

Item No: D3
Subject: **PLANNING PROPOSAL - MINIMUM LOT SIZE FOR DUAL OCCUPANCY (ATTACHED) DEVELOPMENT**
Author: Jorge Alvarez, Strategic Planner
Approvers: Anne White, Team Leader - Strategic Planning
Chris Bluett, Manager - Strategic Planning
Allan Coker, Director - Planning & Development
File No: 19/210098
Reason for Report: To seek the advice of the Woollahra Local Planning Panel in relation to a planning proposal which explains and justifies an amendment to 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:

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.

1. Reason for report to the Woollahra Local Planning Panel (Woollahra LPP)

This report seeks the advice of the Woollahra LPP on a planning proposal that explains and justifies an amendment to clause 4.1A of the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014), to increase the minimum lot size required for dual occupancy (attached) development in the R2 Low Density Residential Zone (R2 zone) from 460 square metres (sqm) to 800sqm (**Annexure 1**).

On 27 September 2018, the Minister for Planning issued a Local Planning Panel Direction – Planning Proposals:

- 1. A Council to whom this direction applies is required to refer all planning proposals to be prepared after 1 June 2018 to the local planning panel for advice, unless the council's general manager determines that the planning proposal relates to:
 - (a) the correction of an obvious error in a local environmental plan,
 - (b) matters that are of a consequential, transitional, machinery or other minor nature, or
 - (c) matters that council's general manager considers will not have any significant adverse impact on the environment or adjoining land.
- 2. When a planning proposal is referred to the local planning panel, it must be accompanied by an assessment report prepared by council staff setting out recommendations, including whether or not the planning proposal should proceed.
- 3. A proposal is to be referred to the local planning panel before it is forwarded to the Minister of the Greater Sydney Commission under section 3.34 of the *Environmental Planning and Assessment Act 1979* (the Act).

In this case, the planning proposal is required to be referred to the local planning panel because the general manager has not made a determination in regard to items 1 (a), (b) or (c), above.

2. Background

2.1 Council notice of motion and resolution – 8 July 2019

On 8 July 2019, in response to a notice of motion Council resolved, in part:

THAT Council:

- 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.*
- 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.*

The notice of motion was accompanied by the following background notes:

- *In October 2016 the Department of Planning and Environment exhibited a Draft Medium Density Housing Code for public comment, which proposed that dual occupancies, manor houses and multi dwelling housing, known as low rise medium density housing, be approved under a Complying Development Approvals pathway and without need for Council approval. The main aim of this was to fast track development and increase housing supply in Greater Sydney.*
- *The Complying Development Approvals process does not provide sufficient opportunity for community consultation on proposed development, and may result in more rapid densification of the municipality with significant impact and pressure on current infrastructure, which may not be able to keep pace.*
- *Council’s current development and planning controls are delivering housing, sufficient to meet the Greater Sydney State Government Housing target without the need for the Code.*
- *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.*
- *In response to a Notice of Motion passed on 21 May 2018, Council obtained a 12-month exemption to the operation of the Code. This exemption will expire on 1 July 2019.*
- *When the Code commences operation, the mandated minimum lot size for development of a dual occupancy (attached) in an R2 Low Density Residential Zone will be the greater of 400 square meters, or whatever is provided for in Council’s LEP. Under the current LEP, that minimum lot size is 460 square meters.²*
- *Being able to construct dual occupancy (attached) development in R2 Low Density Residential Zones through a Complying Development Approvals process may severely impact on the desired and future character of many of the municipality’s neighbourhoods, most especially in Vaucluse, Rose Bay and Bellevue Hill.*
- *A way of improving planning outcomes for dual occupancy attached housing is the increase of lot sizes required for this type of development. This is because larger lot sizes generally allow for greater flexibility in design, resulting in less visually intrusive development. Also, larger lots can better accommodate ancillary elements that add bulk.*

² Woollahra Local Environmental Plan 2014, Part 4, 4.1A(2)

