

Item No:	R4 Recommendation to Council
Subject:	LOW RISE MEDIUM DENSITY HOUSING CODE - LOCAL HOUSING STRATEGY, SPECIAL LOCAL CHARACTER AREAS AND MINIMUM LOT SIZE STANDARDS FOR ATTACHED DUAL OCCUPANCIES
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File No:	19/155841
Reason for Report:	- To update Council on the status of the Low Rise Medium Density Housing Code. - To respond to Council's notice of motion dated 8 July 2019, to investigate minimum lot size standards of 800sqm for attached dual occupancies. - To present planning options to reduce adverse impacts of attached dual occupancies approved as either complying development under the Low Rise Medium Density Housing Code or as development which requires consent under the Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014).

Recommendation:

- A. THAT Council prepare a Local Character Statement to inform the creation of Special Local Character Areas to be included in the Woollahra LEP 2014.
- B. THAT Council await the completion of a Local Housing Strategy and Local Character Statement prior to resolving to amend the Woollahra LEP 2014 in response to the commencement of the Low Rise Medium Density Housing Code.
- C. THAT Council request the Minister for Planning and Public Spaces defer commencement of the Low Rise Medium Density Housing Code for the Woollahra Local Government Area, until the Local Housing Strategy, Local Character Statement and any recommended amendments to the Woollahra LEP 2014 are finalised.

1. Background

The Low Rise Medium Density Housing Code (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. Referred to as ‘terraces’ in this report.

The Code permits dual occupancies, manor houses and terraces to be carried out under a “fast track” complying development approval process. A complying development approval may be issued within 20 days if the proposal complies with all the relevant requirements in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

Associated changes to the planning system will also permit manor houses and terraces to be applied for as a development application (DA) if a council's Local Environmental Plan (LEP) permits multi dwelling housing. For simplicity, in this report the term 'Code' applies to all the amendments to the planning system relating to low rise medium density housing, i.e. both complying development and development that requires consent.

On 6 April 2018 amendments were made to the NSW planning system to facilitate implementation of the Code. The amendments came into effect on 6 July 2018. However, the commencement of the Code has been deferred for Woollahra Council (as one of 45 Councils) on three occasions:

1. In July 2018, the Code was deferred until **1 July 2019** to allow councils sufficient time to fully consider the potential impacts of the amendments.
2. In June 2019, the Code was deferred until **1 November 2019** to allow an independent review of the progress, impediments and pathways to the implementation of the Code.
3. In September 2019, the Code was deferred until **1 July 2020** as recommended by an independent review. The deferral is intended to allow councils to progress their strategic planning initiatives, demonstrate how they intend to meet their local housing needs and work with the Department of Planning, Industry and Environment (DPIE) to identify and map areas of exceptional local character.

This report deals with different topics which relate to the potential commencement of the Code in the Woollahra Local Government Area (LGA). The intended outcome is to identify areas where Council would like to maintain the existing local character and achieve the desired future character of certain areas. The aim of the desired future character in these areas is to allow development which preserves the existing local character of low scale residential uses which responds to the topography, protects views and reinforces a landscaped setting.

The main topics of the report are as follows:

1. Council's requirement to prepare a Local Housing Strategy under the *Greater Sydney Region Plan: A Metropolis of Three Cities* and *Eastern City District Plan*, which will greatly assist in the justification of any initiatives to amend the permissibility of dual occupancies, as well as other housing, within the LGA.
2. How Council can prepare a Local Character Statement and create Special Local Character Areas to recognise and protect the low density residential character of identified residential areas and exclude these areas from being subject to the Code.
3. A discussion on the effectiveness of increasing to the minimum lot size standards for attached dual occupancies in the R2 Low Density Residential Zone (R2 zone) to 800 square metres (sqm). This initiative aims to restrict the development of large dual occupancies in certain residential areas.
4. A discussion of other measures which may restrict the development of large dual occupancies in identified residential areas.

2. Low Rise Medium Density Housing Code Independent Review

In mid-2019, the Minister for Planning and Public Spaces requested an independent review to assess progress of the Code, identify impediments to the Code's delivery in deferred areas, and make recommendations on the appropriate pathway to finalise the Code's implementation. Professor Roberta Ryan and Neil Selmon, University of Technology, conducted the independent review of the Code. The report is dated July 2019 (**Annexure 1**).

2.1 Summary of the review

The review identified three key questions about the Code that have shaped the recommendations of the final report, as summarised below. *Note: **Bolded** text represents staff emphasis.*

Q1: Intent of the Code

What is the intent of the Code?

The review found that there is a lack of community understanding about the nature and application of the Code, including how it will operate with other housing related State Environmental Planning Policies (SEPPs), such as *SEPP (Affordable Rental Housing) 2009* and *SEPP (Housing for Seniors or People with a Disability) 2004*.

The review recommends renaming the Code to the “Two Storey Housing Diversity Code” and providing information to the community to clarify the type of housing that will be delivered.

Q2: Local character

Can local housing needs and local character be recognised and enhanced through a complying development approach to low rise medium density housing?

The review notes that Councils are concerned about the impact the Code will have on areas of special local character. However, the independent review identifies that Council initiated requests for exclusions of significant sections of land in their LGA will undermine the intent of the Code.

Consequently, the review recommends that:

- There are to be **no LGA wide permanent exclusions** from the Code.
- “Special Local Character Areas” could be excluded from the Code if agreed to with the Minister / DPIE and implemented by 1 July 2020.
- Where the Code applies to an R2 zone, **no LEP amendments be made to prohibit dual occupancies** or multi dwelling housing.
- Councils should not increase the FSR or **minimum lot size requirements** beyond the base level controls set out in the Code.

Q3: Certification

Can private certifiers rely on the Design Verification Statement prepared by the building designer as being consistent with the Design Guide?

The review identifies the challenges and complexity of the certification system to the future success of the Code, particularly the new element of Design Verification Statements. The independent review recommends an evaluation of the Design Verification Statement process due to a number of significant concerns about the nature of the Statements, certifier risk and potential for litigation.

Other considerations

The review found that there is a lack of information on the take up of the Code. It recommends the State Government monitor the outcome and implementation of the Code for a period of 21 months from 1 November 2019 until 30 June 2021.

2.2 Recommendations of the review

In total, the review made 18 recommendations, the most relevant to this report are identified below.
*Note: **Bolded** text represents staff emphasis.*

Intent of the Code

2. *The Low Rise Medium Density Housing Code should be **re-named the Two-Storey Housing Diversity Code**.*
3. ***'Low rise medium density'** should be defined. The definition should be articulated in practice notes.*

Local Character

6. *It is recommended that the application of the Code be further deferred until 1 July 2020. Areas identified as being of **Special Local Character** can be excluded from the Code.*
8. *There should be **no LGA wide permanent exclusions** from the Code and **councils will be prevented from nominating the whole of an LGA or the whole of the R2 Low Density Residential zone as a Special Local Character Area**.*
9. *Where the Code currently applies in an **R2 Low Density Residential zone** it should not be removed from application through a Planning Proposal to **prohibit** multi dwelling housing or **dual occupancy** from that zone.*
10. ***Planning Proposals should not increase the floor space ratio or minimum lot size requirements** beyond the base level controls in the Code, on land to which it applies.*

Implementation of the Code

11. *More **detailed guidance** to be provided **on respecting and enhancing local character**, through Planning Practice Notes and case studies that can support the intended outcomes of the Design Guide, with a particular focus on locating dwellings within a precinct and local character context, and on development in infill areas.*

Code Complying Development

15. *Development for the purposes of **multi dwelling housing (terraces)** under the Code should be limited to a maximum of **4 dwellings** in a single Complying Development Certificate in infill/greyfield areas.*

3. Council resolutions

3.1 Minimum lot size standards of 700sqm for manor houses and terraces

On 18 June 2018, Council resolved, in part, to undertake a review of the Woollahra LEP 2014 and *Woollahra Development Control Plan 2015* (DCP) in relation to the Code.

On 25 March 2019, as a consequence of the review, Council resolved, in part, to:

- A. *Prepare a planning proposal to amend clause 4.1A of Woollahra LEP 2014 by inserting minimum lot size standards for manor houses and terraces of 700sqm.*
- B. *Prepare a draft development control plan to amend various sections of the Woollahra DCP 2015, to insert references to manor houses and terraces.*
- C. *Refer the planning proposal and draft DCP to the Woollahra Local Planning Panel (WLPP) for advice.*

On 18 April 2019, the WLPP advised Council that it supported the planning proposal and draft DCP.

On 13 May 2019, Council resolved, in part, to:

- C. *Forward a planning proposal to the Department of Planning and Environment requesting a gateway determination to allow public exhibition. The objective of the planning proposal is to amend Woollahra LEP 2014 to add minimum lot size standards of 700sqm for manor houses and terraces.*
- E. *Publicly exhibit an associated draft development control plan to amend various sections of the Woollahra Development Control Plan 2015, to insert references to manor houses and terraces.*

An update on the progress of this planning proposal is included in part 4 of this report.

3.2 Minimum lot size standards of 800sqm for attached dual occupancies

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

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.*
- C. *THAT the resolution be notified to the Department of Planning and Professor Roberta Ryan, the independent reviewer, by 31 July 2019.*

Part C of the resolution was actioned. A copy of the correspondence to Professor Roberta Ryan and to the Department of Planning Industry and Environment was circulated to Councillors on 5 September 2019 (**Annexure 2**).

Explanation for notice of motion

The main reasons explaining the notice of motion are summarised below:

- Council's current development and planning controls are delivering housing sufficient to meet the Council's housing target set by the *Eastern City District Plan*, without the need for housing approved under the Code.
- The Code does not consider community expectations or the desired future character of neighbourhoods.
- Attached dual occupancies approved as complying development in the R2 zone may severely impact on the desired future character of many of the LGA's neighbourhoods, particularly Bellevue Hill, Rose Bay and Vaucluse.
- Increasing the minimum lot size requirement for attached dual occupancies would allow for greater flexibility in design and minimise adverse amenity impacts.
- On smaller lots, the impacts of attached dual occupancies in the low density neighbourhoods are intensified. The low density neighbourhoods of the LGA have a distinctive sense of place, which flows from a strong landscape character.
- Limiting the approval of attached dual occupancies in the R2 zone to lots of 800sqm or more will maintain the character of the low density neighbourhoods and preserve residential amenity.
- The intention of the proposed amendment is to direct development to larger lots where there is sufficient room for mature trees in the front and rear setback and reduce the apparent density of development.

