



EF22/16097

Gateway determination report – PP-2022-4024

Bayside LEP 2021 - Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings Planning Proposal

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Contents

| | | |
|-----------|---|-----------|
| 1 | Planning Proposal | 1 |
| 1.1 | Overview | 1 |
| 1.2 | Site description | 2 |
| 1.3 | Objectives or intended outcomes | 2 |
| 1.4 | Explanation of provisions | 3 |
| 1.5 | Mapping | 5 |
| 2 | Background to Proposal | 5 |
| 2.1 | Overview of Dual Occupancy Development in the LGA | 5 |
| 2.2 | Semi-detached Dwelling Development | 5 |
| 2.3 | Local Housing Strategy | 5 |
| 2.4 | Code SEPP – Low Rise Housing Diversity Code | 6 |
| 2.5 | Code SEPP – Subdivision Code | 6 |
| 3 | Need for the planning proposal | 7 |
| 4 | Strategic assessment | 9 |
| 4.1 | Regional and District Plan | 9 |
| 4.2 | Local | 10 |
| 4.3 | Bayside Local Housing Strategy | 11 |
| 4.3.1 | Analysis of Historical and Forecast Supply of Dual Occupancy and Semi-Detached Dwelling Development | 12 |
| 4.4 | Local Planning Panel (LPP) Recommendation | 15 |
| 4.5 | City Planning & Environment Committee (CP&EC) | 16 |
| 4.6 | Bayside Council Recommendation | 16 |
| 4.7 | Section 9.1 Ministerial Directions | 17 |
| 4.8 | State environmental planning policies (SEPPs) | 18 |
| 5 | Site-specific assessment | 19 |
| 5.1 | Environmental | 19 |
| 5.1.1 | Built Environment | 19 |
| 5.2 | Social and economic | 20 |
| 6 | Consultation | 20 |
| 6.1 | Community | 20 |
| 6.2 | Agencies | 20 |
| 7 | Timeframe | 21 |
| 8 | Local plan-making authority | 21 |
| 9 | Assessment Summary | 21 |
| 10 | Recommendation | 21 |

Table 1 Reports and plans supporting the proposal

| Relevant reports and plans |
|--|
| Attachment 1: Planning Proposal (Bayside Council) – December 2022 plus appendices A-E |
| Attachment 2: Bayside Council Meeting Minutes – 28 September 2022 |
| Attachment 3: Bayside Historical and Forecast Supply of Dual Occupancy and Semi-Detached Dwelling Development Analysis |

1 Planning Proposal

1.1 Overview

Table 2 Planning proposal details

| LGA | Bayside |
|--------------------------|---|
| PPA | Bayside Council |
| NAME | Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings Planning Proposal |
| NUMBER | PP-2022-4024 |
| LEP TO BE AMENDED | Bayside Local Environmental Plan (Bayside LEP) 2021 |
| ADDRESS | Land zoned R2 Low Density Residential within Bayside Local Government Area (LGA) |
| DESCRIPTION | R2 zoned land within Bayside LGA |
| RECEIVED | 16/11/22 – confirmed adequate on 25/11/22. Revised/amended information consistent with Council resolution received December 2022 |
| FILE NO. | EF22/16097 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal |

The planning proposal (**Attachment A**) seeks to amend Bayside LEP 2021 by introducing new minimum lot size, minimum subdivision lot size and minimum lot width controls across the R2 zone for dual occupancy and semi-detached dwelling developments. This is proposed to be captured through 2 new Bayside LEP 2021 clauses applying to the:

- construction of dual occupancy development;
- subdivision of land on which dual occupancy development exists or is proposed (resulting in semi-detached dwellings); and
- construction of semi-detached dwellings.

Details of the proposal are discussed throughout this report.

1.2 Site description

The planning proposal applies to all land zoned R2 Low Density Residential within the Bayside LGA (**Figure 1**).