- *On smaller lots, the impacts of dual occupancy attached development in the low-density neighbourhoods are intensified. The low-density neighbourhoods of Woollahra have a distinctive sense of place, which flows from a strong landscape character. The redevelopment of smaller lots to higher density generally fails to achieve an appropriate landscaped context, and magnifies the impacts of change within neighbourhoods. Achieving a balanced outcome for landscaping and quality design on small narrow lots is difficult because there is less area to resolve site-specific design issues. With the doubling or tripling of ancillary features, there is less area for deep soil landscaping and little space for large-scale canopy trees to be maintained and planted on site. Such developments outcomes do not maintain the low-density neighbourhood character, which is an underlying objective of the zone.*
- *It is recommended that Council limit the extent of medium density development which the Code will allow in R2 Low Density Residential Zones to land sizes of 800 square meters or more in order to maintain the character of the low-density neighbourhoods of Woollahra and better reflect the concerns of its residents. As mentioned above, 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. It is therefore entirely appropriate that Council tailors its planning framework to achieve better outcomes in its lower density zones.*
- *The intention of the proposed amendment is not to stop redevelopment in the lower density neighbourhoods, it merely requires it to be undertaken on larger lots where there is sufficient room to plant trees in the front and rear setback, and reduce the apparent density of development. This will assist in reducing the impacts of medium density developments in the low-density zones of Woollahra.*
- *The R3 Medium Density Residential zone is tailored to multi dwelling housing. The R3 zone facilitates a more dense urban form than the R2 zone and provides a transition between areas of single dwellings and areas of residential flats. The strategy supports Councils obligation to provide for a mix of housing types. The R3 zone has been applied to those areas most suitable for a more intense form of development.*

2.2 Low Rise Medium Density Housing Code

The Low Rise Medium Density Housing Code (the Code) is a development code in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The Code is relevant to this report in that its proposed commencement in the Woollahra Local Government Area (LGA) was a significant consideration in the notice of motion and subsequent resolution of Council on 8 July 2019.

The Code was initially planned to commence in the Woollahra LGA on 6 July 2018, however, commencement has been deferred until 1 July 2020. When the Code commences, the minimum lot size for dual occupancies (attached) under the Code in the LGA will be the same as that specified under the Woollahra LEP 2015.

The Code applies to three development types, limited to one or two storeys in height:

- Dual occupancy – being two dwellings either attached or detached on one lot of land.
- Manor house – being a type of residential flat building containing three or four attached dwellings.
- Multi dwelling housing (terraces) – being three or more attached dwellings on one lot of land, facing and generally aligned along one or more public roads.

The Code permits dual occupancies, manor houses and multi dwelling housing (terraces) to be carried out under a “fast track” complying development approval process. A complying development approval may be issued by a private certifier or Council in 20 days, if the proposal complies with all the relevant requirements in the Codes SEPP.

2.3 Examples of recent DAs for dual occupancies (attached)

The public response to two contentious DAs for dual occupancies (attached) may also have been a significant consideration in the notice of motion and resolution of Council on 8 July 2019.

On 12 September 2019, the two DAs were approved by the Woollahra Local Planning Panel under the section 8.2 review pathway after an initial refusal on 21 February 2019 (DAs 347/2018/1 and 348/2018/1). The approvals are conditional on architectural and landscaping modifications to the proposed development. The DAs applied to two adjoining lots in the R2 zone, both with a street address of 12 Greycliffe Avenue, Vaucluse (Lots 28 & 29 DP 7253). The lots were approximately 684sqm and 639sqm in size, one with an existing single detached dwelling and the other vacant.

The DAs were the subject of significant community concern, attracting submissions from 24 objectors and an online petition with 324 signatures.

