

## 19.6 MAJOR AMENDMENT TO CITY PLAN - DUAL OCCUPANCIES IN THE LOW DENSITY RESIDENTIAL ZONE

### Objective Reference:

**Authorising Officer:** Louise Rusan, General Manager Community & Customer Services

**Responsible Officer:** David Jeanes, Group Manager City Planning & Assessment

**Report Author:** Janice Johnston, Principal Strategic Planner

**Attachments:** 1. Major Amendment to City Plan, Dual Occupancies in the LDR Zone

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (h) *other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.*

### PURPOSE

The purpose of this report is to:

1. Consider a major amendment pursuant to Part 4 Section 16.1 of the Minister's Guideline and Rules under the *Planning Act 2016*.
2. Outline the proposed contents of the proposed Major Amendment.
3. Submit the contents of the proposed Major Amendment to the Planning Minister and request the amendment is considered as part of General Major Amendment Package approved by Council at its General Meeting on 10 October 2018.
4. Maintain the contents and attachments of this report as confidential until such time that the amendment package is released for public consultation, subject to Council and Ministerial approval.

### BACKGROUND

A planning issue has been identified as a result of a recent Planning and Environment Court appeal where expert and legal advice supported a dual occupancy on a 400m<sup>2</sup> lot in the Urban Residential zone (MCU013949/Planning and Environment Court Appeal 339 of 2018 at 4 Starkey Street, Wellington Point). Although the application was made and assessed under the now superseded Redlands Planning Scheme (RPS) it is likely that the development application would have also been approved if lodged under City Plan. The main concern raised over the approval was the density of development, which significantly exceeded the probable solution in the RPS of 1 dwelling unit per 400m<sup>2</sup>. This density has also been reflected as an acceptable outcome in the Low Density Residential (LDR) zone code of City Plan. Council's policy position to only support dual occupancies on larger lots in this zone is arguably not reflected in the overall outcomes, hence the ability to uphold this policy position may not be realised in all instances.

### ISSUES

#### Appeal Outcome

Probable Solutions in the Urban Residential zone code of the RPS indicate that residential development is to achieve a density of not greater than 1 dwelling unit per 400m<sup>2</sup>. The relevant specific outcomes require dwelling unit density to be compatible with the detached low-rise character of the zone, the use to be consistent with the amenity of the locality and the lot to be of

sufficient size to provide for the needs of the housing type proposed. The expert advice provided as part of the Starkey Street appeal indicates that the development complies with these specific outcomes and Council would most likely not win the appeal. The specific grounds relied upon by Council’s planning expert to support the development included:

- The site is wide (25m), such that the interface with neighbours is relatively contained and the effect upon the neighbour to the rear will be similar to a single house;
- The lot faces large public open space parkland;
- The built form is low rise and does not demonstrate any symptoms of overdevelopment. That is, height, setbacks and site cover comply with the relevant provisions and there is no overshadowing or loss of privacy. In addition, sufficient landscaping and open space areas have been provided for each unit;
- Built form closely resembles a single dwelling, especially given the shared driveway access; and
- A house could be constructed as of right on this site with the same number of bedrooms and close resemblance to how the dual occupancy looks and operates, particularly when viewed from the street.

The advice obtained by Council concludes that after reviewing the proposal and its locality, it is not considered that there would be any wide-spread flow on effects resulting from approval of this dual occupancy. That is, it would not result in a significant number of development applications being made to place dual occupancies on 400m<sup>2</sup> as there are a limited number of sites with similar characteristics to the subject site at Starkey Street.

City Plan Assessment

Within the LDR zone, dual occupancies are accepted subject to requirements where the building height is 8.5m or less and the density does not exceed 1 dwelling unit per 400m<sup>2</sup>. Where these requirements and/or those in the LDR zone code are not met, the application is elevated to code assessment. The LDR zone code includes acceptable and performance outcomes relating to dual occupancies as follows:

Dual occupancies	
<b>PO2</b> In all other areas, dual occupancies occur on larger lots and in a form that is consistent with the low density, open and low-rise character of the locality.	<b>AO2.1</b> Density does not exceed one dwelling per 400m <sup>2</sup> of site area.
	<b>AO2.2</b> The site has a minimum frontage of 20m.

If lodged under City Plan, the application at Starkey Street would not have met AO2.1. It is also considered that it would not have met PO2 as a 400m<sup>2</sup> lot is not considered a ‘larger lot’ in the LDR zone, given that this is the minimum lot size supported in the LDR zone.

