbourhoods. The operation of the Code will severely impact on this.*

The planning proposal does not require an update to address this advice.

### **3.2. Point D of the Woollahra LPP advice**

Part 6.1 of the planning proposal attached at ***Annexure 1*** was updated to make reference to point D of Woollahra LPP’s advice. The updates are highlighted in yellow.

The update provides an analysis supporting a minimum lot size of 800sqm for dual occupancies (attached), by testing the ability of different lot sizes to achieve the desired future character of the R2 zone. The desired future character of the R2 zone is to maintain and complement the existing local character of low scale residential uses which respond to the topography, protect views and reinforce landscape setting. Of particular importance is the capacity of a lot to facilitate landscaped areas which can sustain mature trees.

In order to identify an appropriate lot size for dual occupancies (attached) an analysis was carried out for conceptual built forms on 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
- maximum achievable number of mature trees

The analysis was based on the controls and standards for the soil area dimensions required to sustain mature trees in the following three documents:

- *Woollahra Development Control Plan 2015*
- *Low Rise Medium Density Design Guide for Development Applications (2018)*
- *Australian Standard AS 4970-2009 - Protection of trees on development sites*

The built form analysis illustrates that on lots smaller than 800sqm, the maximum achievable number of mature trees is reduced from the maximum potential number due to the insufficient deep soil area dimensions required to sustain mature trees. Development of dual occupancies (attached) on lots smaller than 800sqm will impact on the lot’s ability to achieve an important attribute of the desired future character of the R2 zone, and the ability to maintain and enhance a mature tree canopy. Furthermore, the 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.

A minimum lot size of 800sqm for dual occupancies (attached) is an appropriate size to achieve the objectives of the planning proposal as it increases a lot's ability to accommodate and sustain mature trees. Furthermore, a minimum lot size of 800sqm will minimise the potential impact of dual occupancy (attached) development on the natural environment, residential amenity and is consistent with the desired future character of the R2 zone.

Consequently, a minimum lot size of 800sqm for dual occupancies (attached) is considered the most appropriate size to achieve the objectives of the planning proposal.

#### **4. Next Steps**

Subject to the Council's decision, the planning proposal will be referred to the Department of Planning, Industry and Environment (the Department) for a gateway determination. This will allow the planning proposal to be placed on public exhibition.

The public exhibition of the planning proposal will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (the Act), the *Environmental Planning and Assessment Regulation 2000* and the gateway determination issued by the Department as delegate for the Minister. The gateway determination will specify the minimum duration of the public exhibition period. This period is usually a minimum of 28 days, which is consistent with Council's standard practice for the exhibition of a planning proposal.

Public notification of the exhibition will comprise:

- A weekly notice in the local newspaper (the Wentworth Courier) for the duration of the exhibition period.
- A notice on Council's website.
- A notice to local community and business groups such as the Double Bay Residents' Association, West Vaucluse Residents' Association and the Sydney East Business Chamber.
- A notices to any parties who have made a submission to Council about previous reports about the Code or amendment of the minimum lot sizes for dual occupancy, manor house or terraces.

##### **4.1. Making the draft LEP under delegated authority**

To streamline the plan-making process, the Minister can delegate plan-making powers to Council for routine matters. In this case, Council may request authorisation to exercise the functions of the Minister to make an LEP under section 3.36 of the Act. Part C of the recommendation of this report addresses this request.

#### **5. Conclusion**

On 30 January 2020 the Woollahra LPP provided advice to Council that it supports the planning proposal to increase the Woollahra LEP 2014 minimum lot size requirement for dual occupancy (attached) development in the R2 Low Density Residential Zone from 460 square metres to 800 square metres. This support was subject to amending the planning proposal to address the following:

- Inserting an appropriate reference to Item 2 of the opportunities listed in Section 8.3 minimum Lot size amendment in the report to the EPC meeting on 4 November 2019, and
- Inserting n 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 800sqm.

The planning proposal has been updated consistent with this advice. The updates are included in Parts 1.2.5 and 6.1 of the planning proposal attached at *Annexure 1* and highlighted in yellow.

The Council may now proceed with referring the planning proposal to the Department requesting a gateway determination to allow public exhibition.

### **Annexures**

1. Planning Proposal - Minimum lot size for dual occupancy (attached) development - (annexures removed) [!\[\]\(8c4dca64662d21542001ca0ed7eeb688\_img.jpg\) !\[\]\(3de35c640e7147a3fb61ee393128d2ae\_img.jpg\)](#)
2. Report to the Environmental Planning Committee - 4 November 2019 - (annexures removed) [!\[\]\(d1438aeefda19c86ae7477bf1fb30796\_img.jpg\)](#)
3. Report to the Woollahra Local Planning Panel - 30 January 2020 - (annexures removed) [!\[\]\(dc4d2c544087998b6f093f485f5119d7\_img.jpg\)](#)