



IRF22/361

## Gateway determination report – PP-2021-7459

---

Increased minimum lot size for dual occupancy  
(attached) development in the R2 Low Density  
Residential zone

April 22

Published by NSW Department of Planning and Environment

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

Title: Gateway determination report – PP-2021-7459

Subtitle: Increased minimum lot size for dual occupancy (attached) development in the R2 Low Density Residential zone

---

© State of New South Wales through Department of Planning and Environment 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (February 22) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview.....	1
1.2	Objectives of planning proposal .....	1
1.3	Explanation of provisions .....	2
1.4	Site description and surrounding area.....	2
1.5	Mapping.....	2
1.6	Background .....	2
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>3</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>8</b>
3.1	Regional Plan .....	8
3.2	District Plan .....	8
3.3	Local.....	11
3.4	Local planning panel (LPP) recommendation.....	12
3.5	Section 9.1 Ministerial Directions .....	13
3.6	State environmental planning policies (SEPPs) .....	15
<b>4</b>	<b>Site-specific assessment .....</b>	<b>15</b>
4.1	Environmental.....	15
4.2	Social and economic.....	15
4.3	Infrastructure .....	16
<b>5</b>	<b>Consultation.....</b>	<b>16</b>
5.1	Community .....	16
5.2	Agencies.....	16
<b>6</b>	<b>Timeframe .....</b>	<b>16</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>16</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>16</b>
<b>9</b>	<b>Recommendation.....</b>	<b>17</b>

**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal (Council)

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Woollahra</b>
<b>PPA</b>	Woollahra Municipal Council
<b>NAME</b>	Increased minimum lot size for dual occupancy (attached) development in the R2 Low Density Residential zone
<b>NUMBER</b>	PP-2021-7459
<b>LEP TO BE AMENDED</b>	Woollahra Local Environmental Plan (LEP) 2014
<b>ADDRESS</b>	Land zoned R2 Low Density Residential in the Woollahra LGA
<b>DESCRIPTION</b>	Multiple Lots/DPs
<b>RECEIVED</b>	22/12/2021
<b>FILE NO.</b>	IRF22/361
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

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

The stated objectives of the planning proposal are to:

- *‘minimise the impacts of dual occupancy (attached) development on the natural environment, residential amenity and the desired future character\* of the R2 Low Density Residential zone.’*
- *‘restrict the application of the Low Rise Housing Diversity Code (LRHD Code) which would otherwise result in attached dual occupancies containing more floor area than permitted in Council’s existing floorplate control or future FSR (floor space ratio) control.’*

\*The proposal states that 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 objectives of this planning proposal are clear.

## 1.3 Explanation of provisions

The planning proposal seeks to amend clause 4.1A *Minimum lot sizes for dual occupancies, manor houses, multi dwellings and residential flat buildings* in the Woollahra LEP 2014 to increase the minimum lot size for dual occupancy (attached) development in the R2 Low Density Residential zone from 460 sqm to 1,200 sqm (as per Table 3).

**Table 3 Current and proposed minimum lot size for dual occupancy controls**

Development type in R2 zone	Current min. lot size	Proposed min. lot size
Dual occupancy (attached)	460 sqm	<b>1,200 sqm</b>
Dual occupancy (detached)	930 sqm	No change

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The planning proposal relates to land in the Woollahra LGA zoned R2 Low Density Residential under the Woollahra LEP 2014 that is at least 460 sqm in area.

## 1.5 Mapping

The planning proposal does not include or require any mapping amendments.

## 1.6 Background

### Previous planning proposal – 800 sqm minimum lot size for dual occupancy (attached)

**2019:** On 8 July 2019 in response to a Notice of Motion, Council resolved to prepare a planning proposal *‘to provide a minimum lot size of 800 square metres or other for dual occupancy (attached) developments in R2 Low Density Residential zone within the municipality.’* On 4 November, the Woollahra Environmental Planning Committee (EPC) considered a report on identifying the options to amend the Woollahra LEP 2014 and on 11 November, Council resolved in part that a planning proposal be prepared to increase the minimum lot size of attached dual occupancies in the R2 zone to 800 sqm.

**2020:** On 30 January 2020, the planning proposal was reported to the Woollahra Local Planning Panel (LPP) for advice who supported it to proceed subject to inclusion of additional items and analysis (discussed at section 3.4 below). On 9 March, Council resolved to forward the proposal to the Department for a Gateway determination and on 13 March the proposal was lodged with the Department.

On 10 August, the Department wrote to Council raising concerns on the proposal’s impact on housing supply and diversity. The letter also stated that additional justification and modelling to determine the most appropriate minimum lot size are required.

On 6 October, the Department wrote a further letter to Council advising that it is premature to progress the proposal without a Local Housing Strategy (LHS) to guide consideration of the proposal. The letter reiterated that the proposal impacts on housing growth and choice and requested additional information and analysis to address concerns.

**2021:** On 1 February 2021, Council reported the advice from the Department’s letters on the proposal to the Woollahra EPC. Council staff prepared a report following on from correspondence

received from the Department and research undertaken by the staff. Council staff did not find any correlation between the formerly proposed 800 sqm site area and the desired outcomes for site coverage, building bulk and landscaping. Council staff recommended that a written request is sent to the Minister for Planning and Public Spaces to formally withdraw the proposal.