Section 5.3.3(4)(c) of City Plan reflects the State wide standard planning scheme provisions in stating that code assessable development that complies with:

- the purpose and overall outcomes of the code complies with the code; and
- the performance or acceptable outcomes complies with the purpose and overall outcomes of the code.

Consequently, this requires an application to comply with either the relevant performance outcomes or overall outcomes/purpose of the code.

As the Starkey Street proposal would not have been able to meet the performance outcome, it would have required assessment against the overall outcomes of the zone code to determine if the application should be approved. The relevant overall outcomes (2)(b) and (f) of the LDR zone code in this case seek to ensure:

- Development maintains a low density streetscape character; and
- Buildings are of a house-like scale.

It is considered likely the development proposed at 4 Starkey Street, if assessed under the City Plan, would have been able to satisfy the above criteria, and therefore would have been considered as meeting the code and approved.

### Discussion of Options

As detailed above, Council's policy position to only support dual occupancies on larger lots in the LDR zone is arguably not reflected in the overall outcomes. Hence, the ability to uphold this policy position may not be realised in all instances. Councillors have indicated that this policy position reflected a prevalent community expectation relating to density in the zone, and as such, would like to see Council's ability to uphold its position strengthened.

Although Council cannot prohibit applicants from lodging applications for dual occupancies at a density which exceeds 1 dwelling unit per 400m<sup>2</sup>, Council can choose to include additional provisions in the City Plan which will strengthen its position regarding lot size and density. Options to consider are as follows:

#### **Option 1 - Elevating the category of development to impact where density exceeds 1 dwelling unit per 400m<sup>2</sup>**

In the current City Plan, Dual Occupancies within the LDR Zone are code assessable if the density achieved is greater than 1 dwelling unit per 400m<sup>2</sup>, therefore bounded assessment applies to these applications. Option 1 involves amending table 5.4.1 (LDR zone categories of development and assessment) so that dual occupancies that exceed a density of 1 dwelling unit per 400m<sup>2</sup> are elevated to impact assessment.

The key benefit of this approach is that it allows community input through the public notification process. Additionally, this approach may discourage applications at a higher density being lodged as applicants may want to avoid the risk of third party appeals. However, unlike code assessable development where the assessment is bounded to the relevant codes, impact assessable development is required to be assessed against the entire planning scheme including the strategic framework. Potentially this may expand the scope in which dual occupancies with a density greater than 1 dwelling unit per 400m<sup>2</sup> may be approved.

#### **Option 2 – Amending the performance and overall outcomes of the LDR zone code to include the specific density target of 1 dwelling unit per 400m<sup>2</sup>.**

To further strengthen the density provision, Council could resolve to reflect the 1 dwelling unit per 400m<sup>2</sup> rate in the performance and overall outcomes of the LDR zone code. This is a similar approach to what has been done relating to the 400m<sup>2</sup> minimum lot size for reconfiguration in the LDR zone code where the following has been included:

- Acceptable outcome AO16.1 - Reconfiguration achieves a minimum lot size of 400m<sup>2</sup>.
- Performance outcome PO16 - Reconfiguration maintains the low density character of the street. Lots less than 400m<sup>2</sup> are not created.

- Overall outcome 6.2.1.2 (2c) which indicates that the purpose of the code will be achieved where not within a particular precinct, lot sizes are not reduced below 400m<sup>2</sup>, unless the resultant lots are consistent with the density and character of the surrounding established neighbourhood.

Due to the bounded assessment of code assessable applications, these provisions effectively ensure the creation of any lots with an area less than 400m<sup>2</sup> in the LDR zone is very unlikely to occur. In this regard, Council will recall the previous advice received from the Department of State Development, Manufacturing, Infrastructure and Planning (the Department) relating to the lot size provisions which indicated that the use of prescriptive outcomes in the acceptable, performance and overall outcomes in a code was effectively prohibitive of development and was therefore contrary to the intention of Queensland's performance based planning system, which is regulated by the *Planning Act 2016*. To address this concern Council was requested by the Minister to add the additional clause 'unless the resultant lots are consistent with the density and character of the surrounding established neighbourhood'. If Option 2 is the option that Council wants to proceed with in relation to density, it should be aware that the Department and the Minister may have similar concerns as raised previously with lot size provisions. The outcomes will need to be drafted in a way which does not prohibit a certain type of development, to allow for performance based planning. Introducing a density target into the acceptable, performance and overall outcomes of the LDR code will therefore not wholly 'fix' the concern raised, but rather, will help to support Council's position on a suitable density in the zone on future applications.