Examples of recent attached dual occupancy DAs

On 12 September 2019, two contentious DAs for attached dual occupancies 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 were the subject of significant community concern, attracting submissions from 24 objectors and an online petition with 324 signatures.

The DAs applied to two adjoining lots, both with a street address of 12 Greycliffe Avenue, Vaucluse (Lots 28 & 29 DP 7253). The lots were approximately 684 and 639sqm in size, one with an existing single detached dwelling and the other vacant. The lots are zoned R2.

Question on notice

On 4 September 2019, Councillor Regan requested an update from the Director, Planning and Development about the 8 July 2019 Council resolution, specifically:

1. When the report referred to in Resolution A above will be prepared?
2. Whether a notification referred to in Resolution C was made, and provide the Councillors with a copy of that notification?

The Director Planning & Development's response in the minutes from Council's meeting of 9 September 2019, is summarised below:

- The staff resources had been directed towards major projects identified as priorities by Council on 26 August 2019, and this project had not been identified as a priority.

- The request may appear simple but Council will require a strong strategic justification for its implementation, which would best be supported by a Local Housing Strategy.
- If requested by Council, a report could be prepared and submitted to the second meeting of the Environmental Planning Committee (EPC) in November 2019, prior to the preparation of a housing strategy.
- Part C of the resolution was actioned. A copy of the correspondence to Professor Roberta Ryan and to the Department of Planning Industry and Environment was circulated to Councillors on 5 September.

3.3 Special Local Character Areas

Council staff have been informed that a notice of motion relating to the investigation and establishment of Special Local Character Areas in the Woollahra LEP 2014 will be submitted to Council in the near future. The draft notice of motion proposes:

THAT Council requests staff to:

1. *undertake an assessment of land areas (including all residential zones) in the municipality that are important to the local character and natural and visual environment of the municipality (including those in sightlines from Sydney Harbour), with a view to identifying those areas where it is important to retain the dominance of landscape over built form and enhance the local character and amenity of the area;*
2. *have regard to (but without limitation) the “Scenic Protection Areas” identified in the Mosman Local Environmental Plan 2012 by way of benchmarking of the assessment to be undertaken in 1 above; and*
3. *prepare a report to Council on measures that can be taken through Council’s planning powers (including any amendment to the Woollahra Local Environmental Plan 2014), to regulate development in such areas so that the character of these areas are retained and the general dominance of landscape over build form is maintained, such report to also consider measures that may be taken to exclude these areas from the Low Rise and Medium Density Housing Code and other codes of the State Environmental Planning Policies.*

4. Current planning proposal for manor houses and terraces

On 16 May 2019, Woollahra Council’s planning proposal to add minimum lot size standards of 700sqm for manor houses and terraces was submitted to the DPIE requesting a gateway determination.

The DPIE initially delayed issuing a gateway determination for the planning proposal pending the outcome of the independent review of the Code. In recent discussions the DPIE has indicated that they may issue a gateway determination for the planning proposal before the end of 2019. However, we have not received any further clarification on when the gateway determination will be issued.

4.1 Other councils’ planning proposals

The independent review identifies that 17 planning proposals relating to the Code have been submitted to the DPIE from deferred councils, most commonly requesting to:

- Limit the permissibility of different types of multi dwelling housing in certain zones and/or locations, particularly dual occupancies and manor homes.

- Change development standards for some types of medium density housing, particularly minimum lot sizes, frontages, side and rear setbacks, parking, and building heights for dual occupancies and manor houses.
- Restrict the application of the Code to entire zones.
- Permanently exempt the Code from applying to existing residential zones whilst adopting some Code into LEP and DCP controls for these zones.

Examples of these planning proposals and their progress status are summarised in **Table 1**. It is noted that most examples were, or are being, finalised by the DPIE 12-16 months after their submission date.

Table 1: Current or recent planning proposals relating to the Code

Council / LEP	Control	Status	Request to DPIE / Gateway determination
Amendments to minimum lot size			
Camden Camden LEP 2010	600sqm minimum lot size for dual occupancies (800sqm on corner lots) where they are permissible	Awaiting LEP finalisation	31 August 2018 18 October 2018
Cumberland Auburn LEP 2010 Holroyd LEP 2013	600sqm minimum lot size for dual occupancies in the R2 and R3 zone	Awaiting LEP finalisation	27 July 2018 6 September 2018
Georges River Hurstville LEP 2012 Kogarah LEP 2012	<ul style="list-style-type: none"> - 650sqm minimum lot size for dual occupancies (increased from 630sqm) - prohibit dual occupancies and multi dwelling housing in the R2 zone and certain land specified in the Kogarah LEP 2012 	Awaiting LEP finalisation	26 June 2018 31 July 2018
Kiama Kiama LEP 2011	<ul style="list-style-type: none"> - 300sqm minimum lot size for dual occupancies and terraces in all the R2 zones except Jamberoo - 400sqm minimum lot size for dual occupancies and terraces in the R2 zone in Jamberoo - 200sqm minimum lots size for all types of low rise medium density housing in the R3 zone 	Awaiting LEP finalisation	6 July 2018 31 July 2018
Randwick Randwick LEP 2012	Adopt the minimum strata and Torrens Title subdivision lot size standards of the Codes SEPP for subdivision of dual occupancies	PP approved / LEP made - 17 August 2018	27 April 2018 10 May 2018
Sutherland Sutherland Shire LEP 2015	- 600sqm minimum lot size for dual occupancies in R2 zone	PP approved / LEP made - 1 February 2019	21 September 2017 6 December 2018

Council / LEP	Control	Status	Request to DPIE / Gateway determination
	- 1,200sqm minimum lot size for multi dwelling housing in R2 zone		
The Hills The Hills LEP 2012	900sqm minimum lot area for manor homes in the R3 zone	Awaiting LEP finalisation	24 October 2018 11 January 2019
Wingecarribee Wingecarribee LEP 2010	1,000sqm minimum lot size for dual occupancies in the R2 and R3 zones	Exhibition	9 April 2019 29 May 2019
Amendment to land use permissibility			
Campbelltown Campbelltown LEP 2015	Prohibit multi dwelling housing in R2 zone	Awaiting LEP finalisation	22 August 2018 15 October 2018
Canterbury-Bankstown Bankstown LEP 2015	Prohibit multi dwelling housing in R2 zone	Awaiting LEP finalisation	8 May 2018 31 July 2018
Lane Cove Lane Cove LEP 2009	Prohibit multi dwelling housing in R2 zone	PP approved / LEP made 14 June 2019	10 May 2018 6 July 2018
Northern Beaches Manly LEP 2013 Pittwater LEP 2014	- Prohibit dual occupancies and multi dwelling housing in the R2 zone under Manly LEP 2013 - Prohibit dual occupancies in the R2 zone under Pittwater LEP 2014	Pre-exhibition	27 June 2018 31 July 2018

A more detailed description of selected planning proposals is provided below.

4.1.1 Sutherland

On 1 February 2019, the *Sutherland Shire Local Environmental Plan 2015 (Amendment No 14)* introduced the following minimum lot size standards in Sutherland Shire:

- a minimum lot size of 600sqm for the construction of a dual occupancy in the R2 Low Density zone
- a minimum lot size of 1,200sqm for the construction of multi-dwelling housing in the R2 zone.

Sutherland Council noted that the 600sqm minimum lot size requirement had existed previously in *Sutherland Local Environmental Plan 2006*. The standard was removed in the Sutherland LEP 2015 to encourage additional housing diversity. However, a significant rise (almost a doubling) in dual occupancy DAs was observed on lots considered to be “small” (below 500sqm) following the removal of this standard. This increase in development impacted on residential amenity and local character of low density residential areas in terms of landscaping, privacy and building bulk.

Sutherland Council justified the amendment to minimum lot sizes by reasoning that it would:

- Achieve the objectives of the R2 zone by providing for housing needs in a low density residential environment.
- Improve built form outcomes by providing greater flexibility in design options.
- Lessen the residential amenity impact on neighbouring land.

The DPIE supported the planning proposal finding that it:

- Did not remove the ability to construct dual occupancies or multi dwelling housing.
- Did not alter the permissibility of any development type within the R2 zone.
- On balance would not impede Council's ability to provide housing supply and diversity (despite some implications for supply).
- Will facilitate improved built form outcomes.
- Will lessen the impact of these types of developments on adjacent lots.

4.1.2 Camden

On 31 August 2018, Camden Council submitted a planning proposal seeking to amend the *Camden Local Environmental Plan 2010* (Camden LEP 2010) by inserting the following new minimum lot size controls:

- dual occupancies:
 - 600sqm minimum lot size control and 800sqm for corner lots
 - 18m minimum street frontage control where dwellings are directly adjacent to each other or 22m where dwellings are directly behind one another
- multi-dwelling housing:
 - 1,500sqm minimum lot size control
 - 25m minimum lot frontage control

The DPIE issued a gateway determination on 18 October 2018.

Camden Council noted that the 600sqm and 800sqm minimum lot size requirement for dual occupancies currently exist in the *Camden Development Control Plan 2011*. Translating this control to a standard in the Camden LEP 2010 would introduce stronger planning controls and consistency to dual occupancy applications lodged as DAs and as complying development. The 1,500sqm standard for multi dwelling housing is based on a comparison of standards from other Sydney Councils including Blacktown, Canterbury-Bankstown and Liverpool and some areas controls by the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

Council justified the amendment by including reasoning that it would:

- Introduce appropriate controls to effectively manage low-rise medium-density development when the Code comes into effect.
- Enable sustainable residential growth that is compatible with the character of the established and transitioning areas
- Ensure that sufficient space is provided to accommodate setbacks, private open space, ancillary buildings and driveway access while maintaining the amenity and character of established neighbourhoods.
- Satisfy the objectives of the Camden LEP 2010 to ensure Camden retains its valued character and scenic qualities.

The DPIE considered that the planning proposal was suitable to proceed to exhibition as it had the potential to:

- Provide certainty for the delivery of good urban design outcomes for dual occupancies and multi-dwelling housing.
- Provide a consistent approach to applying a minimum lot size and lot frontage for dual occupancies and multi-dwelling housing.
- Complement the provisions and best-practice principles of the Code.