### **Subject planning proposal – 1,200 sqm minimum lot size for dual occupancy (attached)**

However, on 22 February 2021 Council resolved to proceed with an amended planning proposal seeking to introduce a 1,200 sqm minimum lot size for attached dual occupancies in the R2 Low Density Residential Zone and send this to the Minister for Gateway determination. This is the subject proposal.

### **FSR and urban greening planning proposal (PP-2021-3786)**

Council prepared a separate planning proposal to introduce floor space ratio (FSR) standards for low density\* residential development in the R2 Low Density Residential and R3 Medium Density Residential zones and urban greening provisions across the LGA. Part of this proposal seeks to introduce an FSR of 0.5:1 to specific land uses (dwelling houses, dual occupancies and semi-detached dwellings) in the R2 Low Density Residential and R3 Medium Density Residential zones, excluding certain heritage conservation areas. A 0.75:1 FSR is proposed for Wolseley Road, Point Piper, which includes land zoned R2 and R3.

On 31 August 2021, the Department issued a gateway determination to proceed subject to conditions, including requiring further evidence to demonstrate the proposed FSR is adequate and viable for dual occupancy development in the R3 zone. The Department is the local plan-making authority (LPMA) for this proposal and at the time of writing the proposal is at the pre-exhibition stage.

\*The Department considers that dual occupancies and semi-detached dwellings should be referred to as 'medium density' residential development to ensure consistency in the terminology used in State planning policy documents.

## **2 Need for the planning proposal**

The planning proposal states it is a response to the Woollahra Local Strategic Planning Statement (LSPS) 2020 and the Woollahra Local Housing Strategy (LHS) 2021. It also states it is the result of scenario testing of development controls under the Woollahra LEP, Woollahra Development Control Plan (DCP) 2015 and the LRHD Code in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ('the Code').

The planning proposal outlines the reasons why it considers it appropriate to increase the minimum lot size for dual occupancy (attached) development from 460 sqm to 1,200 sqm. The reasons are outlined below and the Department's comments against these are provided.

### **Scenario testing**

One of the proposal's arguments for its need and appropriateness is related to scenario testing where development outcomes of dual occupancies (attached) permissible under the Woollahra LEP, DCP and Code controls were compared. The testing was done using a range of lot sizes to examine the associated changes in built form and landscaping outcomes. **Table 4** below provides a summary of the findings of the scenario testing.

The testing concludes that 1,200 sqm is the minimum lot size required to achieve the 0.5:1 FSR that is proposed to apply to attached dual occupancies in the R2 zone (via a planning proposal currently in progress), and would simultaneously result in the same FSR/gross floor area (GFA) for a development scheme allowable under the LRHD Code. It was found that attached dual occupancies approvable under the Code for other lot sizes would allow a larger built form, increased site coverage and less deep soil zones, which could impact on tree canopy coverage. This is said to all result in negative impacts on the streetscape and surrounding properties.

**Table 4 Summary of scenario testing for various lot sizes – based on information from the planning proposal**

Lot size	Woollahra LEP and DCP (proposed controls)			LRHD Code controls		
	FSR	Deep soil (% of site area)	Tree canopy (% of site area)	FSR	Deep soil (% of site area)	Tree canopy (% of site area)
460 sqm	0.5:1	35% (43% achievable)	35% (42% achievable)	0.77:1	28.3%	NA (24% achievable)
600 sqm	0.5:1	35% (42% achievable)	35% (46% achievable)	0.75:1	33.3%	NA (29% achievable)
800 sqm	0.5:1	35% (44% achievable)	35% (37% achievable)	0.625:1	37.5%	NA (25% achievable)
1,000 sqm	0.5:1	35% (45% achievable)	35% (43% achievable)	0.55:1	40%	NA (24% achievable)
1,200 sqm	0.5:1	35% (45% achievable)	35% (39% achievable)	0.5:1	41.7%	NA (30% achievable)

There are a few gaps and deficiencies in the scenario testing, including:

- The testing outlined that under Council's proposed FSR and tree canopy controls, the minimum tree canopy area is 35% of site area and that 50% of the tree canopy area is to be contributed by canopy trees above 8m in height and spread. The proposal erroneously states that the Code has no minimum tree canopy area requirement (denoted by 'NA' in the proposal). This is incorrect as trees are required to be planted for dual occupancy (attached) development sought under the Code as outlined in the Low Rise Housing Diversity Design Guide (Design Guide) provisions. The LRHD Code contains a statutory requirement for the design of dual occupancies under the Code to be consistent with the relevant design criteria in the Design Guide (section 3B.19). Objective 2.1C-1 of the Design Guide requires that *'Landscaped design supports healthy plant and tree growth and provides sufficient space for the growth of medium sized trees'*. The Design Criteria outlines that medium sized trees are to have a spread of 8-12 m and there are tree planting requirements for front and rear setbacks with certain mature tree height requirements. The site testing does not analyse the tree canopy outcomes under the Code.
- The Design Guide also includes Objective 2.1C-2 *'Existing natural features of the site that contribute to the neighbourhood character are retained, and visual and privacy impacts on existing neighbouring dwellings are reduced.'* The Design Criteria requires that *'mature*



*trees are retained, particularly those along the boundary, (except those where approval is granted by Council for their removal).* Overall, it is considered that the application of the Code is not an appropriate reason to curtail dual occupancy (attached) development in the R2 zone, as the Code itself contains provisions that specifically relate to some of Council's concerns around tree canopy and amenity impacts.