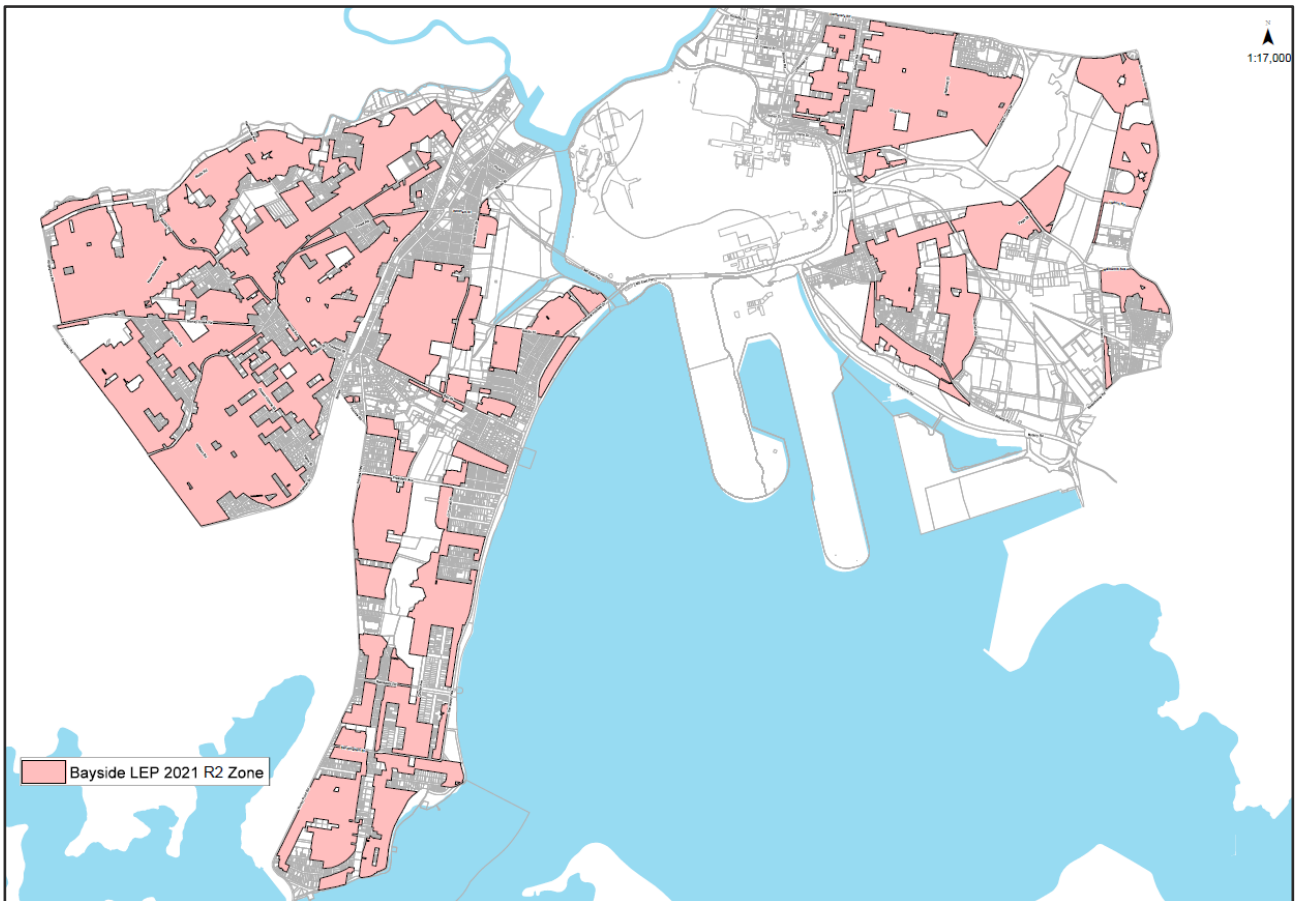


Figure 1: All R2 Low Density Zoned Land in the Bayside LGA. Source: Planning Proposal

1.3 Objectives or intended outcomes

As outlined within the planning proposal, the objective of the planning proposal is to encourage housing diversity in the R2 zone without adversely impacting residential amenity and the character of these areas.

The intention of introducing the proposed provisions is to better guide the consideration of proposals for dual occupancy and semi-detached dwelling developments already permitted under the Bayside LEP 2021.

The planning proposal would also result in establishing minimum lot sizes, which would apply when development and subdivision is proposed via complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP). This is discussed and detailed further below in **Section 2**.

1.4 Explanation of provisions

The planning proposal will introduce new controls relating to development of dual occupancies and semi-detached dwellings and the subdivision of these land uses.

Proposed controls will comprise two separate clauses introducing new minimum lot sizes, subdivision lot sizes and lot width controls across the R2 zone for dual occupancy and semi-detached dwelling developments.

A new special provisions maps is proposed which will delineate certain R2 zoned land as 'Area A' in the suburbs of Botany, Mascot, Rosebery and Eastlakes, formerly in the Botany Bay LGA locality (**Figure 2**). The special provisions map is referred to in the proposed new provisions as detailed below.



Figure 2: R2 Low Density Zoned Land to be identified as 'Area A'. Source: Planning Proposal

Minimum Lot Sizes and Special Provisions

Dual Occupancy Development proposed in 'Area A':

Development for the purposes of a dual occupancy will be subject to the following controls:

- a) Minimum area of the lot on which the dual occupancy is proposed is 550m²;
- b) Minimum width of on which the development is proposed, measured at the building line to a primary road frontage:
 - 15m for a lot that adjoins a single road frontage, or
 - 12 metres for lots that adjoin more than one road or laneway.

Semi-detached development proposed in R2 zone 'Area A':

Development for the purposes of the construction of semi-detached dwellings, not involving subdivision, will be subject to the following controls:

- a) Minimum area the lot on which the semi-detached dwelling proposed is 275m²;
- b) Minimum width on which the development is proposed, measured at the building line to a primary road frontage:
 - 7.5m for a lot that adjoins a single road frontage, or
 - 6m for lots that adjoin more than one road or laneway.

Dual Occupancy Development proposed in all other R2 zoned land:

Development for the purposes of a dual occupancy will be subject to the following controls:

- c) Minimum area of the lot on which the dual occupancy is proposed is 650m²;
- d) Minimum width of on which the development is proposed, measured at the building line to a primary road frontage:
 - 15m for a lot that adjoins a single road frontage, or
 - 12m for lots that adjoin more than one road or laneway.

Semi-detached development proposed in all other R2 zoned land:

Development for the purposes of the construction of semi-detached dwellings, not involving subdivision, will be subject to the following controls:

- c) Minimum area the lot on which the semi-detached dwelling proposed is 325m²;
- d) Minimum width on which the development is proposed, measured at the building line to a primary road frontage:
 - 7.5m for a lot that adjoins a single road frontage, or
 - 6m for lots that adjoin more than one road or laneway.

Exceptions to minimum subdivision lot size

Development proposed in R2 zone 'Area A':

Subdivision of an existing dual occupancy, or where or semi-detached dwellings are proposed will be subject to the following controls:

- a) Minimum area of each lot resulting from subdivision is 275m²;
- b) Minimum width of each lot resulting from subdivision, measured at the building line to a primary road frontage:
 - 7.5m for a lot that adjoins a single road frontage, or
 - 6m for lots that adjoin more than one road or laneway, and;
- c) Only one dwelling per allotment.

Development proposed in all other R2 zoned land:

As outlined above for 'Area A' - however for point a) this is proposed to be a minimum of 325m².

1.5 Mapping

A new special provisions map is proposed which will delineate certain R2 zoned land as 'Area A' in the former Botany Bay LGA locality (see **Figure 2** previously).

2 Background to Proposal

2.1 Overview of Dual Occupancy Development in the LGA

Prior to the Bayside LEP 2021 (which permits dual occupancies in all residential zones), dual occupancies were permitted under the former Rockdale Local Environmental Plan 2011 (Rockdale LEP) and prohibited in all residential zones under the former Botany Bay Local Environmental Plan 2013 (Botany LEP 2013).

Dual occupancy is defined in the Bayside LEP 2013 (and all standard instrument LEPs) as follows:

- *dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).*
- *dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.*
- *dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.*

There are no development standards in the Bayside LEP 2021 for lot size for the construction of new dual occupancy development in the LGA, however Rockdale Development Control Plan 2011 (RDCP 2011) specifies a minimum lot size of 700m² and minimum site frontage of 15m. There are no DCP controls for dual occupancies on land in the former Botany LGA.

Clause 4.1(3B) of Bayside LEP 2021 allows the subdivision of existing dual occupancies if the resultant lots have a minimum area of 350m². This clause explicitly outlines that it does not apply to the subdivision of land in the R2 zone on which the erection of an attached dwelling or a semi-detached dwelling is proposed.

2.2 Semi-detached Dwelling Development

Semi-detached dwellings are defined in the Bayside LEP 2013 as:

- *semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.*

Semi-detached dwellings are permitted with consent in the R2 zone under the Bayside LEP 2021. Semi-detached dwellings were permitted in the R2 zone in both the former Rockdale and Botany Bay LEPs. Currently, there are no lot size controls relating to semi-detached dwellings in the Bayside LEP. As outlined above, Clause 4.1(3)(B) provides lot size controls for the subdivision of dual occupancies, creating semi-detached dwellings. However, as previously outlined, this only applies to the former Rockdale LGA sites.