4.1.3 Lane Cove

On 14 June 2019, the *Lane Cove Local Environmental Plan 2009* was amended to remove “multi dwelling housing” as a permissible use in the R2 Zone, so that manor houses and all multi dwelling housing types would not be permissible in the zone. However, dual occupancies are still permitted with development consent in the zone. The amendment was requested primarily in response to the anticipated introduction of the Code. The amendments to Lane Cove LEP 2009 brings it into line with the permissibility that currently exists in the R2 zone of Woollahra LEP 2014, in which “multi dwelling housing” is not permitted but dual occupancies are permitted.

The DPIE considered that the planning proposal was suitable to proceed to exhibition as:

- The previous LEP planning controls limited the scale of multi-dwelling housing development to a single storey with the intent to maintain the low-density character of the zone.
- The Code was not consistent with Council's intent for single storey villas in the R2 zone.
- Only one DA had been received for multi dwelling housing in the R2 Zone since 2010, therefore the proposal was likely to have a minor impact.

4.2 DPIE requirements for justifying planning proposals relating to the Code

In considering the justification of these planning proposals, the DPIE has generally requested the following supporting information from councils:

- The total area of land (number of lots) currently zoned R2 and R3 Medium Density Residential (R3 zone) in the LGAs.
- The number of lots that would be eligible for low rise medium density housing development (i.e. dual occupancies, manor homes and multi dwelling housing) in the R2 and R3 zones under the Code, taking into account the SEPP exclusions, such as foreshore areas and sites below the minimum lot size.
- The number of dual occupancy and multi-dwelling housing developments approved in the R2 and R3 zones in the LGA in the last 5 years.
- Whether the proposal is supported by a local housing strategy that has been developed in consultation with the community.

5. Comparison with other Councils' LEPs

A review of existing LEPs for various Sydney councils is summarised in **Table 2**. The 14 LEPs vary in their minimum lot size standard for dual occupancies from 450sqm to 2 hectares in various zones and specific identified areas. Dual occupancies in the R2 zones vary from 450sqm to 1,000sqm.

The largest controls generally relate to the semi-rural areas such as the RU2 Rural Landscape and RU4 Primary Production Small Lots zones, or special areas defined by the LEPs, such as “Area G” and “Area K” in the Hurstville LEP 2012. However, generally the minimum lot size of attached dual occupancies sit around the 600 to 700sqm range, including in LGAs with landscaped, large lot character similar to parts of the Woollahra LGA such as Bellevue Hill, Rose Bay and Vaucluse. The

notable exception is the Pittwater LEP 2014 at 800sqm. Therefore, Council could reasonably argue for an increase in the minimum lot size for attached dual occupancies based on achieving parity with other councils with a similar built form character.

Table 2: Review of LEPs with minimum lot sizes for dual occupancies
(sorted from largest lot size to smallest)

LEP	Zone / Area / Condition	Minimum lot size for dual occupancies	
		Attached	Detached
Fairfield LEP 2013	As mapped (Permitted in RU2, RU4, R2 and R4 zones)	600sqm, 900sqm or 2 ha	600sqm, 900sqm or 2 ha
Kogarah LEP 2012	As mapped (Permitted in R2 and R3 zones)	650sqm or 1,000sqm	650sqm or 1,000sqm Detached dual occupancies must have 2 road frontages
Hurstville LEP 2012	<ul style="list-style-type: none"> R2 and R3 zone: Mapped Area G R2 zone: Mapped Area K 	<ul style="list-style-type: none"> 630sqm 1,000sqm 	<ul style="list-style-type: none"> 630sqm 1,000sqm
Woollahra LEP 2014	<ul style="list-style-type: none"> R2 zone R3 zone 	<ul style="list-style-type: none"> 460sqm 460sqm 	<ul style="list-style-type: none"> 930sqm 460sqm
Pittwater LEP 2014	RU2, R2 and R3 zones	800sqm	800sqm
Hunters Hill LEP 2012	R2 and R3 zones	700sqm	900sqm
Willoughby LEP 2012	R2 and E4 zones	700sqm	900sqm
The Hills LEP 2012	R2 and R3 zones	600sqm	700sqm
	R4 zone	1,800sqm	1,800sqm
Canterbury LEP 2012	R2, R3 and R4 zones	600sqm	600sqm
Bankstown LEP 2015	R2 zone	500sqm - 15m lot width	700sqm - 20m lot width
Blacktown LEP 2015	R2 zone	500sqm	600sqm
Burwood LEP 2012	R1, R2 and R3 zones	500sqm	600sqm
Ryde LEP 2014	R2 zone	580sqm	Not permitted
Randwick LEP 2012	R2 zone	450sqm	No control
North Sydney LEP 2013	R2, R3, R4 and IN2 zones	450sqm	450sqm
Hornsby LEP	No clause	N/A	N/A
Ku-ring-gai LEP 2015	No clause	N/A	N/A
Lane Cove LEP 2009	No clause	N/A	N/A
Manly LEP 2013	No clause	N/A	N/A
Mosman LEP 2012	No clause	N/A	N/A
Warringah LEP 2011	No clause	N/A	N/A

6. Analysis of dual occupancies in the Woollahra LGA

An investigation of dual occupancy approvals in the Woollahra LGA, and the potential for dual occupancy approvals under the Code, is provided below.

6.1 Permissibility of dual occupancies in the Woollahra LGA

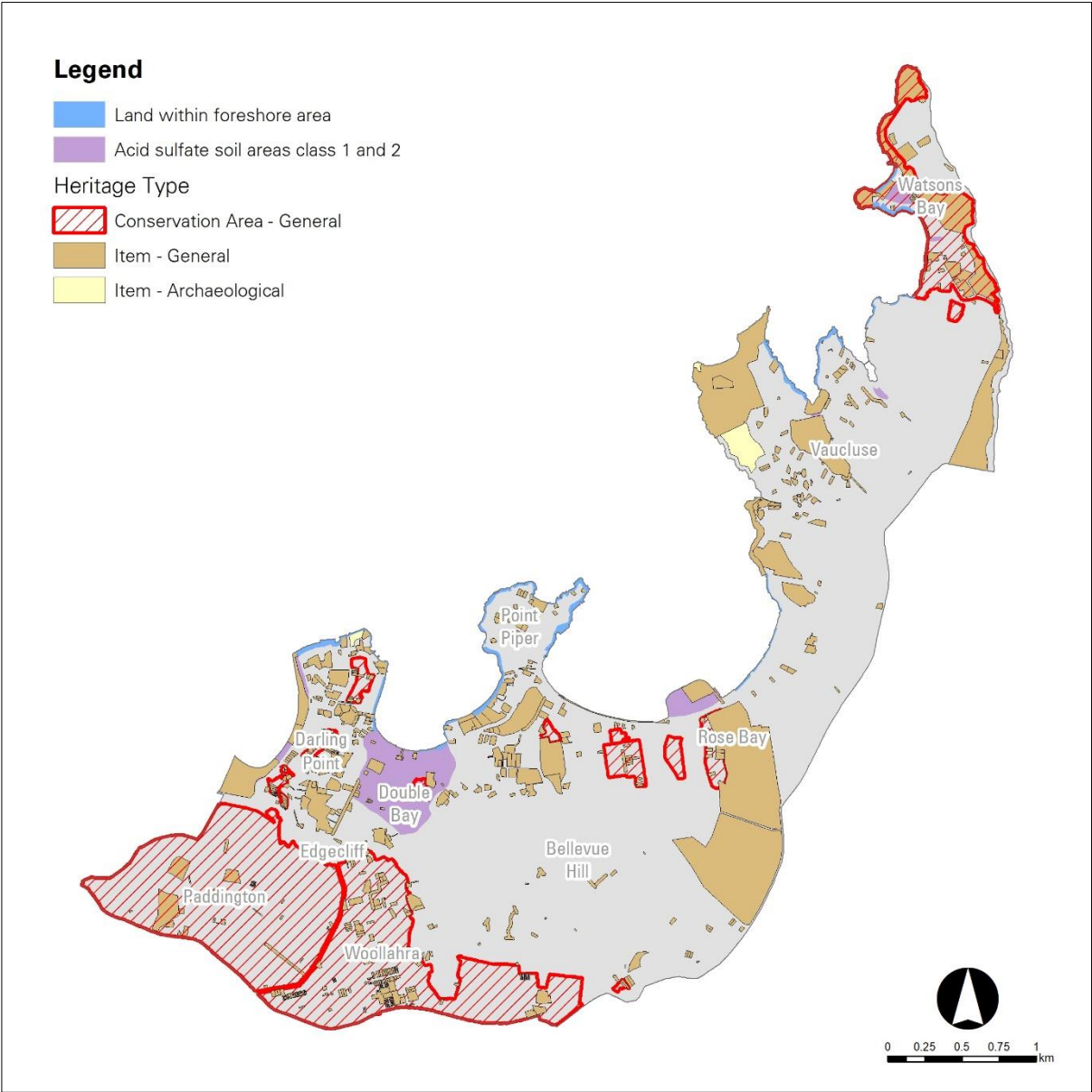
Attached and detached dual occupancies are currently permitted in the R2 and R3 zones under the Woollahra LEP 2014. The Code only permits complying development uses where the same use is already permitted by the LEP. Accordingly, the Code will only permit complying development of dual occupancies in the R2 and R3 zones in the Woollahra LGA.

The Code also excludes complying development on certain land (refer to the **Figure 1**), including:

- Land that comprises, or on which there is a heritage item (state or local), a draft heritage item or land subject to an interim heritage order.
- Land within a heritage conservation area or a draft heritage conservation area.
- Land that is reserved for a public purpose.
- Land identified on the Acid Sulfate Soils Map as being Class 1 or Class 2.
- Land in the foreshore area (which is land between a foreshore building line and the mean high water mark).

Additionally, complying development under the Code is linked to certain standards within the Woollahra LEP 2014, including minimum lot size and gross floor area (GFA). Therefore, the minimum lot size and GFA specified for complying development under the Code will be the same as the standards of the LEP.

Figure 1: Land excluded from the Code



Note: This map does not include draft heritage items.

6.2 Lots where dual occupancies are permitted

Table 3 shows the number of all R2 zoned lots in LGA, and those that would permit complying development under the Code (Code lots), sorted by lot size. The table illustrates that:

All R2 lots

- 42% (26% + 16%) of all R2 lots are 460sqm or larger, permitting attached dual occupancies as a DA. This would be reduced to 16% of lots if a minimum lot size control of 800sqm was introduced for attached dual occupancies in the Woollahra LEP 2014.
- 38% (24% + 14%) of all R2 lots are Code lots that are 460sqm or larger, and will permit attached dual occupancies as complying development. This would be reduced to 14% of Code lots if a minimum lot size control of 800sqm was introduced.