- For the testing of the standards for dual occupancy (attached) development in the Woollahra LEP, the FSR of 0.5:1 being sought in the FSR and urban greening planning proposal, is utilised. The minimum landscaped area and tree canopy area requirements of 35% each, and setback requirements in the DCP amendments proposed to accompany the proposed new FSR control were also applied in the testing. The existing floorplate control in the DCP is stated in the proposal to equate to an FSR of approximately 0.55:1. The subject planning proposal makes references to the 0.5:1 FSR *'due to shortly replace the Woollahra DCP 2015 floorplate control'* and states *'it is also expected that an FSR of 0.5:1 will apply to dual occupancies from 2022 onwards'*. Whilst the FSR and urban greening planning proposal was issued Gateway determination to proceed subject to conditions, the final outcome of the proposal should not be pre-empted. The proposal is still at the pre-exhibition stage at the time of writing, and is subject to community consultation, Council endorsement, Department finalisation and if supported to proceed, drafting by the Parliamentary Counsel's Office.
- The planning proposal itself does not illustrate the method of canopy measurement. Instead, the proposal states that for the scenario testing, tree canopy area was calculated using the minimum deep soil requirements for different tree sizes as in the *Woollahra: Greening our LGA* report by Lyndal Plant dated June 2020. There are questions as to what assumptions were made in measuring tree canopy coverage and how they in turn influence the scenario testing findings.
- A range of lot sizes are tested from 460 sqm up to 1,200 sqm, however the testing did not include scenarios for 500 – 550 sqm, 700 sqm, 900 sqm and 1,100 sqm. There are circumstances where the FSRs and deep soil outcomes of a potential complying development for lot sizes below 1,200 sqm to be close to Council's proposed FSR control of 0.5:1, and meet or exceed the deep soil area target of 35% (see lot size for 800 sqm and 1,000 sqm for example).

### Comparison with other councils

The planning proposal includes analysis of the minimum lot size controls for dual occupancies in other Greater Sydney and NSW regional councils. The proposal states that *'the minimum lot size for dual occupancy (attached) development is generally in the 600 to 700sqm range.'* However, it is not clear how the councils were selected, and many metropolitan councils are missing from the table, including neighbouring Waverley Council and the City of Sydney Council which would impact on the average minimum lot size figure that was provided. Nonetheless, from the data it is evident that Woollahra's proposed lot size of 1,200 sqm is significantly higher than other councils, including neighbouring Waverley and Randwick where the minimum lot sizes are currently 400 sqm (as per the Code) and 450 sqm\* respectively. (\*Note: a Gateway determination has been issued for a planning proposal that includes, among other things, an increase in the minimum lot size for attached dual occupancies from 450 to 550 sqm in the R2 zone across the Randwick LGA.)

The proposal seeks to justify the 1,200 sqm lot size by arguing that low density areas of the Woollahra LGA are characterised by larger lots and extensive landscaping unlike other metropolitan LGAs. Council note that larger land size generally contributes to the character of the R2 zone and allows for sympathetic massing of buildings, generous canopy coverage and deep soil planting. This statement lacks justification considering that the figures in the planning proposal indicate that only 4% (341 out of 9,285) of all R2 zoned lots have a lot size greater than 1,200 sqm. The majority (59% or 5,418 out of 9,285) of R2 zoned lots are in fact less than 460 sqm in size. The need for a 1,200 sqm lot size is not considered to be sufficiently justified.



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

The proposal outlines that the Code (complying development) pathway is quicker, without public consultation and allows more floor area. It states that *‘under these conditions it is likely that complying development under the Code will become increasingly attractive to developers, compared to development applications.’* The proposal considers it likely that dual occupancies (attached) will have an increasing impact on the character of the R2 zone, and this in turn forms part of its justification.

One of the key reasons for the proposal given by Council is that it will *‘reduce the adverse impacts of dual occupancy (attached) development on the residential amenity and future character of the R2 Low Density Residential zone.’* The proposal raises concerns about amenity impacts of complying development dual occupancies (attached). However, no real examples of amenity impacts from dual occupancies (attached) approved under the complying development or DA pathways have been provided. The Department’s letter to Council dated 10 August 2020 stated that detailed modelling of built form supported by examples of actual developments should be included. For complying development, no examples or empirical data on actual impacts have been provided as only three dual occupancy (attached) developments have been approved under the Code since 1 July 2020 and as of 13 December 2021, none of these have been constructed. Specific details of the environmental impacts from approved complying development certificates (CDCs) were not discussed. In any case, the design of a dual occupancy development under the Code must be consistent with the relevant criteria in the Design Guide and controls to promote good amenity for residents and neighbours.