2.3 Local Housing Strategy

This planning proposal is in accordance with Bayside Council's Local Housing Strategy endorsement letter (**Attachment B**) sent from the Department on 30 June 2021. The endorsement letter required Council to '...To ensure housing diversity is achieved by 2036, Council is to expedite the following investigations and obtain Gateway for planning proposals by December 2022... the review and update of dual occupancy controls.'

The letter also requires historical data and forecast supply of medium-density housing, including statistics on the range of housing types approved over the last five years and anticipated future take up rates. This is provided within the planning proposal and is considered further in **Section 4** below.

2.4 Code SEPP – Low Rise Housing Diversity Code

The Code SEPP - Low Rise Housing Diversity Code (LRHD Code) allows dual occupancy development to be undertaken as Complying Development on R2 zoned land where it is permitted with consent (subject to compliance with other relevant provisions of the SEPP).

As the planning proposal outlines, the Code SEPP largely overrides the controls of the Bayside LEP 2021. However, the Code does allow for minimum lot size controls for dual occupancy specified in a Local Environmental Plan (in this case Bayside LEP) to apply in place of the default 400m² control in the SEPP.

Clauses 3B.8(1)(b) and 3B.21(b)(ii) of the Code SEPP as they apply to this form of development are replicated below:

3B.8 Lot requirements

(1) *The area of the parent lot must not be less than whichever is the greater of the following—*

- (a) 400m²,
- (b) *the minimum lot area specified for dual occupancies in the environmental planning instrument that applies to the land concerned.*

3B.21 Lot requirements

The lot must meet the following requirements—

- (b) *in the case of a dual occupancy—the area of the lot must not be less than whichever is the greater of the following—*
 - (i) 400m²,
 - (ii) *the minimum lot area specified for dual occupancies in the environmental planning instrument that applies to the land concerned,*

The planning proposal outlines that the LRHD Code 400m² control being significantly less than desired lot sizes for the R2 zone, particularly comparative to the current RDCP control of 700m² as previously discussed. Council's position is that the 400m² control would impact upon the character and amenity of lower density neighbourhoods in the R2 zone.

The minimum lot size for dual occupancy development under the LRHD of 400sqm is significantly less than what is permitted under the RDCP and Council is concerned about the impact upon the character and amenity of lower density neighbourhoods in the R2 zone if the code applied in the absence of LEP controls.

The planning proposal intends to implement a larger minimum lot size control for dual occupancy development on R2 zoned land, in turn ensuring the low density character of the R2 zone is preserved. If there is a minimum lot size in the LEP this would apply to development applications as well as complying development sought under the Code.

Under the LRHD Code, the area of the parent lot also influences the maximum gross floor area (GFA) of buildings, minimum setbacks, and minimum landscaped areas. This further contributes to maintaining low density character in the R2 zone, consistent with zone objectives and current subdivisions patterns (discussed in **Section 4** further).

The proposed minimum lot size for dual occupancy development is 550m² on lots identified within 'Area A' and 650m² on all other R2 zoned allotments.

2.5 Code SEPP – Subdivision Code

The Code SEPPs Subdivision Code permits as Complying Development, the Torrens title subdivision of land on which a dual occupancy has been developed via the Code SEPPs controls. The Subdivision Code requires the area of each resulting lot to be:

- The minimum subdivision lot size control for dual occupancy development contained in an LEP;
- If no LEP control exists – 200m²

The 200m² minimum lot size control of the Code SEPP therefore applies in all former Botany Bay R2 zoned land, as there is no current minimum lot size control in the Bayside LEP 2021. The planning proposal intends to introduce a 275m² minimum lot size for lots identified in 'Area A' and a 325m² lot size for all other R2 zoned lots.

The former Rockdale R2 zoned land has a minimum lot size control for the purposes of subdividing an existing dual occupancy or on which dual occupancy is proposed under Clause 4.1(3)(B) – this is 350m². There is a large discrepancy in the application of Subdivision Code minimum lot size provisions in the Bayside LGA.

3 Need for the planning proposal

The planning proposal states that it has been prepared specifically in response to Actions 3.6 and 6.1 of the Bayside Local Housing Strategy.

- *Action 3.6: Permit Dual Occupancies throughout the Bayside LGA with minimum site frontage and area provisions set out in the LEP (except in identified Heritage Conservation Areas or potential local character areas).*
- *Action 6.1: Review development controls including the use of minimum lot size and frontages controls to ensure that effective design can be achieved in infill development situations*

The Bayside Local Housing Strategy was endorsed by Council in March 2021 and endorsed by the Department in June 2021. The planning proposal is considered the best and only means to achieve the proposal's intended objectives and outcomes. The proposal is not inconsistent with dual occupancy LEP provisions for other LGAs in the Eastern City and South Districts, most notably Georges River Council which is the adjoining LGA (**Figure 3**).

| LEP | Minimum lot size controls (sqm) | Minimum lot width controls (m) | Lot Size for Dual Occupancies Map used |
|------------------------|---------------------------------|---|--|
| Eastern District | | | |
| Burwood LEP 2012 | Attached dual occupancies: 500 | Nil | No |
| | Detached dual occupancies: 600 | | |
| Canada Bay LEP 2013 | Attached dual occupancies: 450 | Nil | No |
| | Detached dual occupancies: 800 | | |
| Randwick LEP 2012 | Attached dual occupancies: 450 | Nil | No |
| Woollahra LEP 2014 | Attached dual occupancies: 460 | Nil | No |
| | Detached dual occupancies: 930 | | |
| South District | | | |
| Bankstown LEP 2015 | Attached dual occupancies: 500 | 15 | Yes (Special Provisions Map) |
| | Detached dual occupancies: 700 | 20 | |
| Canterbury LEP 2012 | 600 | Nil | No |
| Georges River LEP 2021 | 650 | Attached dual occupancies: 15 Detached dual occupancies: 18 (if 1 dwelling faces primary road) or 22 | Yes |
| | 1000 | | |
| Sutherland LEP 2015 | 600 | Nil | No |

Figure 3: Summary of Eastern City and South District LGA Dual Occupancy Controls for R2 zone (Source: Planning Proposal)

As seen in **Figure 3**, LEP provisions in some instances differentiate between ‘attached’ and ‘detached’ dual occupancy. The proposal does not distinguish between the land use variations in its proposal controls, simply relying on the parent term ‘dual occupancy’.