2.4 Council resolution to prepare a planning proposal – 11 November 2019

On 4 November 2019, the Environmental Planning Committee (EPC) of Council considered a report identifying options to amend the current Woollahra LEP 2014 controls, including a minimum lot size of 800 sqm, or other size, for dual occupancy (attached) developments in R2 zone (**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 800m2.*
- 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.*
- F. THAT Council request the Minister for Planning and Public Spaces to exempt Woollahra Council from the commencement of the Low Rise Medium Density Housing Code for the Woollahra Local Government Area as it fails to deliver an increased diversity of housing.*
- G. THAT Council advises the Minister that it does not agree with the independent review that there is strong community support for new multi-dwelling housing in low density R2 zones, particularly within the Woollahra Municipality.*

On 13 December 2019, the Mayor of Woollahra Council wrote to the Minister for Planning and Public Spaces to request consideration of points F and G of this resolution. A response has yet to be received.

3. Planning proposal

3.1 Planning proposal structure

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

3.2 Objective of the planning proposal

The objective of the planning proposal is to minimise the potential impact of dual occupancy (attached) development on the natural environment, residential amenity and 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 the landscaped setting. The desired future character was established in consultation with the local community.

3.3 Explanation of provisions

The objective of the planning proposal can be achieved by an amendment to clause 4.1A of the Woollahra LEP 2014. Clause 4.1A deals with minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings. Under clause 4.1A development consent for these three land uses can only be granted if the lot on which they are erected has a nominated minimum lot size. In the case of a dual occupancy (attached) in the R2 zone, the minimum lot size is currently 460 sqm. The proposed amendment will replace 460sqm with 800sqm.

The recommended amendment is to the table in Clause 4.1A as shown below. The proposed amendments are shown as inserted text shown underlined: inserted text and deleted text show in strikethrough: ~~deleted text~~.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Dual occupancy (attached)</i>	<i>Zone R2 Low Density Residential</i>	<u>800</u> 460 <i>square metres</i>
<i>Dual occupancy (detached)</i>	<i>Zone R2 Low Density Residential</i>	<i>930 square metres</i>
<i>Dual occupancy (attached)</i>	<i>Zone R3 Medium Density Residential</i>	<i>460 square metres</i>
<i>Dual occupancy (detached)</i>	<i>Zone R3 Medium Density Residential</i>	<i>460 square metres</i>
<i>Multi dwelling housing</i>	<i>Zone R3 Medium Density Residential</i>	<i>700 square metres</i>
<i>Residential flat building</i>	<i>Zone R3 Medium Density Residential</i>	<i>700 square metres</i>

3.4 Justification

The planning proposal has strategic merit and the key reasons to amend Woollahra LEP 2014 are discussed in detail in parts 6.1 to 6.4 of the planning proposal, and summarised below.

3.4.1 Residential amenity and desired future character

Dual occupancy (attached) development on lots smaller than 800sqm in the R2 zone may result in an adverse impact on the residential amenity and the existing and 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 the landscaped setting. The desired future character was established in consultation with the local community.

The planning proposal seeks to reduce these potential impacts by ensuring larger lot sizes for the construction of dual occupancies (attached) in the R2 zone. The larger lot sizes will allow for greater flexibility in the design and siting of dwellings on a site and encouraging larger building setbacks than on smaller sites. These setbacks to minimise privacy and noise impacts, and ensure larger areas of deep soil landscaping. However, the amenity and desired future character impacts of DAs for dual occupancies (attached) will still be determined on a case by case basis.

3.4.2 Impact of the Code on the number and scale of dual occupancies (attached)

The adverse residential amenity and desired future character impacts of dual occupancy (attached) development will be exacerbated by the commencement of the Code in the Woollahra LGA. Under the Code dual occupancies (attached) will be permitted as complying development which is:

- issued in 20 days
- not subject to public exhibition, and
- generally allows a maximum gross floor area greater than that achievable as development consent under a DA.

Under these conditions it is likely that complying development under the Code will become more attractive to developers than DAs. This assumes that developers will seek to reduce the time period and risk for approval and maximise the GFA and financial returns of their developments.

As the minimum lot size for dual occupancies (attached) under the Code in the LGA will be the same as that specified under the Woollahra LEP 2015, the planning proposal will have the effect of minimising the amenity impact of complying development by requiring dual occupancies (attached) on lots 800sqm or larger, in line with development approved under a DA.