With regards to adverse impacts of dual occupancies approved under the DA pathway, there are also no detailed examples. The proposal briefly mentions community concerns in 2019 over development applications (DAs) at 12 Greycliffe Avenue, Vaucluse for the construction of two dual occupancy (attached) developments (DA347/2018 and 348/2018). However, after a section 8.3 review of the original refusals by the Woollahra Local Planning Panel (LPP), the proposals were amended and recommended for approval by Council staff as they were said to satisfactorily address the reasons for refusal of the original applications (related to desired future character, design excellence, streetscape character, on-site parking and landscaping to the street). The DAs were approved by the Woollahra LPP on 12 September 2019.

Significantly limiting dual occupancy (attached) development in the R2 zone via a blanket lot size control in response to physical constraints, such as lot configuration, deep soil and tree canopy coverage, is not considered appropriate, as potential impacts would be better addressed by using quantitative and qualitative design and site-specific controls in the LEP and/or DCP. A possible alternative would be to explore controls, such as lot width and deep soil areas to facilitate a desirable planning outcome. The above issues can also be carefully considered in detail as part of a merit based assessment at the development application stage.

The proposed minimum lot size of 1,200 sqm for attached dual occupancies is even greater than that for detached dual occupancies which is 930 sqm. Detached dual occupancy development would generally require a larger lot size than its attached counterpart as it would typically need to accommodate side setbacks, separate driveways while accommodating functional floor plates.

As a comparison, the proposed minimum lot size for attached dual occupancies of 1,200 sqm is also significantly greater than that for manor house, multi-dwelling housing and residential flat building in the R3 zone, being 700 sqm.

## Minor impact of the planning proposal on overall housing development

The proposal seeks to justify the change by arguing that it *'will not have an unreasonable impact on the development of housing in the LGA'* for reasons outlined below. The Department's response to these is included.

### Low proportion of new dwellings

The proposal outlines that the number of DAs for dual occupancy (attached) developments in the LGA is low (on average 8 approvals per year between 2015 and 2021). A total of 58 DAs for attached dual occupancies were approved between 2015 and 2021, of which 31 (i.e. 62 dwellings) have been constructed as at 13 December 2021. The proposal also states that there were only 3 CDCs approved in 2021 and none of them have been constructed as at 13 December 2021 (see discussion above). The proposal considers that this amendment is unlikely to have a significant impact on this trend. As such the proposal sees that dual occupancy (attached) development comprise *'a very low proportion of new dwellings being constructed in the LGA'* and hence will not have an unreasonable impact on housing supply.

This argument is inconsistent with the earlier argument raised in the proposal that dual occupancy (attached) development under the Code will become increasingly attractive due to faster approval, more floor space and this will have a growing impact on the R2 zone. The justifications given are self-contradictory in that on one hand, this type of housing is expected to become more popular with increased impact on the character of the zone, while on the other the historically low uptake is said to be likely to continue and thus will not impact on housing supply.

### No reduction in permissible residential density

The proposal believes it will not reduce the permissible residential density of land and will not reduce the potential number of dwellings in the R2 zone as secondary dwellings are a permissible use in the zone. The Department disagrees with this premise as secondary dwellings are not a substitute for dual occupancies, this is discussed below in section 3.5.

### Capacity of R3 Medium Density Residential zone

The proposal states the R3 Medium Density Residential zone has adequate capacity to deliver additional low rise, medium density housing, with 1,987 lots over 460 sqm where dual occupancy could be constructed. However, no data have been provided on the uptake of dual occupancies (attached) in the R3 zone, or the number of lots that are 700 sqm or greater in area, which could allow higher order residential uses such as multi dwelling housing or residential flat buildings. There are concerns that dual occupancies may become unattractive for uptake in either the R2 zone due to the restrictive minimum lot size proposed, or the R3 zone as it will be more profitable to pursue higher density residential development. The Woollahra Local Housing Strategy itself states at p.47 *'typically high property values are seeing housing investment delivering high value houses, and in the R3 Medium Density Zone, redevelopment for residential flat buildings.'*

## Mechanism

In terms of the mechanism for delivering the intended outcomes of the planning proposal - to increase the minimum lot size for dual occupancy (attached) development from 460 sqm to 1,200 sqm, a planning proposal provides the legal mechanism to alter the existing lot size control in the Woollahra LEP.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Regional Plan.