Should a Gateway determination be issued, conditions will require the proposal to be updated to clarify this and include all standard instrument LEP definitions for dual occupancy, dual occupancy (attached) and dual occupancy (detached).

4 Strategic assessment

4.1 Regional and District Plan

The site is in the Eastern City District. The Greater Sydney Commission (now Greater Cities 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 Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. By giving effect to the District Plan, the proposal is also consistent with the Greater Sydney Commission's Greater Sydney Regional Plan: A Metropolis of Three Cities.

The Planning Proposal is assessed against relevant District Plan Planning Priorities in **Table 3**.

Table 3 District Plan assessment

| District Plan Priorities | Justification |
|--|---|
| Planning Priority E1: Planning for a city supported by infrastructure Planning Priority E3: Providing services and social infrastructure to meet people's changing needs | This priority requires that land use planning aligns with infrastructure planning and seek to ensure services and social infrastructure to meet people's changing needs. |
| Planning Priority E4: Fostering healthy, creative, culturally rich and socially connected communities | This priority seeks to ensure communities are healthy, resilient and socially connected. The planning proposal will assist in facilitating diversity in housing typologies throughout the LGA. Landowners will be provided more certainty on the development of dual occupancies and semi-detached dwellings, providing statutory land use controls to guide sound land use outcomes for the R2 zone. The proposal is generally consistent with these priorities. |
| Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage | This priority seeks to ensure that the housing is developed in proximity to jobs and services. The priority seeks to create housing typology diversity to aid in housing affordability. The planning proposal outlines that the amendments will improve design outcomes of housing typologies that are currently permitted with consent in the R2 zone of the Bayside LEP 2021 and will continue to contribute towards Bayside LGA's overall housing supply, housing diversity and guide better built form outcomes. The proposed lot and width size standards are less than the existing Bayside LEP and DCP standards/controls, however greater than the widths within the Low Rise Housing Diversity Code. While at first glance this should logically result in more lots in the LGA becoming suitable for dual occupancy and semi-detached dwellings, the results of Council's evaluation shows that it results in overall less dwellings. If the result is less capacity and capability for these forms of dwellings, this is of concern and needs further work. For this reason, the proposal is inconsistent with these priorities. |

| District Plan Priorities | Justification |
|--|--|
| Planning Priority E12: Retaining and managing industrial and urban services land | The planning proposal only relates to land zoned R2 in the Bayside LEP. The proposal will not reduce or impact any existing industrial or urban services within the LGA. |

4.2 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 4 Local strategic planning statement assessment

| LSPS Priorities | Justification |
|--|---|
| Planning Priority 1: Align land use planning and transport infrastructure planning to support the growth of Bayside | Refer to response to Planning Priority E1 of the District Plan. |
| Planning Priority 5: Foster healthy, creative, culturally rich and socially connected communities | As above in response to E3 of the District Plan. The planning proposal will ensure that the dual occupancy and semi-detached dwelling developments reflect the objectives of the R2 zone. |
| Planning Priority 6: Support sustainable housing growth by concentrating high density urban growth close to centres and public transport corridors | The planning proposal will not result in an unreasonable density increase in the low density zone, rather it will ensure dual occupancy and semi-detached dwelling development is consistent with Council's desired future character of the R2 zone and create consistent in controls across the former Botany and Rockdale LGAs. The R2 zoning throughout Bayside is generally located within proximity to centres and public transport options. |
| Planning Priority 7: Provide choice in housing to meet the needs of the community | Refer to the Department's assessment to Planning Priority E5 and E6 of the District Plan. |
| Planning Priority 8: Provide housing that is affordable | Whilst this planning proposal does not specifically propose affordable housing, it will provide for overall improved built form outcomes in the R 2 zone but unfortunately seems to reduce the number of likely dwellings. |
| Planning Priority 9: Manage and enhance the distinctive character of the LGA through good quality urban design, respect for existing character and enhancement of the public realm | <p>The planning proposal outlines that it responds to Actions 3.6 and 6.1 of the LHS.</p> <ul style="list-style-type: none"> <i>Action 3.6: Permit Dual Occupancies throughout the Bayside LGA with minimum site frontage and area provisions set out in the LEP (except in identified Heritage Conservation Areas or potential local character areas).</i> <i>Action 6.1: Review development controls including the use of minimum lot size and frontages controls to ensure that effective design can be achieved in infill development situations</i> <p>The planning proposal seeks to better guide design outcomes for low rise medium density housing typologies and is intended to improve housing supply and choice in more traditional suburban settings, while ensuring these typologies adequately conform with existing character.</p> <p>The proposed amendments will ensure development occurs consistently with Council's desired future character for the R2 zone within Bayside.</p> |

| LSPS Priorities | Justification |
|---|--|
| Planning Priority 11: Develop clear and appropriate controls for development of heritage items, adjoining sites and within conservation areas | <p>Whilst the planning proposal does not specifically seek to amend heritage provisions within the Bayside LEP, as it applies to the entire R2 zone, it will impact allotments that are identified as items of environmental heritage and/or within a heritage conservation area.</p> <p>Any potential impacts to heritage significance will continue to be considered at any subsequent development application stage and such development will be subject to clause 5.10 Heritage Conservation of the Bayside LEP 2021.</p> <p>Dual occupancies and semi-detached dwellings are permitted land uses in the R2 zone, the proposed provisions intend to guide development outcomes consistent with Council's desired future character for the Bayside R2 zone. This in turn will compliment heritage conservation for these areas.</p> <p>Regardless, the proposal introduces lot size controls across the entire LGA for R2 zoned land, which includes local and State listed heritage items and Heritage Conservation Areas (HCAs). This has the potential to impact on the curtilage of existing heritage items and create potential streetscape impacts in HCAs. Should any Gateway determination be issued, conditions will require Heritage NSW to be consulted.</p> |

Table 5 Other local strategies

| Other Local Strategies | Justification |
|---------------------------------------|---|
| Community Strategic Plan (CSP) | <p>This Planning Proposal generally aligns with the following actions outlined in the Bayside Community Strategic Plan:</p> <ul style="list-style-type: none"> <i>Places have their own village atmosphere and sense of identity</i> <i>Local developments reflect innovative, good design and incorporate open space and consider vertical families</i> <i>Bayside will be a 30 minute City – residents work local or work off-site – no-one has to travel for more than 30 minutes to work</i> |

4.3 Bayside Local Housing Strategy

The Bayside Local Housing Strategy (LHS) was endorsed by Council in March 2021 and endorsed by the Department in June 2021. The planning proposal states that it has been prepared specifically in response to Actions 3.6 and 6.1 of the Bayside Local Housing Strategy.