3.4.3 Minor impact of the planning proposal on potential housing development

The planning proposal is of minor significance in terms of the potential housing development in the LGA, for the following reasons:

1. Historically, the number of DAs approved for dual occupancies (attached) in the LGA is low and an amendment to the minimum lot size controls for approval is unlikely to have a significant impact on this trend.
2. The planning proposal will only have a minor impact on the potential to develop dual occupancies (attached) as complying development in the LGA, compared with development

permitted under a DA. The number of R2 lots on which dual occupancies will be permitted under the Code is almost the same as the R2 lots on which dual occupancies are currently permitted under a DA.

3. The planning proposal will not reduce the permissible residential density of land. The potential number of dwellings in the R2 zone will not be reduced, as secondary dwellings are a permissible use in the zone and are not subject to a minimum lot size control. In this regard, a minimum of two dwellings will remain permissible on all lots in the R2 zone, whether they be dual occupancies or a combination of a principal dwelling and secondary dwelling.
4. As a result of these considerations, the planning proposal is unlikely to impact on Council achieving the State government's five year housing target of 300 dwellings by 2021 identified in the *Eastern City District Plan*.

3.4.4 Other considerations

1. The planning proposal maintains the permissibility of variety and choice of housing types, particularly dual occupancy (attached) development, to cater for existing and future housing needs.
2. The planning proposal will not impact on the efficient use of existing infrastructure and services in the LGA and ensures that new housing has appropriate access to infrastructure and services.
3. The planning proposal is comparable in scope to recent planning proposals by other Councils. A similar planning proposal resulted in the amendment of the *Sutherland Shire Local Environmental Plan 2015* on 1 February 2019. Several other planning proposals are currently awaiting finalisation or a gateway determination.

3.4.5 Relationship to strategic planning framework

The planning proposal is generally consistent with the relevant objectives and actions contained in applicable State, regional, district and local plans and strategies, as summarised below (refer to section 6.2 of the planning proposal).

1. The planning proposal is consistent with the relevant objectives of Greater Sydney Region *Plan: A Metropolis of Three Cities* (2018) and the actions of the *Eastern City District Plan* (2018).
2. The planning proposal is consistent with the Council's Community Strategic Plan titled *Woollahra – 2030: Our community, our place, our plan*. Notably, the planning proposal meets the strategies and goals under the theme 'Quality places and spaces'.
3. The planning proposal is consistent with the *Draft Woollahra Local Strategic Planning Statement*, particularly with Planning Priority 4: Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes.

4. The planning proposal is consistent with the *Standard Instrument – Principal Local Environmental Plan* and all other applicable State environmental planning policies (refer to Schedule 1 of the planning proposal).
5. The planning proposal is consistent with the terms of section 9.1 direction – 3.1 Residential zones and all other applicable section 9.1 directions (refer to section 6.2 and Schedule 2 of the planning proposal).


4. Conclusion

This report seeks the advice of the Woollahra LPP in relation to a planning proposal that explains and justifies an amendment to clause 4.1A of the Woollahra LEP 2014 to increase the minimum lot size required for development consent of dual occupancy (attached) development in the R2 zone from 460sqm to 800sqm. The planning proposal satisfies the requirements of section 3.33 of the Act as it includes:

- A statement of the objectives or intended outcomes.
- An explanation of the provisions that are to be included.
- The justification for the objectives, outcomes and provisions and the process for their implementation.
- Details of the community consultation that is to be undertaken.

Advice from the WLPP will be provided to Council.

Annexures

1. Planning Proposal - Minimum lot size for dual occupancy (attached) development (Annexures removed) [↓](#) 
2. Report to the EPC meeting of 4 November 2019 – Low Rise Medium Density Housing Code - Local Housing Strategy, Special Local Character Areas and Minimum Lot Size Standards for attached dual occupancies (Annexures removed) [↓](#) 