**Table 5 Regional Plan assessment**

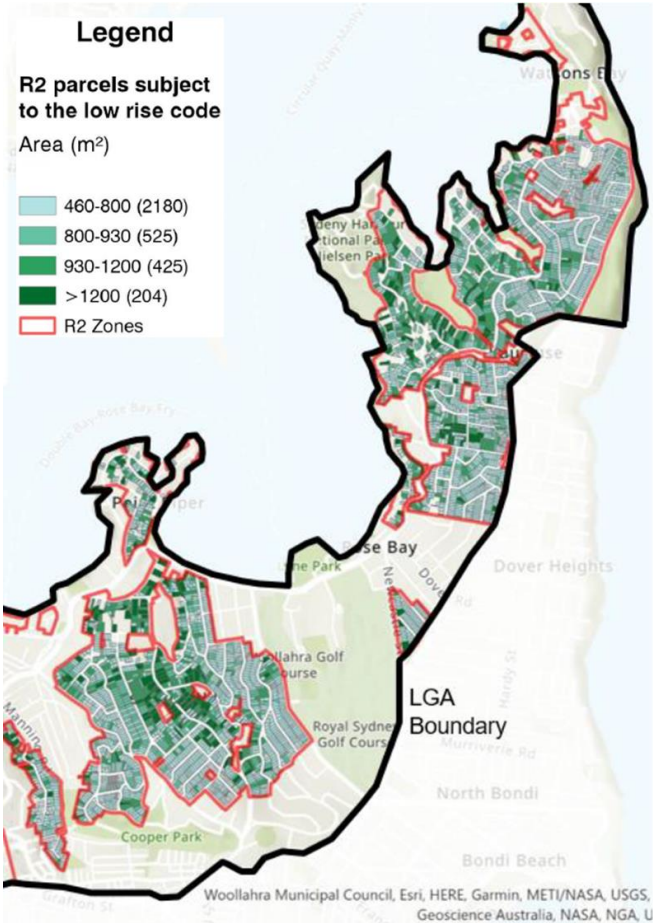
Regional Plan Objectives	Justification
Objective 10: Greater Housing Supply	This Objective states that <i>‘Providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney’s growing population.’</i> A range of housing types are required to provide for the needs of the community at different stages of life and cater for a diverse range of household types. Dual occupancies contribute to greater housing variety and are a type of residential in-fill development. This proposal would also reduce housing supply potential in the R2 zone (discussed in detail at section 3.2 below) and is considered inconsistent with this Objective.
Objective 11: Housing is more diverse and affordable	The proposal would significantly reduce future potential for dual occupancy (attached) in the R2 zone and limit the provision of this housing typology. The Region Plan notes that <i>‘Factors that contribute to rental and purchasing affordability challenges include the limited availability of smaller dwellings to meet the growing proportion of small households...’</i> Reducing opportunities for dual occupancy (attached) in the R2 zone on lots of at least 460 sqm is inconsistent with this Objective to provide more diverse and smaller housing typologies.
Objective 30: Urban tree canopy is increased	The proposal states it would result in the ability to achieve an increase in urban tree canopy consistent with this Objective.

### 3.2 District Plan

The sites are within the Eastern City District and the Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is inconsistent with the priorities for liveability, and consistent with priorities for sustainability in the plan as outlined below. The Department is not entirely satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the Environmental Planning and Assessment Act 1979. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 6 District Plan assessment

District Plan Priorities	Justification
Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport.	<p>This Priority seeks to provide greater housing supply that is also diverse and affordable. This Priority identifies that councils will be preparing local housing strategies to address housing supply.</p> <p>The proposal will reduce the number of residential lots available for housing by introducing larger lot sizes for attached dual occupancies. The proposal will also reduce the opportunity for greater housing diversity.</p> <p>The proposal would significantly reduce the number of R2 zoned lots eligible for dual occupancy (attached) development via both the development application (DA) and complying development certificate (Code) pathways. The proposal outlined that across the LGA there are 9,285 lots zoned R2 Low Density Residential in the LEP. For the DA pathway, the number of R2 lots eligible will reduce from 41% down to 4% (3,867 to 341), and for the Code lots 36%* to maximum 2% (3,334 to 204) (<b>Figure 1</b>). (*the proposal incorrectly calculates this percentage as 38% on pg. 20). The proposal caveats that the number of Code lots would be further reduced after consideration of other site-specific standards, such as battle-axe lots and minimum lot widths.</p>  <p><b>Legend</b></p> <p><b>R2 parcels subject to the low rise code</b></p> <p>Area (m<sup>2</sup>)</p> <ul style="list-style-type: none"> <li>460-800 (2180)</li> <li>800-930 (525)</li> <li>930-1200 (425)</li> <li>&gt;1200 (204)</li> <li>R2 Zones</li> </ul> <p><b>Figure 1: R2 Low Density Residential parcels subject to the Code in the Woollahra LGA (Source: Planning proposal)</b></p>