- Action 3.6: Permit Dual Occupancies throughout the Bayside LGA with minimum site frontage and area provisions set out in the LEP (except in identified Heritage Conservation Areas or potential local character areas).*

The LHS outlines that Action 3.6 is to be completed within a 0-2 year timeframe. Dual occupancy development was permitted throughout the Bayside R2 zone as part of the gazettal of the Bayside LEP 2021. This planning proposal is consistent with Action 3.6 as it introduces minimum site frontage provisions for dual occupancy development and semi-detached dwelling development.

- Action 6.1: Review development controls including the use of minimum lot size and frontages controls to ensure that effective design can be achieved in infill development situations*

The LHS outlines that Action 6.1 is to be completed within a 0-2 year timeframe. This planning proposal is consistent with Action 6.1 as it will introduce minimum lot size and lot width controls to ensure dual occupancy and semi-detached dwelling developments meet Council's desired future character for the Bayside R2 zone. A separate planning proposal is being prepared by Bayside Council will introduce these controls into the residential uses in the R3 zone.

The LHS letter of approval from the Department outlined requirements for Bayside Council to action. This planning proposal actions some of those requirements, specifically the following:

4. *To ensure housing diversity is achieved by 2036, Council is to expedite the following investigations and obtain Gateway for planning proposals by December 2022:*

- a) the introduction of dwelling size and mix controls;*
- b) the review and update of medium density controls;*
- c) the review and update of dual occupancy controls.*

The planning proposal is accompanied by an analysis of the historical and forecast supply of dual occupancy and semi-detached dwelling development (**Attachment 3**). This is consistent with requirement 9 of the LHS approval letter.

9. *As housing diversity is a key objective in the LHS, Council is to provide a comprehensive evidence base in relation to the delivery of medium-density housing, including dual occupancy and associated controls, particularly if Council will request an exemption from the Low Rise Housing Diversity Code. This should include:*

- a) Historical and forecast supply of medium-density housing, including statistics on range of housing types of approved over the last five years (development applications and complying development certificates) and anticipated future take-up rates.*

This analysis is assessed below.

4.3.1 Analysis of Historical and Forecast Supply of Dual Occupancy and Semi-Detached Dwelling Development

As outlined above, as part of the LHS letter of approval Council is required to supply an analysis of the historical and forecast supply of Dual Occupancy and Semi-Detached Dwelling Development within Bayside LGA. This is provided at **Attachment 3**.

Historical Supply

Council has undertaken a review of approvals over the last 5 years (both development applications and complying development certificates) for dual occupancy and semi-detached dwellings. A summary of this historical supply is shown in **Figure 4**.

| Year | Zone R2 Approvals | Average parent lot size (sqm) | Average resulting lot size where subdivision included (sqm) |
|-------------------|-------------------|-------------------------------|---|
| Nov 2016-Nov 2017 | 16 | 772.45 | 387.24 |
| Nov 2017-Nov 2018 | 15 | 737.49 | 369.75 |
| Nov 2018-Nov 2019 | 7 | 745.26 | 376.23 |
| Nov 2019-Nov 2020 | 10 | 821.25 | 405.52 |
| Nov 2020-Nov 2021 | 29 | 750.53 | 367.94 |
| TOTAL | 77 | 765.4 | 381.34 |

Figure 4: Summary of approvals history of dual occupancy dwelling developments in R2 zone (November 2016-November 2021) (Source: Planning Proposal)

In relation to the above:

- All are in the former Rockdale LGA locality. Dual occupancies have only been permitted in the former Botany Bay LGA locality since the adoption of the Bayside LEP 2021 in August 2021;
- 60 developments were approved via a development application; and
- Seventeen developments were approved via complying development certificate under the LRHD Code, (noting the LRHD Code come into force in July 2020).

With no dual occupancy approvals in the former Botany Bay LGA locality, semi-detached dwelling proposals have been the prominent land use. The review of semi-detached dwelling approvals over the 2016-2021 period can be seen in **Figure 5**.

| Year | Zone R2 Approvals | Average original lot size – where subdivision is included (sqm) | Average resulting lot size (sqm) |
|-------------------|-------------------|---|----------------------------------|
| Nov 2016-Nov 2017 | 10 | 540.96 | 278.19 |
| Nov 2017-Nov 2018 | 8 | 506.81 | 253.31 |
| Nov 2018-Nov 2019 | 13 | 539.89 | 268.01 |
| Nov 2019-Nov 2020 | 10 | 462.16 | 231.86 |
| Nov 2020-Nov 2021 | 12 | 515.55 | 257.88 |
| TOTAL | 53 | 513.07 | 257.85 |

Figure 5: Summary of approvals history of semi-detached dwelling developments in R2 zone (November 2016-November 2021) (Source: Planning Proposal)

In summary, Council's data suggests that the proposed lot size provisions are not inconsistent with historical development patterns across the LGA.

Setting the dual occupancies and semi detached minimum lot size provisions at 550-650 m² and 275-325m² (depending on location), would enable make more lots suitable for these forms of development, which is expected to result in a slightly greater density of development.

Forecast Supply

Council indicates there are difficulties in forecasting future dual occupancy development due to a number of reasons:

- LGA amalgamations;
- Consolidated planning controls only coming into force in 2021 (noting a consolidated DCP is yet to be finalised);
- Differing lot patterns across the 2 former LGAs
- Commencing of the LRHC; and
- The COVID-19 pandemic.

The proposal provides that regardless of the proposed provisions, dual occupancy is more likely to be taken up in the former Rockdale LGA locality, due to historical subdivision patterns and fewer environmental constraints (e.g. heritage, groundwater, acid sulfate soils, airport noise contours) that prevent complying development taking place.

Code SEPP exclusions and preventive subdivision patterns (i.e. lot size and width) means that the LRHD Code does not apply in many parts of the R2 zone. This is illustrated in **Figure 6**.

The suburb of Botany is cited as an example most likely to contain more suitable sites for dual occupancy development with a reduced lot size, but is also almost entirely exempted from the Codes SEPP due to environmental and lot constraints.

Council asserts that both the LRHD Code and the planning proposal are expected to have a minimal impact on forecast supply of dual occupancies in the former Botany LGA locality.



Figure 6: Allotments unaffected by Code SEPP exclusions and with a 15m lot width
(Source: Planning Proposal)

Council has applied a forecast methodology using the rate of take-up of allotments over the 5-year approvals history, to remaining supply of lots under current and proposed controls, to forecast expected approvals. These include forecasts for a 'do nothing' scenario (where the proposal does not progress) as well as a scenario with the proposed controls (**Figure 7**).