Code lots

- 46% of all R2 lots are subject to the Code. It should be noted that this number will be further reduced once other site specific standards and restrictions are considered (such as battle-axe lots and minimum lot widths).
- 82% (52% + 30%) of R2 Code lots would permit attached dual occupancies as complying development. This would be reduced to 30% of Code lots if a minimum lot size control of 800sqm was introduced.

Table 3: Count of all R2 lots and lots to which the Code applies

R2 zone lots and minimum size of lot	All R2 lots	All R2 lots %	R2 Code lots	R2 Code lots as % of all lots	R2 Code lots %
<460sqm	5,409	58	767	8	18
≥ 460sqm - <800sqm	2,444	26	2,241	24	52
≥ 800sqm	1,428	16	1,272	14	30
Total R2 lots	9,281	100	4,280	46	100

6.3 Number of approved DAs for dual occupancies

The number of DAs for dual occupancies in the past 5 years (2014-2019) is shown in the **Table 4**. The table shows that:

- 17 attached dual occupancies were approved during this period,
- 12 (71%) of the 17 approvals were on lots smaller than 800sqm,
- 5 (29%) of the 17 approvals were on lots 800sqm or larger.
- Only 1 detached dual occupancy was approved in this period.

Table 4: Approved dual occupancies in the past 5 years (2014-2019)

DAs	Attached	Detached	% attached
<800sqm	12	0	71%
≥ 800sqm	5	1	29%
Total	17	1	100%

6.4 Summary of analysis of dual occupancies in the Woollahra LGA

The tables illustrate that it is not anticipated that the Code will have a large impact on dual occupancy approvals, as:

- Complying development of dual occupancies under the Code will only be permitted on the same lots where they are currently permitted by the Woollahra LEP 2014, and that are not excluded by the Code.
- The number of all R2 lots on which dual occupancies are permitted as DAs is almost the same as will be permitted under the Code, that is:
 - 42% compared to 38% on lots which are 460sqm or larger
 - 16% compared to 14% on lots which are 800sqm or larger
- The number of complying development certificates for alterations and additions for dual occupancies is likely to be low. Only 3 DAs for alterations and additions to dual occupancies were approved in the past 5 years (2014-2019).
- The number of dual occupancy DA approvals in the LGA in the past 5 years (2014-2019) is low at 17.

7. Development potential for dual occupancies

The development potential achievable on a site can be expressed as a maximum GFA. There are different methods for calculating GFA for dual occupancies in the WLEP 2014, WDCP 2015 and the Code.

GFA controls can be expressed as a formula, a specific number (sqm) or, as in most LEPs, as a ratio between GFA and lot size, known as a floor space ratio (FSR). For example, an FSR of 0.5:1 on an 800sqm lot would permit a GFA of 400sqm.

Currently, the GFA for DAs in the Woollahra LGA is determined by floorplate controls set out in the Woollahra DCP 2015. However, on 30 July 2019 staff submitted a planning proposal seeking a floor space ratio (FSR) control of 0.5:1 to apply to low density residential development (which includes dual occupancies) to the DPIE. The planning proposal seeks to amend the Woollahra LEP 2014, and the new FSR control would replace the floorplate controls in the DCP. However, the DPIE has requested further information before it will provide a Gateway Determination. An update on this planning proposal was reported to the EPC on 28 October 2019.

The Code provides its own standards for the permissible GFA of dual occupancies. This is based on the formulae below:

- Attached dual occupancy (side by side)
GFA = 25% of lot area + 300sqm to a maximum of 800sqm
- Attached dual occupancy (above and below)
GFA = 25% of lot area + 150sqm to a maximum of 400sqm
- Detached dual occupancy
GFA = 25% of lot area + 300sqm to a maximum of 800sqm

Table 5 compares the development potential for dual occupancies for complying development under the Code with that for DAs under the DCP floorplate controls and the proposed LEP FSR controls. For additional comparison, the GFA was calculated for the largest minimum lot size permitted for each type of land use listed below and for an 800sqm lot size:

- Dual occupancy (detached, side by side) - 930sqm
- Dual occupancy (attached, side by side) - 460sqm
- Dual occupancy (attached, above and below) - 460sqm

The table illustrates that the development potential for dual occupancies under the Code is greater in almost all cases than what is permitted under the existing DCP floorplate controls and proposed LEP FSR standard. This suggests that complying development under the Code will become more attractive to developers than DAs for dual occupancies, assuming developers will seek to maximise the GFA and financial returns on their developments.

Table 5: Maximum GFA for dual occupancies in the R2 zone
(greatest GFA per type shown in bold)

Dual occupancy type	Lot size ¹	Code	WDCP 2015 (floorplate) ²	WLEP 2014 (0.5:1 FSR) ³
Attached dual occupancy (side by side)	460sqm	415sqm	253sqm	230sqm
	800sqm	500sqm	440sqm	400sqm
Attached dual occupancy (above and below)	460sqm	265sqm	253sqm	230sqm
	800sqm	350sqm	440sqm	400sqm
Detached dual occupancy	930sqm	532.5sqm	511.5sqm	465sqm
<p><i>Notes:</i></p> <ol style="list-style-type: none"> 1. The minimum lot sizes permissible for complying development under the Code is the same as that permissible for development consent under Woollahra LEP 2014. 2. The Woollahra DCP 2015 floorplate controls exclude outbuildings such as decks, sheds, garages and detached studios. The floorplate controls translate to the equivalent of an FSR of approximately 0.55:1. 3. The GFA calculations for dual occupancies in the WLEP 2014 column is based on an FSR of 0.5:1, which is the subject of current planning proposal request to DPIE. 				

8. Strategies to minimise the impacts of dual occupancies

The strategies below may assist Council in controlling the location, size and impacts of attached dual occupancies.

8.1 Local Housing Strategy

Council is required to prepare a Local Housing Strategy under the *Greater Sydney Region Plan: A Metropolis of Three Cities* and *Eastern City District Plan*. A draft strategy is expected by mid-2020. Research for the strategy would provide quantitative and qualitative findings and recommendations about housing in the LGA, including:

- overall housing capacity
- precinct development potential
- local character
- development permissibility

- development controls, such as optimal minimum lot sizes for dual occupancies
- the preferred locations for additional housing, such as allowing additional housing to be dispersed throughout the LGA compared to concentrating it within centres and higher density residential areas.

Undertaking this detailed research prior to considering amendments to an LEP is considered best practice and would greatly assist in any request by Council to the DPIE to amend the Woollahra LEP 2014. The DPIE have advised staff that this is their preferred approach and was the basis for the justification of the planning proposal discussed earlier in the Sutherland, Camden and Lane Cove examples.

The strategy would quantify the level of housing that is being provided under Council's existing controls, and could qualify Council's aim to focus additional housing into areas which are considered suitable for higher density development, such as the Edgecliff, Double Bay and Rose Bay centres. Therefore, it is advisable for Council to prepare a Local Housing Strategy prior to, or in concurrence with, any requests to amend the Woollahra LEP 2014.

The main challenge to this approach is that there may not be sufficient time to complete the strategy and associated planning proposal(s) prior to the 1 July 2020 deadline, when the Code is scheduled to commence. Council may be able to request a further deferral of the commencement of the Code for Woollahra until the strategy and associated planning proposal(s) are complete.

8.2 Special Local Character Areas

The independent review of the Code recognises that councils are concerned about the impact of the implementation of the Code on local character. While the Code requires designers to consider local character in the Design Verification Statements, the review found that the current strategic planning work being undertaken by councils will support an improved interpretation of the specific attributes of local character.

The independent review recommends that the Special Local Character Areas could be excluded from the Code if agreed to by the Minister / DPIE and implemented by 1 July 2020.

Woollahra is currently undertaking, or will soon commence, detailed local strategic planning work required by recent reforms to the planning system. This work includes:

1. Local Strategic Planning Statement (LSPS) - due to be finalised by 31 March 2020.
2. Local Housing Strategy to meet the requirements of the *Greater Sydney Region Plan: A Metropolis of Three Cities* and *Eastern City District Plan*.

Some councils are undertaking detailed local character work including the preparation of local character statements for inclusion in DCPs and to potentially inform local character overlays in local environment plans. Council undertook similar work in preparing the local character statements in the Woollahra DCP 2015.

Council could consider the preparation of local character statements and Special Local Character Areas, identified by a local character overlays, for inclusion in the Woollahra LEP 2014, consistent with the local character statements in the Woollahra DCP 2015. Council could then request the Special Local Character Areas be exempt from the Code.

Opportunities

A request seeking to include Special Local Character Areas in the Woollahra LEP 2014 would require a planning proposal with a clear justification of the strategic merit. Justification of the planning proposal may include:

1. An amendment to create Special Local Character Areas is consistent with recommendation 6 of independent review discussed earlier in this report.

Note: recommendation 6 states that “Areas identified as being of Special Local Character can be excluded from the Code”.

2. If recommendation 6 of the independent review is adopted, complying development will not be permitted in the Special Local Character Areas.
3. The Special Local Character Areas will reinforce the desired future character controls contained in the Woollahra DCP 2015, especially in parts of Bellevue Hill, Rose Bay and Vaucluse.
4. The Local Character Statement and Local Housing Strategy can be coordinated for consistency and to support parallel findings and recommendations.

Challenges

The main challenge to the approval of a planning proposal is that Council does not have a current Local Housing Strategy which identifies housing need and proposed targeted locations for the provision of additional housing. The strategy would greatly assist in supporting the strategic justification and boundaries of the Special Local Character Areas.

8.2.1 Special Local Character Areas process

Guidance for councils preparing their Local Character Statements is provided by the DPIE in *Planning Circular PS 18-001: Stepping up planning and designing for better places: respecting and enhancing local character* (16 January 2018), *Discussion Paper – Local Character Overlays* (February 2019) and *Local Character and Place Guideline* (February 2019). The documents propose that special local character areas would be introduced into LEPs by way of an optional standard clause and map to accommodate a local character “overlay”.

Planning Circular

The planning circular states that character overlays will only be permitted in exceptional areas where the council has:

- Demonstrated the character of a local area is significant in accordance with guidelines to be issued by the DPIE.
- Ensured that the LGA will meet the dwelling targets for future growth as established by the relevant regional or district plan.