District Plan Priorities	Justification
	<p>The planning proposal believes it is generally consistent with the objectives for this Priority as:</p> <ul style="list-style-type: none"> <li>• it is <i>'unlikely to impact on Council achieving longer term housing targets'</i> and the 0-5 year housing target (2016-2021) of 300 dwellings has been met</li> <li>• there is capacity in the R3 Medium Density Residential zone for more low-rise medium density developments (there are 1,987 lots with an area of 460 sqm and above) and this would be a more appropriate zone for dual occupancy (attached) development.</li> </ul> <p>However, the Department considers there would be an impact on longer term housing supply and diversity. The proportion of lots eligible for attached dual occupancies, as a type of housing, under both the DA and CDC pathways will be substantially reduced.</p> <p>Further, for attached dual occupancy in the R3 Medium Density Residential zone, there is a lack of information on the uptake and viability of this development type in this zone, considering that for larger sites there is access to higher order residential accommodation types, such as multi-dwelling housing and residential flat buildings. As discussed above in section 2, there is insufficient evidence to demonstrate the uptake and viability of dual occupancy (attached) development in the R3 zone.</p> <p>The proposal will reduce the opportunity for greater housing supply and diversity.</p>
<p>Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage</p>	<p>The proposal states that <i>'residents of the Woollahra LGA value the existing local character of the R2 Low Density Residential zone which consists of low scale residential uses which responds to the topography, protects views and reinforces a landscaped setting.'</i> The proposal states that it seeks to build on the values of the existing local character of the R2 zone by only permitting dual occupancies (attached) that are appropriately designed and not contrary to the character of the zone. The proposal is consistent with this Priority, however as previously raised, the need and justification for a 1,200 sqm minimum lot size is inadequate.</p> <p>Further it is noted that the maximum building height in the Woollahra LEP for the R2 Low Density Residential zone is generally 9.5 m, compared to 8.5 m for dual occupancy (attached) development in the Code. Part of the proposal's objective is to reduce impacts of Code dual occupancies on the character of the R2 zone by protecting views and reducing visual impacts. However, the maximum building height set out in the Code is lower than in the Woollahra LEP.</p> <p>Further, for the Code pathway, the provisions of the Code and supporting Design Guide seek to ensure good design outcomes for dual occupancies and address key considerations including layout, landscaping, private open space, light, natural ventilation and privacy.</p>
<p>Planning Priority E16: Protecting and enhancing scenic and cultural landscapes</p>	<p>The proposal states it is generally consistent with the objectives and actions for this priority and that the proposal recognises the iconic Woollahra landscape around the Sydney harbour and existing landscaped setting of the R2 zone.</p> <p>The proposal does not specifically respond to objective or actions of Priority 16 as it does not seek to enhance and protect views of scenic and cultural landscapes from the public realm. Increasing the minimum lot size does not in itself mean that views to scenic and cultural landscapes would be established, maintained or enhanced.</p>



District Plan Priorities	Justification
Planning Priority E17: Increasing urban tree canopy cover and delivering Green Grid Connections	<p>The planning proposal outlines that larger lot sizes will allow for greater areas of deep soil landscaping where large canopy trees can be accommodated (and where an FSR of 0.5:1 is achieved simultaneously). The proposal is consistent with Objective 30 – <i>Urban tree canopy cover is increased.</i></p> <p>The proposal states that <i>‘apart from public open spaces, the majority of landscaped areas, mature trees, remnant vegetation and bushland edges are contained in the landscaped areas of large lots in the R2 Low Density Residential zone’.</i></p> <p>The Priority does state that <i>‘extending the urban tree canopy should be balanced with the need to allow sunlight into homes and onto roofs for solar power.’</i> This is a relevant matter for consideration to ensure good residential amenity in dual occupancy development and should be addressed further in the proposal.</p>

### 3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 7 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement (LSPS) 2020	<p>The Woollahra LSPS was finalised by Council in March 2020 and subsequently assured by the Greater Sydney Commission. The LSPS sets out a 20-year land use vision to guide land use planning for the LGA.</p> <p>The planning proposal states it is consistent with Planning Priority 4 - <i>Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes.</i></p> <p>As indicated above, the proposal is considered to reduce the opportunity for greater housing supply and diversity in the R2 zone by discouraging attached dual occupancy development and is not supported.</p>
Community Strategic Plan (CSP) 2030	<p>The Woollahra CSP 2030 identifies the strategic direction and integrated planning framework for the LGA. The planning proposal states it is consistent with certain strategic goals in the CSP such as:</p> <ul style="list-style-type: none"> <li>Goal 4: Well-planned neighbourhood <ul style="list-style-type: none"> <li>4.1 <i>Encourage and ensure high quality planning and urban design outcomes</i></li> <li>4.4 <i>Encourage diversity in housing choice to suit a changing population</i></li> </ul> </li> <li>Goal 5: Liveable places <ul style="list-style-type: none"> <li>5.4 <i>Protect trees, streetscapes and landscapes</i></li> <li>5.5 <i>Enhance the physical environment of our local suburbs, neighbourhoods and town centres</i></li> </ul> </li> </ul> <p>As indicated above, the proposal is considered to reduce the opportunity for greater housing supply and diversity in the R2 zone, and as such is in contrary to strategic goal 4.4.</p>

Local Strategies	Justification
Woollahra Local Housing Strategy (LHS) 2021	<p>Local housing strategies are required to link Council's vision for housing with the housing objectives and targets of the NSW government and District Plan. On 25 October 2021, the Woollahra LHS was endorsed by Council subject to a few minor changes. The LHS identifies a 6-10 year housing target (2021-2026) of 500 dwellings and that this can be met relying on existing planning controls.</p> <p>The proposal seeks to implement LHS Action 3 – <i>Introduce a minimum lot size for dual occupancies</i> which is for Council to submit the LHS and additional site testing to the Department to support this planning proposal. It states <i>'this will ensure that dual occupancies fit in with the established scale of our residential areas and contribute to our tree canopy. The introduction of this development standard will not reduce housing diversity in the LGA or adversely affect housing supply targets.'</i></p> <p>The Department issued approval for the LHS on 11 March 2022. It included a requirement (no. 5) that relates to the subject planning proposal, it stated:</p> <p><i>'5. Council's proposal to introduce a minimum 1,200m<sup>2</sup> lot size for attached dual occupancies is not supported as it is inconsistent with the provisions of Section 9.1 Ministerial Direction 6.1 – Residential zones because it would significantly impact and reduce housing choice, housing diversity and housing supply. The proposal is also considered incompatible with minimum lot sizes for other forms of multi-unit development such as medium density and apartment development; all of have lesser minimum lots sizes.'</i></p> <p>The proposal is expected to reduce the choice of housing typologies and would eliminate the majority of opportunities for this type of development in the R2 zone, rendering attached dual occupancies impractical or not feasible to develop. The proposal is not supported by the Department's approval of the LHS and should not progress.</p>