The forecast of approvals for new dual occupancies and semi-detached dwellings under a 'do nothing' scenario is as follows:

| | |
|---|------------|
| DA Approvals In Former Rockdale LGA: | 57 |
| CDC Approvals In Former Rockdale LGA: | 85 |
| DA Approvals In Former Botany Bay LGA: | 46 |
| CDC Approvals In Former Botany Bay LGA: | 6 |
| Total Approvals – 'Do Nothing' Scenario: | 194 |

The forecast of approvals under a PP scenario is outlined below:

| | |
|---|------------|
| DA Approvals In Former Rockdale LGA: | 109 |
| CDC Approvals In Former Rockdale LGA: | 25 |
| DA Approvals In Former Botany Bay LGA: | 8 |
| CDC Approvals In Former Botany Bay LGA: | 1 |
| Total Approvals – PP Scenario: | 143 |

Figure 7: Forecast dual occupancies and semi-detached dwellings under two scenarios
(Source: Planning Proposal)

The proposal highlights that the above figures are baseline forecasts only and, a greater post-pandemic development take up may occur than what has been forecast.

Notwithstanding the above and desire for the proposal to harmonise lot size provisions across the Bayside LGA and to guide better built form outcomes, the Council's prediction that the result of the LEP amendments sought would seemingly reduce the likely take up and/or ability for these forms of dwellings to be developed in the LGA is concerning.

Both the GCC and DPE encourages the retention and increased capacity for medium density forms of development such as dual occupancies and semi detached locations, so the result of this proposal appears to have the reverse effect.

Given that the logic that reduced lot sizes along would ordinarily be expected to make more sites capable of complying of the new lot and width sizes, more work is required to explain this outcome. Additionally, it is recommended that Council retest what lots in all R2 zones are suitable under current controls and the proposed controls and that this be included in the planning proposal before exhibition. This will allow the Department to review the full effect of the changes without the adding in likely market take up - which is hard to predict especially when relying upon data that is 2 years old too.

Development Control Plan (DCP)

It is noted that Council has undertaken a review of its Development Control Plan (DCP) to harmonise the former council plans. The proposal notes that the changes to the DCP relate directly or indirectly to the subject planning proposal. It is presumed from this that there are control changes in the DCP that may interact with the lot sizes and widths sought for this proposal.

It is required that the planning proposal be revised to explain the interrelationship of any relevant and changing DCP controls and new standards sought this planning proposal, so the community understand these combined effect of these together.

4.4 Local Planning Panel (LPP) Recommendation

The draft proposed was considered by the LPP at its meeting on 26 May 2022. The following advice was provided to Council:

1. *The Bayside Local Planning Panel recommend to Council that pursuant to s3.33 of the Environmental Planning and Assessment act 1979 (EP&A Act), that the draft Planning Proposal – Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings be submitted to the Department of Planning and Environment for a Gateway Determination.*
2. *The Bayside Local Planning Panel recommend to Council that the Rockdale Development Control Plan 2011 and Botany Bay Development Control Plan 2013 be reviewed concurrently with the draft Planning Proposal, to ensure consistency between controls contained in these documents and the draft Planning Proposal.*
3. *The Bayside Local Planning Panel recommend to Council that should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process.*
4. *The panel notes and is in support of the draft Planning Proposal – Minimum Lot Sizes for Dual Occupancies and Semi-Detached Dwellings be submitted to the Department of Planning and Environment for a Gateway Determination, however, the panel suggests the LEP clauses be simplified, and the construction of that section to make it clear there are only two models and simply specified the lot size and frontage requirements for each of the two models (i.e., Model One - 15m frontage and 600 sqm lot size requirement & Model Two - 12m frontage and 500sqm lot size requirement).*

4.5 City Planning & Environment Committee (CP&EC)

With the LPP advice taken into consideration, the draft proposal was considered by the CP&EC at its meeting on 10 August 2022. The committee resolved:

1. *That, pursuant to s3.34 of the Environmental Planning and Assessment act 1979 (EP&A Act), the draft Planning Proposal be submitted to the Department of Planning and Environment for a Gateway Determination.*
2. *That, should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process.*
3. *That the Rockdale Development Control Plan 2011 (RDCP 2011) and Botany Bay Development Control Plan 2013 (BBDCP 2013) be reviewed concurrently with the draft Planning Proposal, to ensure consistency between controls contained in these documents and the draft Planning Proposal.*
4. *That, should a Gateway determination be issued, a future report be tabled to Council to consider any proposed amendments to the RDCP 2011 and BBDCP 2013, which would be exhibited concurrently with the draft Planning Proposal.*

4.6 Bayside Council Recommendation

Council considered a report at its meeting on 24 August 2022, regarding a draft Planning Proposal to introduce new planning controls for dual occupancy and semi-detached dwelling development. At its meeting, Council resolved:

‘That this item be deferred to the next Council Meeting for an analysis of the impacts of the change being the minimum lot size being equal to or greater than 650 sq m and the frontage width being equal to or greater than 15 m for Zone R2 Low Density Residential Dual Occupancy.’

A further report and draft planning proposal prepared by Council officers in response to the August 2022 meeting was considered by Council on 28 September 2022. Council recommended that the draft planning proposal proceed to Gateway Determination. The full recommendation is listed below, minutes can be found at **Attachment 2**:

- 1 *That, pursuant to s3.34 of the Environmental Planning and Assessment act 1979 (EP&A Act), a draft Planning Proposal comprising the proposed planning controls as identified as new Option 4 being:*
 - *Minimum lot size Area A - 550 sqm. Minimum for subdivision 275sqm. Widths unchanged as per Option 1.*
 - *Remainder of R2 zone - 650 sqm. Minimum for subdivision 325 sqm. Widths unchanged as per Option 1.**be submitted to the Department of Planning and Environment for a Gateway Determination.*
- 2 *That, should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process.*
- 3 *That the Rockdale Development Control Plan 2011 (RDCP 2011) and Botany Bay Development Control Plan 2013 (BBDCP 2013) be reviewed concurrently with the draft Planning Proposal, to ensure consistency between controls contained in these documents and the draft Planning Proposal.*
- 4 *That, should a Gateway determination be issued, a future report be tabled to Council to consider any proposed amendments to the RDCP 2011 and BBDCP 2013, which would be exhibited concurrently with the draft Planning Proposal.*