Discussion Paper – Local Character Overlays (February 2019)

The discussion paper sets out the following criteria and required supporting information that would need to be addressed by councils requesting a local variation or exclusion from the Code:

1. Must demonstrate supply and diversity of housing across the local government area which will meet current and future needs of the community.
2. Must provide compelling reason for variation or exclusion.
3. Variation or exclusion is quantifiable and can be mapped.

Local Character and Place Guideline (February 2019)

Creating Special Local Character Areas would require research undertaken in accordance with the Local Character and Place Guideline prepared by the DPIE. The Guideline provides a “character assessment toolkit” which may be used alongside the draft “Good Urban Design” document that supports the “Better Place” policy produced by the Government Architect NSW.

The toolkit introduces the following tools to examine the local character of an area through qualitative assessment:

- Step 1 - Hearing from your community
Involve the community in determining local character.
- Step 2 - Identifying an area’s character
Determine the character of an area by identifying unique social, economic and environmental considerations.
The physical boundaries of a character area may be natural features, open space, thoroughfares, infrastructure, change in use (commercial to residential) or special features. There may be a change in character where one area can be characterised differently from an adjacent area, such as the boundary with an adjacent council.
- Step 3 - Examine different sources of information and map local character
Examine existing information and documents to assist in local character assessment. These sources may include, as a starting point, demographic data, local records, visual landscape studies, urban design studies, retail and employment land audits, heritage studies, historic maps, community engagement and consulting with appropriate government or industry partners
- Step 4 - Setting desired future character
Identify the characteristics of the area that can change, be enhanced or should be maintained.
- Step 5 - Producing a character assessment
Provide local character mapping and a narrative of where an area has come from, where it is headed and what makes it unique.

8.2.2 Local Character Statement for the Woollahra LGA

For Council to produce a Local Character Statement and create associated Special Local Character Areas, staff could initiate research based on the following sources:

A. Council

Nominations of Councillors identifying certain areas like the residential areas around Neilsen Park and Greycliffe Avenue, Vacluse.

B. Community

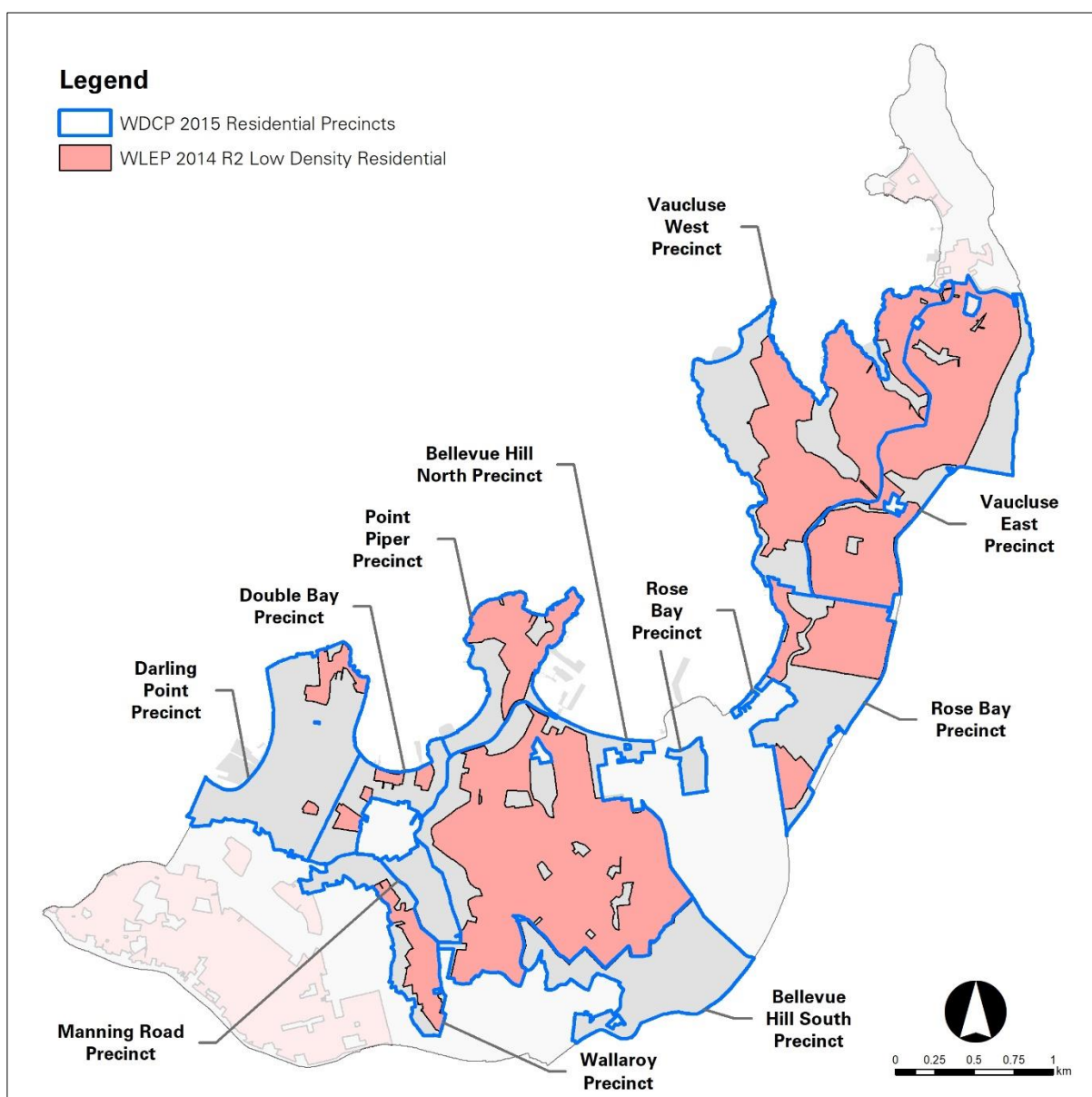
Nominations from the community sourced from submissions to the LSPS consultation, and a specific community consultation exercise for the Local Housing Strategy and Local Character Statement.

C. Desired future character statement

The background research and community consultation results that guided Council in creating the residential precinct character statements and desired future character statement which are established in the Woollahra DCP 2015. This is particularly relevant in areas with a desired future character aiming to preserve low scale residential uses, respond to the topography, protect views and reinforce a landscaped setting such as Bellevue Hill, Rose Bay, Vaucluse West and Vaucluse East (refer to **Figure 2**).

Note: Heritage Conservation Areas are exempt from the Code and are subject to detailed development controls and local heritage character requirements. They would not be included in Special Local Character Areas.

Figure 2: Woollahra DCP 2015 Residential precincts and R2 zone



D. Identified areas in the R2 zone

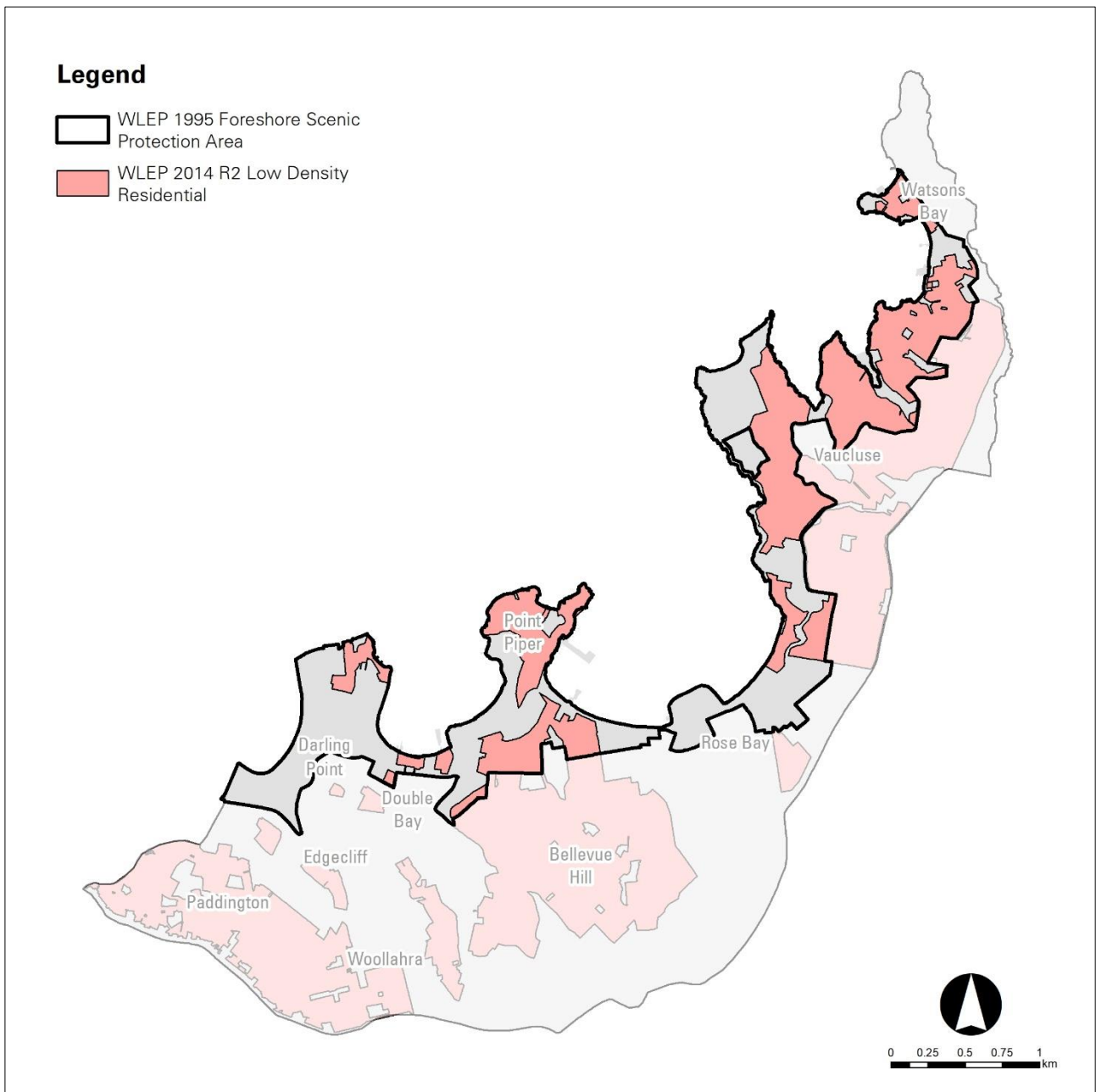
Some sections of the R2 zone could be considered as areas of special local character, particularly if they intersect with residential precincts that have a desired future character which aims to preserve low scale residential uses, respond to the topography, protect views and reinforce a landscaped setting, such as Bellevue Hill, Rose Bay, Vaucluse West and Vaucluse East and also in identified parts of other residential precincts (refer to **Figure 2**).