### 3.4 Local planning panel (LPP) recommendation

On 30 January 2020, the Woollahra LPP considered a report on the previous planning proposal to increase the minimum lot size for dual occupancy (attached) development in the R2 zone from 460 sqm to 800 sqm.

The LPP resolved to support the previous planning proposal and advised Council that it should: *'Carry out an analysis of options for a range of lot sizes for dual occupancy (attached) in order to support the justification for the minimum lot size of 800m<sup>2</sup> and, if beneficial, provide these options to the Department...as part of the planning proposal'*.

The LPP has not specifically considered this planning proposal to increase the minimum lot size from 460 sqm to 1,200 sqm. There is a Ministerial Direction issued under section 9.1 of the EP&A Act titled 'Local Planning Panels Direction – Planning Proposals.' Clause 1 of the Direction sets out that all planning proposals prepared after 1 June 2018 are required to be referred to the LPP for advice unless the council's general manager (GM) makes a determination that the proposal relates to: the correction of an obvious error in a LEP, matters that are of a consequential, transitional, machinery or other minor nature, or matters the GM considers will not have any significant adverse impact on the environment or adjoining land. The Department has not been informed of any such determination being made by Woollahra's GM. Clause 3 of the Direction states that the LPP must have given its advice on the planning proposal before council considers whether or not to forward it to the Minister for a Gateway determination. For these reasons, the consistency with the Minister's Direction under section 9.1 relating to Local Planning Panels have not been met.



## 3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 8 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.2 – Heritage Conservation	Consistent	<p>Direction 3.2 requires that a planning proposal contain provisions which facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage of the area.</p> <p>All heritage items, heritage conservation areas and archaeological sites that are listed in the LEP will be retained. The proposal is therefore consistent with this Direction.</p>
6.1 – Residential Zones	Inconsistent	<p>Direction 6.1 aims to encourage a variety of housing types, make efficient use of infrastructure and service and minimise the impact of residential development on the environment and resource lands.</p> <p>Under this Direction, a planning proposal must <i>'not contain provisions which will reduce the permissible residential density of land.'</i> The proposal would reduce dwelling potential as it would decrease the potential number of lots in the LGA that could accommodate dual occupancy (attached) development. For the DA pathway, the number of R2 lots eligible will reduce from 41% down to 4%, and for the Code lots 36% to a maximum 2%.</p> <p>The proposal argues that the potential number of dwellings in the R2 zone will not be reduced, as secondary dwellings will continue to be permissible. Secondary dwellings are a type of residential accommodation that is significantly different from attached dual occupancies in terms of form and size. The Woollahra LEP stipulates the maximum floor area of secondary dwellings of 60 sqm or 5% of the total floor area of the principal dwelling, whichever is the greater. Secondary dwellings and dual occupancies are not considered to be direct substitutes.</p> <p>Under this Direction a planning proposal must also <i>'encourage a variety and choice of housing types to provide for existing and future housing needs.'</i> The proposal would discourage uptake of low-rise medium density housing and limit diversity and choice of housing types.</p> <p>The planning proposal is inconsistent with this Direction.</p>
5.1 – Integrating Land Use and Transport	Partly inconsistent, not justified	<p>Direction 5.1 aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve specified planning objectives relating to transportation integration. This Direction applies as the proposal seeks to alter a provision relating to urban land.</p> <p>The planning proposal is partially inconsistent with this Direction as it seeks to impose a blanket restriction on the development of</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>dual occupancy (attached) development on lots less than 1,200 sqm in area in the R2 zone.</p> <p>In discussing the LHS, the proposal notes that the strategy raises an issue with increasing the density of land uses in the R2 zone, and that <i>'Areas such as Vaucluse are not readily accessible by active transport due to topography and are not well serviced by mass transit. As such, increased densities are likely to increase car dependency, adding to congestion'</i> (p. 45). The proposal also notes that sites in the R3 zone are generally located closer to major public transport hubs and active transportation routes.</p> <p>However, the planning proposal does not provide any detailed analysis of the coverage, frequency and walking catchments of public transport services, especially buses around the R2 zones. Additionally, no analysis of the active transport routes in relation to R2 zones is given. There are a number of bus routes servicing the LGA that provide regular services 7 days a week to the City, Edgecliff and Bondi Junction (including bus services 324 - 327, 380 and 386 - 387).</p> <p>Therefore, a proportion of the currently eligible lots (of 460 sqm and greater), are in proximity to existing public transport links, infrastructure and services. It is acknowledged that there are some lots that are located a greater distance away from public transport infrastructure or more difficult to access such services due to topography.</p> <p>However and overall, the proposal would reduce potential additional housing on land zoned R2 Low Density Residential in established neighbourhoods with existing infrastructure and services. A blanket approach to restricting dual occupancy (attached) should not be supported.</p>
4.5 – Acid Sulfate Soils	Consistent	<p>Direction 4.5 aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. The proposal does not seek to introduce provisions to regulate works in acid sulfate soils, or intensify land uses in areas identified as being affected by acid sulfate soils.</p>
4.1 - Flooding	Consistent	<p>Direction 4.1 aims to ensure appropriate consideration of flood prone land in line with government policies and plans when a planning proposal seeks to create, remove or alter a zone or a provision that affects flood prone land. The proposal does not rezone land or contain any provisions contrary to the direction.</p>