4.7 Section 9.1 Ministerial Directions

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

Table 6 9.1 Ministerial Direction assessment

| Directions | Consistent/ Not Applicable | Reasons for Consistency or Inconsistency |
|---|----------------------------------|--|
| 1.1 Implementation of Regional Plans | Generally Consistent | <p>The planning proposal is consistent with parts of the priorities within the Greater Sydney Regional Plans. The assessment against the District Plan above in Section 4.2 displays how the planning proposal gives effect to the regional plan.</p> <p>The only concern is that the proposal appears to result in less take up for these forms dwellings, which is to be addressed with additional data to retest this.</p> |
| 1.11 Implementation of Bayside West Precincts Bayside West 2036 Plan | Consistent | <p>This direction applies when a PPA prepares a PP for land in the Bayside LGA area that applies to land within the Bayside West Precincts in the Arncliffe, Banksia and Cooks Cove Bayside.</p> <p>Given that the planning proposal applies to all R2 zoned land in Bayside, the planning proposal impacts land within the Bayside West Precincts. The planning proposal is consistent with this Direction and does not impede the operation of this Direction.</p> |
| 3.2 Heritage Conservation | Consistent | <p>Whilst the planning proposal does not specifically seek to amend heritage provisions within the Bayside LEP, as it applies to the entire R2 zone, it will impact allotments that are identified as items of environmental heritage and/or within a heritage conservation area.</p> <p>Dual occupancies and semi-detached dwellings are permitted land uses in the R2 zone, the proposed provisions intend to guide development outcomes consistent with Council's desired future character for the Bayside R2 zone. This in turn will compliment heritage conservation for these areas.</p> <p>As previously discussed in Table 4, the proposal introduces lot size controls across the entire LGA for R2 zoned land, which includes local, and State listed heritage items and HCAs. This has the potential to impact on the curtilage of existing heritage items and create potential streetscape impacts in HCAs. To ensure a comprehensive consideration of heritage matters, should any Gateway determination be issued, conditions will require Heritage NSW to be consulted.</p> |
| 4.1 Flooding | Consistent | <p>The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy, and to ensure that provisions of an LEP are commensurate with flood hazard and considers flood impacts on and off the land.</p> <p>The proposed amendments do not introduce any new land uses or flood related development controls. Whilst some parts of the R2 zoned land within the LGA are flood prone, the proposed provisions are intended to simply control density and built form outcomes in the R2 low density zone for permissible land uses.</p> <p>Any development application on flood prone land in the R2 zone will continue to be assessed against Council's LEP and DCP flooding controls.</p> |
| 4.4 Remediation of Contaminated Land | Consistent | <p>This Direction aims to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered at the planning proposal stage.</p> <p>The planning proposal does not propose any site-specific amendment. Dual occupancies and semi-detached dwellings are residential accommodation uses which are permitted within the R2 Low Density Residential zone.</p> |

| Directions | Consistent/ Not Applicable | Reasons for Consistency or Inconsistency |
|---------------------------------------|----------------------------------|---|
| | | Accordingly, contamination considerations will occur at any subsequent development applications stages. |
| 5.1 Integrated Land Use and Transport | Consistent | <p>This Direction requires a planning proposal to consider improving access to housing, jobs and services by walking, cycling and public transport and reducing reliance on cars.</p> <p>The planning proposal is not permitting any additional uses in the R2 zone. The R2 zone throughout Bayside is generally located within proximity to jobs, services and public transport.</p> |
| 6.1 Residential zones | Unclear | <p>This Direction aims to encourage housing choice, make efficient use of infrastructure and services and minimise the impact of residential development on environment and resource lands.</p> <p>The planning proposal outlines that the amendments will improve design outcomes of housing typologies that are currently permitted with consent in the R2 zone of the Bayside LEP 2021 and will continue to contribute towards Bayside LGA's overall housing supply and diversity.</p> <p>The Department agrees with this and notes that the proposal will impact the existing R2 zone which is generally located in proximity to existing services, jobs and public transport. Despite this – retesting is sought to demonstrate that the effect of the changes will or won't result in less capacity and capability for these forms of dwellings.</p> <p>For these reasons the proposal is inconsistent with this Direction.</p> |

4.8 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs, except the Codes SEPP as discussed in the table below.

Table 7 Assessment of planning proposal against relevant SEPPs

| SEPPs | Proposal |
|---|--|
| Exempt and Complying Development Codes SEPP 2008 | <p>Refer to Section 2 of this report which details the proposal's effect on the application of the Code SEPP.</p> <p>The concern is that council predicts that less CDCs will occur under the Code, as a result of the proposed amendments. This appears illogical overall as the controls for minimum lot sizes are reduced. Further testing is to be sought and reconsidered by DPE before the proposal proceeds to exhibition.</p> |
| Housing SEPP 2021 | The planning proposal will not impact the operation of the SEPP. The planning proposal will improve design outcomes for uses already permitted in the LEP to ensure consistency with the desired future character of the Bayside R2 zone. |
| SEPP (Resilience and hazards) 2021 | See response to S9.1 Direction 4.4 Contaminated land. |

5 Site-specific assessment

5.1 Environmental

5.1.1 Built Environment

Urban design considerations are detailed in the proposal, having been utilised to determine the proposals lot size and lot width controls. As discussed throughout the report, controls for dual occupancy and semi-detached dwellings are at odds between the former Botany Bay and Rockdale LGAs area and/or are non-existent to guide development of the land uses.

The urban design analysis provided with the proposal considers and compares LRHD controls, current Bayside LEP 2021 controls and RDCP 2011 controls. In summary the analysis provides:

- **Floor area** – generally the LRHD allows for significant floor space ratio increase above the Bayside LEP 2021
- **Site widths** – a 15m site width can also provide a reasonable suburban character, when considered alongside guidance to maximise landscaping in the street setback, provide a prominent street entry and allow habitable rooms to address the street.
- **Specific R2 zoned localities with higher FSR controls** – lots in some areas of the former Botany LGA (Mascot, Daceyville, Pagewood and Hillsdale/Eastgardens) have smaller allotment areas and widths. In these areas, development for dual occupancies (or subdivided to create semi-detached dwellings) under Bayside LEP 2021 should not be encouraged.