E. Scenic Protection Area

The *Woollahra Local Environmental Plan 1995* contained a mapped area referred to as the “Harbour Foreshore Scenic Protection Area” (refer to **Figure 3**). The area was linked to controls which required the consideration of the visual impact of development when viewed from Sydney Harbour and the impact on the natural landform and topography. The mapped area and associated controls were not translated into the drafting of the *Woollahra LEP 2014* because similar controls were introduced by *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (Sydney Harbour SREP) which, as a State planning instrument, overrides the controls of the LEP. Currently other councils have “Scenic Protection Areas” in their LEPs, for example:

- Mosman – Clause 6.4 of the *Mosman Local Environmental Plan 2012* relates to development consent in the “scenic protection area”. In its assessment of DAs Council must consider the location and design of proposed development, to minimise the visual impact of the development to and from Sydney Harbour, and to maintain the existing natural landscape and landform.
- Northern Beaches – Clause 6.9 of the *Manly Local Environmental Plan 2013* relates to development consent in the “foreshore scenic protection area”. In its assessment of DAs Council must consider:
 - the impacts on the visual amenity of harbour or coastal foreshore
 - overshadowing of the foreshore
 - loss of views from a public places
 - the scenic qualities of the coastline
 - suitability of development type, location and design
 - conflict between land-based and water-based coastal activities.

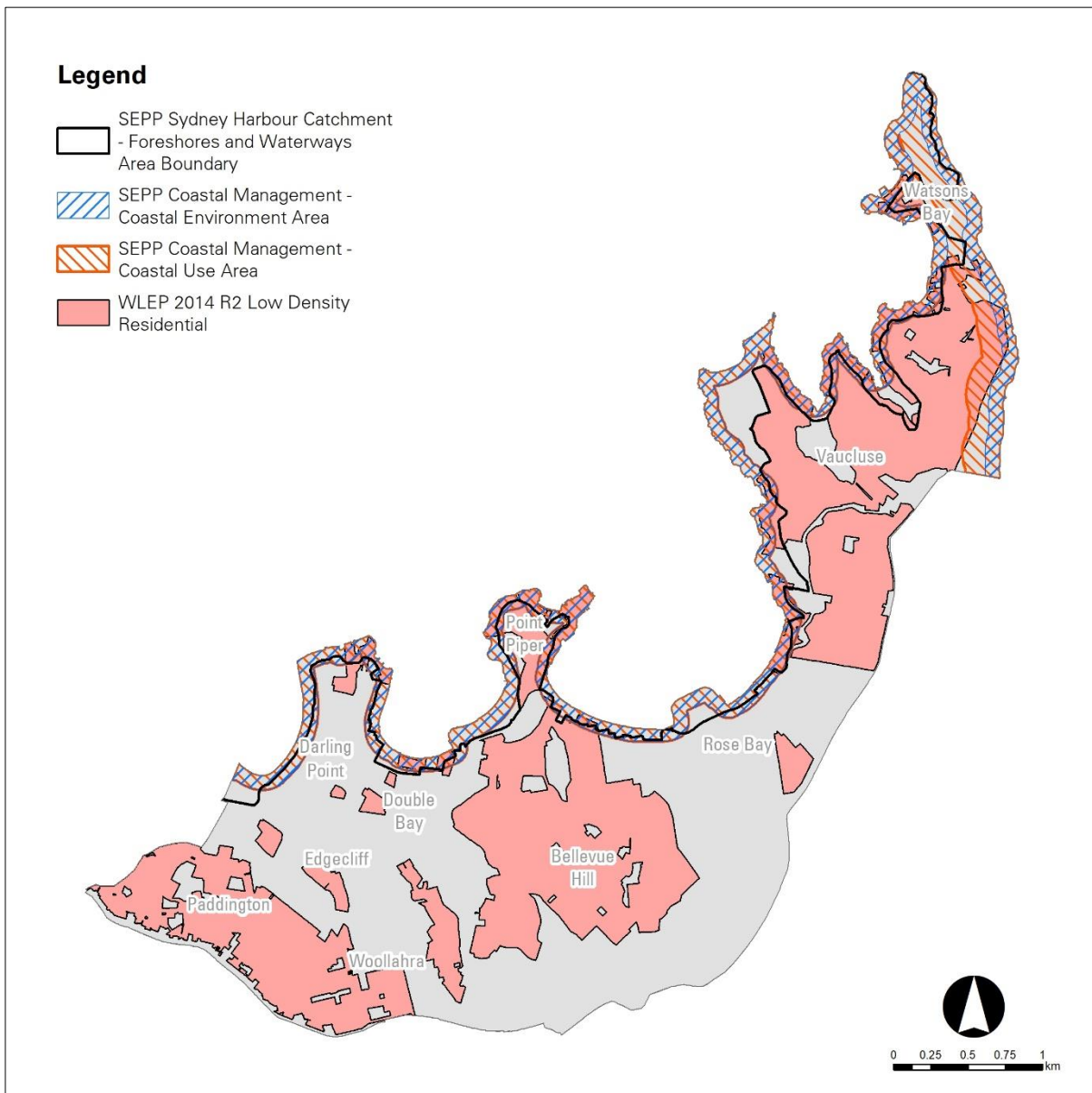
Figure 3: Woollahra LEP 1995 Foreshore Scenic Protection area and Woollahra LEP 2014 R2 zone



F. Coastal area

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) identifies a “coastal environment area” and “coastal use area” for which Council must consider any adverse impacts of development on the natural and human coastal environment as part of a DA assessment. This includes impacts on ecology, hydrology, public open space, safe access to and along the coast, use of the surf zone, overshadowing, wind funnelling, loss of views from public places, visual amenity, and cultural and built heritage. The SEPP works in conjunction with Sydney Harbour SREP, but also identifies the entire ocean coastal area of the LGA from South Head to the boundary with Waverley LGA (refer to **Figure 4**).

Figure 4: SEPP identified coastal areas



G. Tree Canopy

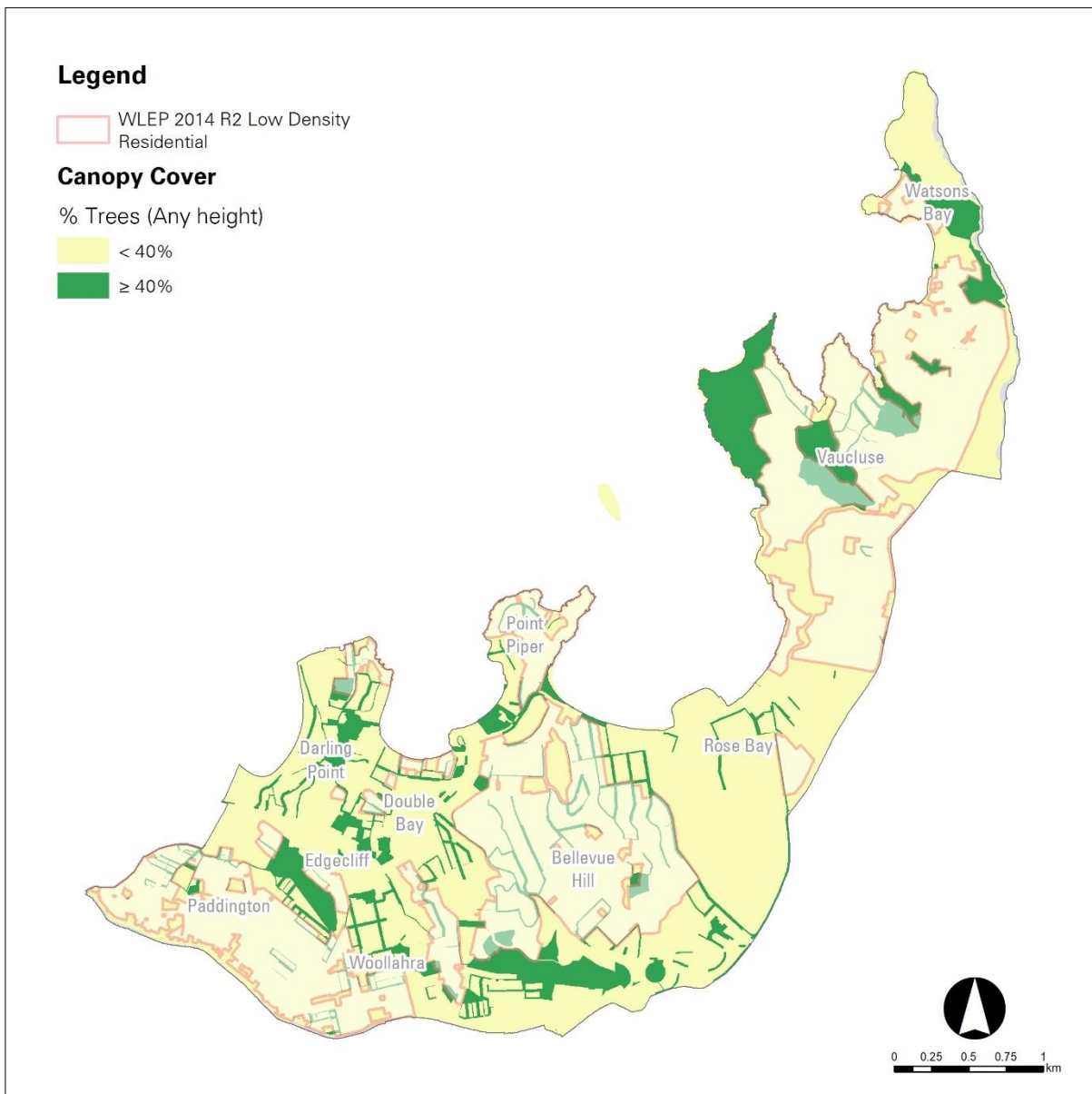
The *Greater Sydney Region Plan: A Metropolis of Three Cities* and *Eastern City District Plan* identify addressing urban heat as a performance indicator to measure the success of elements of a vision to manage growth and change in Greater Sydney.

The indicator relates to the value of green infrastructure such as tree canopy, vegetation and waterways in reducing the impact of extreme heat on people's health and improving local amenity. The goal is to increase the urban tree canopy and the contribution it can make to the quality of public places, streets and open spaces, and improved amenity. The GSC has released the "Urban Vegetation Cover" and "Heat Vulnerability Index" mapping to assist councils developing strategies to meet this goal. The GSC goal for Greater Sydney is a tree canopy coverage of 40%.