## 3.6 State environmental planning policies (SEPPs)

The planning proposal is generally consistent with all relevant SEPPs as discussed in the table below.

**Table 9 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Exempt and Complying Development Codes) 2008 (‘Codes SEPP’)	The Codes SEPP aims to provide a streamlined assessment process for development that complies with specific development standards. The Codes SEPP includes the Low Rise Housing Diversity Code (‘the Code’) at Part 3B, and Division 2 sets out the development standards for certain dual occupancies and attached development. Under the Code the minimum lot size for dual occupancies (attached) is the same as that specified under the Woollahra LEP.	Yes	The proposed increase to the minimum lot size for dual occupancy (attached) will affect the operation of the Codes SEPP as it will significantly reduce the number of eligible ‘Code’ lots. Although it is technically not inconsistent with any of the SEPP provisions.

## 4 Site-specific assessment

### 4.1 Environmental

The planning proposal is unlikely to result in any adverse environmental impacts given the intended outcomes of the proposal will result in less dual occupancies (attached) being eligible for complying development under the Code or merit-based development assessment.

### 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	As discussed above, the proposal would impact on potential housing diversity and choice which could result in negative social outcomes.

Social and Economic Impact	Assessment
Economic	<p>The planning proposal will have negative economic impacts. As stated above, the proposal would decrease the potential number of lots in the LGA that could accommodate dual occupancy (attached) development. It is considered this would impact on the economic viability of dual occupancy housing and would restrict the ability of land to be developed to provide additional and more diverse housing.</p> <p>The planning proposal itself acknowledges that the introduction of the 1,200 sqm minimum lot size <i>'may require some sites to be amalgamated for development consent of dual occupancies (attached).'</i></p> <p>The proposal is likely to render attached dual occupancies impractical or unfeasible to develop.</p>

## 4.3 Infrastructure

The planning proposal does not seek any increased density or uplift and will not place additional demand on infrastructure for roads, sewer, transport and other services.

## 5 Consultation

### 5.1 Community

The planning proposal is not recommended to proceed to a community consultation.

### 5.2 Agencies

The planning proposal is not recommended to proceed to agency consultation.

## 6 Timeframe

No timeframe is required as the planning proposal is not recommended to proceed.

## 7 Local plan-making authority

The planning proposal is not recommended to proceed and so nomination of a local plan-making authority is not required.

## 8 Assessment summary

It is recommended that the planning proposal is not supported to proceed for the following reasons:

- The proposal would significantly reduce the number of R2 Low Density Residential zoned lots eligible for dual occupancy (attached) development via both the development application (DA) and complying development certificate (CDC) pathways, thereby reducing potential housing supply and opportunities for housing diversity.
- The planning proposal would reduce potential additional housing supply and diversity and is inconsistent with the relevant aims, objectives or priorities of the following:
  - the Greater Sydney Region Plan (Objective 10: Greater housing supply and Objective 11: Housing is more diverse and affordable)

- the Eastern City District Plan (Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport)
- There are inconsistencies and contradictions in relation to the justification and need to increase the minimum lot size for dual occupancy (attached) development to 1,200 sqm. In particular, there are gaps and deficiencies in the scenario testing of different minimum lot sizes against building bulk and deep soil / tree canopy outcomes.
- The proposal is inconsistent with the approval requirement that the Department has placed on the Woollahra Local Housing Strategy.
- The proposal would result in negative economic impacts as it would adversely affect the viability of dual occupancy (attached) development in the R2 zone and would restrict the ability of land to be developed to provide additional and more diverse housing.
- The proposal is inconsistent with section 9.1 Ministerial Direction 6.1 - Residential Zones and partly inconsistent with 5.1 – Integrating Land Use and Transport.
- The Woollahra Local Planning Panel has not specifically considered this planning proposal and consistency with the section 9.1 Ministerial Direction relating to Local Planning Panels has not been met.

## 9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should not proceed for the reasons above.



Simon Ip  
Manager, Place and Infrastructure



4 May 2022  
Amanda Harvey  
Executive Director, Metro East and South

### Assessment officer

Lawren Drummond  
A/Senior Planning Officer, Eastern and South Districts  
9274 6185