Proposed controls

- The locationally appropriate lot size controls proposed that would also apply under the LRHD Code, can allow for a denser form of development than is permissible under the BLEP 2021, while still respecting neighbourhood character.
- In the former Rockdale LGA, the proposed minimum lot size control is 650m² (or 325m² for semi-detached dwellings) with lot widths of 15m for lots with a single road frontage or 12m for lots that adjoin more than one road or laneway (or 7.5m and 6m, respectively, for semi-detached dwellings). This provides for a built form outcome within the more traditional suburban context of the former Rockdale LGA development/subdivision pattern and more appears to align with controls under the RDCP 2011.
- In the former Botany Bay LGA locality, a minimum lot size control of 550m² is proposed within the suburb of Botany (or 275 m² for semi-detached dwellings), with the same lot width controls mention above. Lot sizes and widths are somewhat more generous in this suburb than areas further to the north, although this area is almost entirely excluded from the Codes SEPP. Despite this Council's prediction at **Figure 7** above suggested a delimiting of dual occupancies and semi detached dwellings in this area. More testing is required to prove or disprove this outcome.
- In the suburbs of Mascot, Rosebery and Eastlakes, where the LRHD Code partly applies, a minimum lot size of 550m² is also proposed (or 275 sqm for semi-detached dwellings). Under the LRHD Code, dual occupancies could be developed at an FSR of up to 0.79:1, above current Bayside LEP 2021 controls of 0.55:1 and 0.7:1. However, the denser suburban fabric, combined with a sparsity of realistic infill candidate sites, should ensure that any potential character impacts are minimised.
- The proposed minimum lot width controls (which currently also exist in the LRHD Code) present the main hurdle to widespread take-up in Mascot, Rosebery and Eastlakes, under the BLEP 2021 or the LRHD Code.
- In the suburbs of Daceyville, Pagewood, Eastgardens and Hillsdale, a minimum lot size of 650m² is proposed (or 325m² for semi-detached dwellings), with lot width controls consistent with the former Rockdale LGA as these suburbs have a similar subdivision pattern and built form.

The proposed map of 'Area A' (R2 zone land in Botany, Mascot, Rosebery and Eastlakes) is seen previously in **Figure 2** of this report.

The Department notes Council's intent to guide appropriate housing outcomes in the R2 zone, whilst also facilitating housing typology diversity. However, the Department requires further urban design analysis to justify and support the proposal's differing lot size controls in 'Area A' comparative to the balance of the LGA. Different controls applying to different parts of the LGA in the R2 zone must be suitably supported to ensure a sound land use planning outcome. This is further considered prudent due to Council resolving to increase the lot size controls from what Council officer recommended.

Additionally, it is noted that the explanation of the changes to the controls and where this occurs as outlined in the planning proposal is confusing. Hence the planning proposal needs revision to explain to the community and stakeholders more simply what controls they currently have for their sites and what the new controls are proposed by this proposal.

Dual occupancy and semi-detached dwellings will continue to be permitted with consent in the R3 Medium Density Residential and R4 High Density Residential zones of the Bayside LEP 2021. Medium density housing will be considered in detail in a future separate planning proposal by Council.

Natural Environment

The Bayside LGAs R2 zoned land is largely already developed, urban land. Dual occupancies and semi-detached dwellings are already permitted land uses in the R2 zone and impacts on the natural environment will be considered at any future development application stages.

5.2 Social and economic

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

Table 8 Social and economic impact assessment

| Social and Economic Impact | Assessment |
|----------------------------|--|
| Social | The planning proposal will ensure dual occupancy and semi-detached dwelling development in the R2 zone occurs in a manner consistent with Council's desired future character and objectives of the R2 zone. This is envisaged to have a positive social impact on the Bayside LGA. |
| Economic | The planning proposal will not result in any significant adverse economic impacts with the LGA or more broadly across metropolitan Sydney. |

6 Consultation

6.1 Community

An exhibition period of 30 days is considered appropriate considering the broad application of the proposal and its complexities. This forms a condition of the Gateway determination.

6.2 Agencies

The planning proposal does not specifically identify which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- Land and Housing Corporation;
- NSW Heritage;

- NSW Department of Planning and Environment, Environment and Heritage Branch (flooding)
- NSW State Emergency Service (SES)
- Property NSW

7 Timeframe

A project timeline is included in the planning proposal which has a timeframe of 7 months after Gateway Determination to complete the LEP.

The Department recommends a time frame of 7 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the Gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

8 Local plan-making authority

Given the scale and LGA wide nature of the planning proposal, the Department does not support Council being authorised as the local plan-making authority for this proposal.

9 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- it demonstrates strategic merit in being consistent with the Bayside Local Housing Strategy;
- it is consistent with the Eastern City District Plan and Council's local strategic plans;
- the proposed amendment will not have a significant impact (if any) on dwelling numbers in the LGA;
- it will ensure consistency in planning controls across the LGA; and
- it will assist in guiding sound built-form outcomes that minimises impact in the low density residential areas of the Bayside LGA, whilst also facilitating housing diversity.

As discussed in the previous sections, the proposal must be updated before consultation to:

- Provide land use definition consistent with the standard instrument LEP;
- Clarify that proposed controls relating to dual occupancies also referred to attached and detached dual occupancies; and
- Provide further urban design analysis and justification for the 'Area A' lot size controls and why they differ from the balance of the R2 zone LGA.

10 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

- 1) Prior to public exhibition, the planning proposal is to be updated to:
 - (a) Include the Bayside LEP 2021 definitions for the following land uses:
 - i) Dual occupancy;
 - ii) Dual occupancy (attached);
 - iii) Dual occupancy (detached); and

- iv) Semi-detached dwellings.
 - (b) Clarify the land use term 'dual occupancy' in the proposed provisions subsequently would apply to both attached and detached dual occupancy developments.
 - (c) Provide further urban design analysis and justification for the 'Area A' lot size controls being less than the balance of the R2 zoned land in the Bayside Local Government Area.
 - (d) More simply explain the comparison of the current controls against those being amended by this proposal, linked to which locations, to clearly demonstrate the changes and where the new controls apply.
 - (e) Include how the new and retained controls in the recent draft DCP relevant for dual occupancies and semi-detached dwellings interact with the proposed controls sought by the subject planning proposal.
 - (f) Provide a straight comparison of what R2 lots in the LGA comply with the current controls and which lots will comply with those proposed by the planning proposal, removing any prediction/s of market take up.
 - (g) Demonstrate how fewer dual occupancy and semi-detached dwellings would be developed under the proposed provisions, despite the reduced lot sizes sought by this proposal.
- 2) The planning proposal is to be submitted to the Department for endorsement to proceed to exhibition.
- 3) Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
- (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 30 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).

Exhibition must commence within 3 months following the date of the Gateway determination.

- 4) Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:

- NSW Heritage;

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

- 5) A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

- 6) Prior to finalisation, the planning proposal must be updated to address any matters raised by agencies during consultation under Condition 3.
- 7) The Council as planning proposal authority is not authorised to exercise the functions of the local plan-making authority.
- 8) The LEP should be completed on or before 2 December 2023.



Laura Locke
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1 March 2023

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