Tree canopy refers to all trees on public and private land within the LGA and the extent of tree crown (including branches and leaves). The tree canopy cover is measured as a percentage of the total land area or, for individual sites, the tree canopy cover as a percentage of the total site area.

The local character statement could identify areas with a particular percentage of tree canopy, such as 20%, 25% or 30%, to assist in maintaining the canopy and landscape qualities of the area into desired future character objectives (refer to **Figure 5**).

Figure 5: Tree canopy



H. Local Housing Strategy

The Local Housing Strategy could recommend areas that are not considered suitable for the development for higher density residential development, as discussed earlier in this report.

8.3 Minimum lot size amendment

The existing minimum lot size of 460 square metres for attached dual occupancies is based on the rationale that the lot size should be double the size of the historical minimum lot size requirement of 230sqm for the erection of a single dwelling house. This standard was translated into clause 4.1B of the Woollahra LEP 2014, which permits subdivision of land in the R3 zone to a minimum lot size of 230sqm for a dwelling house, attached dwelling or semi-detached dwelling.

Council's resolution of 8 July 2019 requested staff to investigate amending Woollahra LEP 2014 to introduce a minimum lot size standard of 800sqm for attached dual occupancies in the R2 zone. It is noted that the minimum lot size controls in the Code for dual occupancies and terraces cannot be less than the minimum lot size for dual occupancies and terraces in LEP applying to lot. Therefore, any amendment to the minimum lot size in the Woollahra LEP 2014 will also apply to complying development in the Woollahra LGA.

Opportunities

A request seeking to amend the minimum lot sizes for dual occupancies in the Woollahra LEP 2014 would require a planning proposal with a clear planning justification of the strategic merit. Justification of the planning proposal may include:

1. Council's current development and planning controls are delivering additional housing to meet the targets already set in the *Eastern City District Plan 2018* without the need for the Code.
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 Vacluse.
3. Limiting the approval of attached dual occupancies in the R2 zone to lots of 800sqm or more will assist in maintaining the low scale, landscaped character of the low density residential neighbourhoods and preserve residential amenity. It will also allow for greater flexibility in design, permit adequate landscaping and minimise adverse amenity impacts.
4. As DAs approval numbers for dual occupancies are low, at only 19 approvals over the period 2013-2019, the proposal is likely to have a minor impact on overall development and should be approved to improve planning and residential amenity outcomes.
5. The findings and recommendations of a completed Local Housing Strategy, if they support this strategy.

Challenges

There are several challenges to the approval of a planning proposal, including:

1. Council does not have a current Local Housing Strategy which will be required to identify housing need and proposed targeted locations for the provision of additional housing. The strategy could greatly assist in supporting the strategic justification of amended minimum lot sizes for certain types of development in certain areas or zones.

2. Introducing a minimum lot size for dual occupancy development is inconsistent with recommendation 10 of the independent review of the Code discussed earlier in this report.
Note: Recommendation 10 states that “Planning Proposals should not increase the floor space ratio or minimum lot size requirements beyond the base level controls in the Code, on land to which it applies”.
3. The amendment is inconsistent with Ministerial Direction 3.1 Residential Zones, issued under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*. The direction must be considered as part of the strategic justification for all planning proposals. The relevant part of the Direction is as follows:

3.1 Residential Zones

Objectives

- (1) *The objectives of this direction are:*
 - (a) *to encourage a variety and choice of housing types to provide for existing and future housing needs,*
 - (b) *to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
 - (c) *to minimise the impact of residential development on the environment and resource lands.*

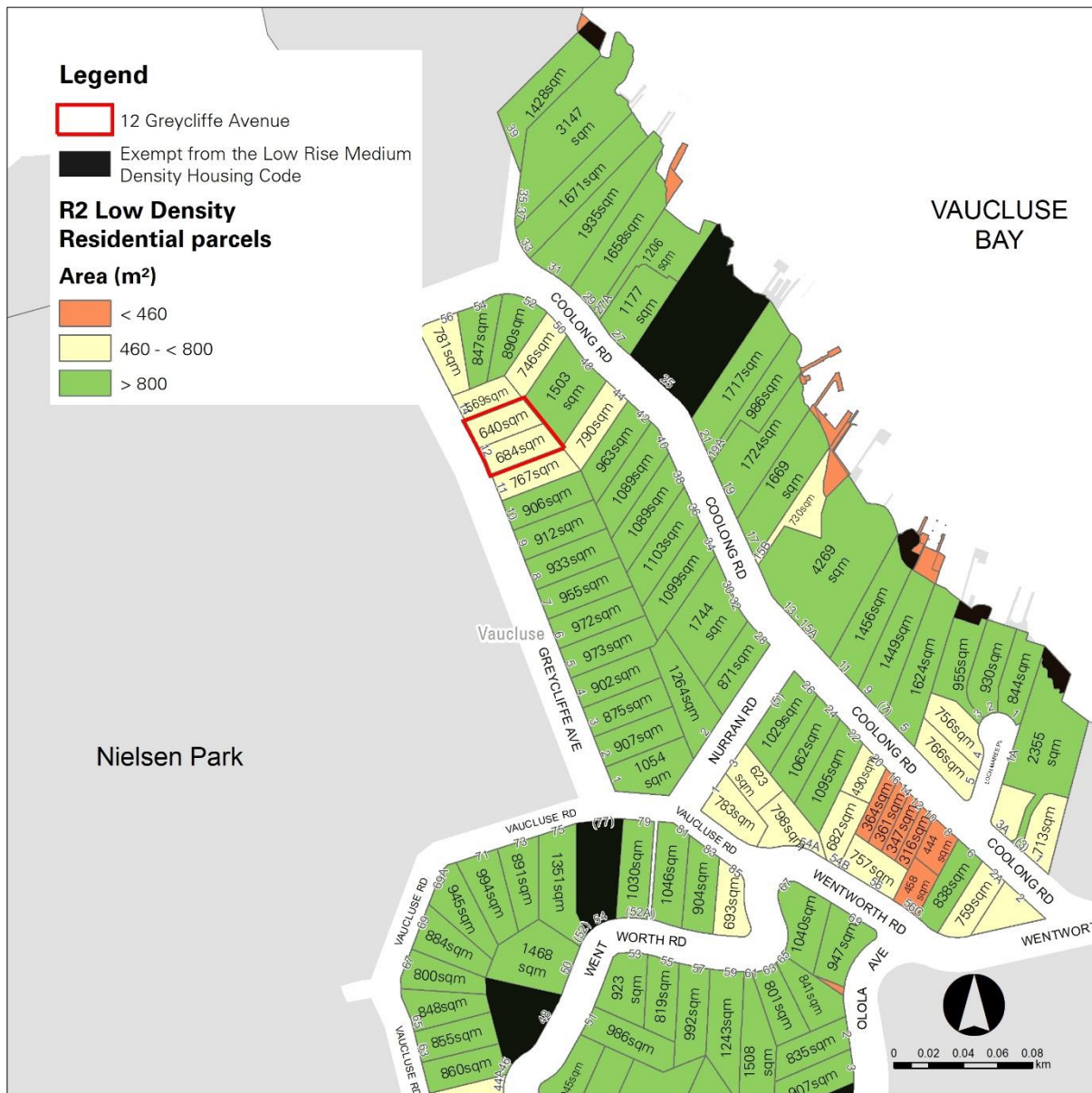
What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must include provisions that encourage the provision of housing that will:*
 - (a) *broaden the choice of building types and locations available in the housing market, and*
 - (b) *make more efficient use of existing infrastructure and services, and*
 - (c) *reduce the consumption of land for housing and associated urban development on the urban fringe, and*
 - (d) *be of good design.*
 - (5) *A planning proposal must, in relation to land to which this direction applies:*
 - (a) *contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
 - (b) *not contain provisions which will reduce the permissible residential density of land.*
4. The amendment may produce the opposite effect to that envisaged by Council, in that attached dual occupancy development will be redirected from residential areas with smaller lots, such as Woollahra and the eastern sections of Bellevue Hill and Rose Bay, to areas with larger lots and a landscaped setting, such as the ridgeline of Bellevue Hill and Vacluse (refer to **Figure 6**).
The effect of redirecting attached dual occupancies to larger lots can also be demonstrated by considering the recent DAs at 12 Greycliffe Ave, Vacluse, discussed earlier in this report. In this case, while a minimum lot size requirement of 800sqm may have prevented attached dual occupancies being approved on the two lots, it would not prevent attached dual occupancies being approved on 10 of the 14 other lots on the same street which are larger than 800sqm, or on a significant majority of lots in the surrounding area which are mostly greater than 900sqm (refer to the **Figure 7**).

Figure 6: Lot sizes in the R2 zone



Figure 7: Lot sizes in the Greycliffe Avenue area



8.4 Other options

8.4.3 Prohibit attached dual occupancies in the R2 zone

To control the location and impact of dual occupancies, Council may consider removing dual occupancies as a use permitted with consent in the R2 zone of the Woollahra LEP 2014. Dual occupancies (either attached or detached) are not a mandated permissible use in any zone of the Standard Instrument, which sets out the standard provisions for all LEPs. It is up to each council to decide where, and if, this use should be permitted with development consent.

For example, the Mosman LEP 2012 does not permit dual occupancies in the R2 zone. This decision was supported by the *Mosman Residential Development Strategy 1996* (updated 2016). The strategy describes Mosman Council's negotiated exemptions from State instruments that would have otherwise permitted dual occupancies, including:

1. *Sydney Regional Environmental Plan No. 12 – Dual Occupancy*, on the basis that:
 - the policy had permitted overdevelopment of sites in inappropriate locations resulting in adverse impacts on surrounding properties
 - the dual occupancy provisions incorporated into the former *Mosman Local Environmental Plan 1*, restricted dual occupancy development within the environmentally sensitive areas, foreshore and slopes of Mosman.
Note: The SEPP has since been repealed
2. *State Environmental Planning Policy No 53—Metropolitan Residential Development*, on the basis that Mosman was already achieving and exceeding State Government targets for accommodating population growth through allowing small lot subdivisions and multiple dwellings in appropriate locations. *Note: the SEPP has since been repealed.*

The draft Mosman LEP 2012 initially permitted ‘secondary dwellings’ in the R2 zone, however, following the introduction of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, the secondary dwelling provisions were deleted from the draft LEP as they were inconsistent with, and partly duplicated, the SEPP.

8.4.4 Reintroduce Harbour Scenic Protection Area

Council could reintroduce the Woollahra LEP 1995 “Harbour Foreshore Scenic Protection Area” into the Woollahra LEP 2014. The controls associated with the area could be worded to prohibit attached dual occupancies or impose another form of control on their development.

Opportunities and challenges

A request seeking to amend the Woollahra LEP 2014 for either or both of these options would require a planning proposal with a clear planning justification of the strategic merit. The opportunities and challenges for these options are similar to those discussed for the planning proposal to introduce a minimum lot size standard of 800sqm for attached dual occupancies in the R2 zone. The differences begin that:

1. A planning proposal seeking to prohibit attached dual occupancies in the R2 zone, or within the R2 zone of a Harbour Scenic Protection Area, is inconsistent with recommendation 9 of the independent review discussed earlier in this report.

Note: Recommendation 9 states that “Where the Code currently applies in an R2 Low Density Residential zone it should not be removed from application through a Planning Proposal to prohibit multi dwelling housing or dual occupancy from that zone”.

2. The reintroduction of the Harbour Scenic Protection Area may duplicate the proposed introduction of the Special Local Character Areas, discussed earlier in this report.

9. Options for Council consideration

Council may resolve to adopt all or part of the following options, or any other matter:

1. As part of a Local Housing Strategy required by the *Greater Sydney Region Plan: A Metropolis of Three Cities* and *Eastern City District Plan*, provide justification to support initiatives to amend the permissibility of dual occupancies within the LGA.

2. Prepare a Local Character Statement and introduce Special Local Character Areas into the Woollahra LEP 2014 to recognise and protect the low density residential character of identified residential areas and exclude these areas from being subject to the Code.
3. Request the Minister for Planning and Public Spaces defer commencement of the Code for the Woollahra LGA, until the Local Housing Strategy, Local Character Statement and any recommended amendments to the Woollahra LEP 2014 are complete.
4. Prepare a planning proposal to increase the minimum lot sizes for attached dual occupancies in the R2 zone to 800sqm. This initiative aims to restrict the development of large dual occupancies in identified residential areas.
5. Prepare a planning proposal to prohibit attached dual occupancies from the R2 Zone under Woollahra LEP 2014.
6. Prepare a planning proposal to reintroduce the Harbour Scenic Protection Area from Woollahra LEP 1995 into the Woollahra LEP 2014.
7. Commence preparation of the initiatives above, but defer final decision about planning proposals until the Local Housing Strategy and Local Character Statements are complete.

Table 6 summarises the opportunities and challenges of these options.

Table 6: Opportunities and challenges to options

Option	Opportunities	Challenges
1. Complete Local Housing Strategy	<ul style="list-style-type: none"> ✓ Required by legislation and <i>Greater Sydney Region Plan: A Metropolis of Three Cities</i> and <i>Eastern City District Plan</i>. ✓ Best practice ✓ Will support other strategies and provide justification for amendments to the Woollahra LEP 2014 	<ul style="list-style-type: none"> ✗ Commencement of the Code on 1 July 2020 is unlikely to allow sufficient time to prepare, exhibit and finalise the Local Housing Strategy and associated planning proposal to amend the Woollahra LEP 2014.
2. Request a deferral of commencement of the Code to Woollahra until completion of the Local Housing Strategy and associated planning proposal	<ul style="list-style-type: none"> ✓ Permit sufficient time to prepare, exhibit and finalise the Local Housing Strategy and associated planning proposal to amend the Woollahra LEP 2014, prior to the commencement of the Code in the Woollahra LGA. 	<ul style="list-style-type: none"> ✗ Commencement of the Code on 1 July 2020 is unlikely to allow sufficient time to prepare, exhibit and finalise the Local Housing Strategy and associated planning proposal to amend the Woollahra LEP 2014. ✗ Minister / DPIE may not be willing to permit another deferral of the Code.
3. Prepare Local Character Statement and introduce Special Local Character Areas to	<ul style="list-style-type: none"> ✓ Consistent with recommendation 6 of independent review. ✓ If recommendation 6 of the independent review is adopted, complying development will not be permitted in Special Local Character Areas. 	<ul style="list-style-type: none"> ✗ Council has yet to prepare a Local Housing Strategy which would support the Local Character Statement. ✗ Commencement of the Code on 1 July 2020 is unlikely to allow sufficient time to

Option	Opportunities	Challenges
Woollahra LEP 2014	<ul style="list-style-type: none"> ✓ The areas will reinforce the desired future character controls currently in the Woollahra DCP 2015. ✓ The Local Character Statement and Local Housing Strategy will support each other. 	<p>prepare, exhibit and finalise the Local Character Statement and associated planning proposal to amend the Woollahra LEP 2014.</p>
4. Minimum lot size of 800sqm for attached dual occupancies in the R2 zone	<ul style="list-style-type: none"> ✓ Council's current planning controls are achieving additional housing need without the Code. ✓ Will help prevent complying development from undermining Council's controls and local character. ✓ Will help to maintain the low scale, landscaped local character of identified areas and reduce adverse amenity impacts. ✓ Is likely to have a minor impact on the overall level of development, due to the low number of dual occupancy approvals in the LGA. ✓ The findings and recommendations of a completed Local Housing Strategy may support this approach. 	<ul style="list-style-type: none"> ✗ Council has yet to prepare a Local Housing Strategy to support the proposal ✗ Inconsistent with recommendation 10 of independent review. ✗ Inconsistent with 9.1(2) Ministerial Direction ✗ May produce the opposite effect to that envisaged by Council by redirecting dual occupancies to larger lots in landscaped settings
5. Prohibit attached dual occupancies in the R2 zone	<ul style="list-style-type: none"> ✓ Council's current planning controls are achieving additional housing need without the Code. ✓ Will help prevent complying development from undermining Council's controls and local character. ✓ Will help to maintain the low scale, landscaped local character of identified areas and reduce adverse amenity impacts. ✓ Is likely to have a minor impact on the overall level of development, due to the low number of dual occupancy approvals in the LGA. ✓ The findings and recommendations of a completed Local Housing Strategy may support this approach. 	<ul style="list-style-type: none"> ✗ Council has yet to prepare a Local Housing Strategy to support the proposal ✗ Inconsistent with recommendation 9 of independent review ✗ Inconsistent with 9.1(2) Ministerial Direction

Option	Opportunities	Challenges
6. Reintroduce Harbour Scenic Protection Area	<ul style="list-style-type: none"> ✓ Council's current planning controls are achieving additional housing need without the Code. ✓ Will help prevent complying development from undermining Council's controls and local character. ✓ Will help to maintain the low scale, landscaped local character of identified areas and reduce adverse amenity impacts. ✓ Is likely to have a minor impact on the overall level of development, due to the low number of dual occupancy approvals in the LGA. ✓ The findings and recommendations of a completed Local Housing Strategy may support this approach. 	<ul style="list-style-type: none"> ✗ Council has yet to prepare a Local Housing Strategy to support the proposal ✗ Inconsistent with recommendation 9 of independent review ✗ Inconsistent with 9.1(2) Ministerial Direction ✗ The reintroduction of the Harbour Scenic Protection Area may duplicate the proposed introduction of the Special Local Character Areas.
7. Defer final decision on planning proposals until the Local Housing Strategy and Local Character Statements are complete.	<ul style="list-style-type: none"> ✓ Permit sufficient time to prepare, exhibit and finalise the Local Housing Strategy and Local Character Statement to provide the best advice about planning proposals to amend the Woollahra LEP 2014. 	<ul style="list-style-type: none"> ✗ Commencement of the Code on 1 July 2020 is unlikely to allow sufficient time to prepare, exhibit and finalise the Local Housing Strategy and Local Character Statement prior to the commencement of the Code in the Woollahra LGA, unless an additional deferral is provided by the Minister / DPIE.

10. Conclusion

The Code will permit dual occupancies to be approved as complying development on almost as many lots in the Woollahra LGA as are permitted only with development consent. Complying development is not subject to the same merit assessment controls as DAs, undermining the ability of Council to protect areas with a desired future character which aims to preserve low scale residential uses, respond to the topography, protect views and reinforce a landscaped setting, such as Bellevue Hill, Rose Bay and Vacluse.


The Code commenced on 6 July 2018. However, following objections from a number of councils, commencement of the Code has been deferred for Woollahra Council (as one of 45 Councils) on three occasions. The latest deferral is until 1 July 2020. The deferral followed the recommendations of an independent review into the Code and is intended to allow councils time to progress their strategic planning initiatives, such as the preparation of a Local Housing Strategy and Local Character Statement.

This report has discussed different options which relate to the likely commencement of the Code with the aim of maintaining the existing local character and achieve the desired future character of the low scale, landscaped areas discussed earlier. The following conclusions have been drawn from staff's research and analysis:

1. Council's requirement to prepare a Local Housing Strategy should be prioritised to assist in the justification of any initiatives to amend the permissibility of dual occupancies within the LGA.
2. The preparation of a Local Character Statement and creation of Special Local Character Areas to recognise and protect the low scale character of identified residential areas should be prioritised to allow the exclusion of these areas from being subject to the Code.
3. Given the current timeframe of mid-2020 to prepare a draft Local Housing Strategy, Council should request the Minister for Planning and Places defer commencement of the Code for the Woollahra LGA, until the Local Housing Strategy, Local Character Statement and any recommended amendments to the Woollahra LEP 2014 are finalised.
4. The decision to increase minimum lot sizes for attached dual occupancies in the R2 Zone to 800sqm, and other options aimed to restrict the development of large dual occupancies in identified residential areas should be deferred until the Local Housing Strategy and Local Character Statement are finalised.

Having considered the findings of this report, it is recommended that Council prioritise the finalisation of the Local Housing Strategy and Local Character Statement prior to resolving to amend the Woollahra LEP 2014 in response to the commencement of the Code. It is also recommended that Council submit a request to the Minister / DPIE seeking sufficient time for Council to achieve this outcome.

Annexures

1. Low Rise Medium Density Housing Code: Independent Review Report - July 2019 [!\[\]\(4e333a6106fc298d0ae6dff272a736ef_img.jpg\)](#)
2.  Council letter to Professor Roberta Ryan - 23 July 2019 [!\[\]\(9496824b8cff3a19f59b81b37b57d8b6_img.jpg\)](#) 