### **Option 3 – Amending the overall outcomes of the LDR zone code to indicate that dual occupancies are only supported on 'larger lots'**

A more performance based approach to Option 2 would be to reflect the wording of Performance Outcome PO2 as an overall outcome. PO2 indicates that dual occupancies '*occur on larger lots and in a form that is consistent with the low density, open and low-rise character of the locality*'. This is considered a better approach than Option 2, as it allows for flexibility in decision making, whilst still outlining the policy position that this type of development is not suitable on small sites.

The term 'larger lots' could also be defined through a note in the code. For example, lots over 650m<sup>2</sup> could be deemed 'larger'. However, there are concerns with this approach given:

- It creates inconsistency with the acceptable outcome of 1 dwelling per 400m<sup>2</sup>, as the performance outcome and overall outcome which reference 'larger lots' would support a density of 1 dwelling unit per 325m<sup>2</sup>;
- It adds a prescriptive element to the overall outcome. This may lead to difficulties in addressing design issues as it may imply that a dual occupancy on a 650m<sup>2</sup> lot automatically results in the development being consistent with the low density character of the locality, when in fact this determination needs to be based on the impacts of the development, the design of the proposal and the site characteristics.

As such, it is not recommended that the term 'larger lots' is defined.

### **Option 4: Maintain current provisions**

As discussed above, if the Starkey Street application was lodged under City Plan, it is reasonable to assume that the same outcome (approval) would be achieved. Critically however, many of the reasons relate to the locality, the shape of the lot and the design features of the development. If Council chooses not to amend the scheme, although a large number of applications are not expected, there may be future applications made which also exceed the acceptable outcome density provision, which may be approved due to compliance with the overall outcomes. This is

not necessarily a poor outcome as it allows for performance based assessment. In the instance of 4 Starkey Street, the proposal is considered suitable for the site and designed to maintain the streetscape character. However, such approvals do not reflect Council's policy position to only support dual occupancies on 'larger lots'. Given section 60(2) of the Planning Act indicates that to the extent that a code assessable application complies with the relevant codes, the assessment manager must approve the application, if Council wants to reduce the possibility of dual occupancies being approved on small lots, then some changes to the scheme are considered necessary.

### Process for Changing Scheme

If Council proceeds with any of options 1 to 3 a major amendment to City Plan would be triggered. Given the State has only recently received Council's first City Plan major amendment package, it is considered that Council could reasonably request the State to include this issue as part of the existing package currently undergoing State Interest.

### Recommendation

Based on the analysis it is recommended that Council adopt Option 3. It is recommended that Council amend the existing overall outcomes in the LDR zone code, in order to indicate that dual occupancies should only be supported on larger lots. It is not recommended that Council include a definition or explanatory note on what is deemed a 'larger lot'. It is considered that this option is a performance based outcome (in accordance with the *Planning Act 2016*) which allows flexibility in decision making, whilst still outlining Council's preferred density target for development in the zone.

## **STRATEGIC IMPLICATIONS**

### **Legislative Requirements**

The major amendment will be undertaken in accordance with the requirements of the Minister's Guidelines and Rules, a statutory document under the *Planning Act 2016* and *Planning Regulation 2017*.

### **Risk Management**

Undertaking amendments to the planning scheme will ensure the document remains current and consistent with community expectations.

### **Financial**

Any proposed amendment to the planning scheme will be funded as part of the operating budget of the City Planning and Assessment Group.

### **People**

The staff resourcing required to make an amendment to the Planning Scheme will be primarily drawn from the Strategic Planning Unit of the City Planning and Assessment Group.

### **Environmental**

There are no relevant environmental matters.

### **Social**

Mandatory public consultation requirements for major planning scheme amendments will ensure the community is given the opportunity to provide feedback on any proposed changes.

## Alignment with Council's Policy and Plans

The proposed amendments will align with the Wise Planning and Design goals contained in Council's Corporate Plan and the Redlands Community Plan. This includes managing population growth and enhancing the City's character and liveability.

## CONSULTATION

Position Title	Consultation Date	Comments/Actions
Councillor Briefing Session	20/11/2018	Consultation with Councillors was undertaken through a briefing.

## OPTIONS

### Option One

That Council resolves to:

1. commence a major amendment of City Plan as outlined in Attachment 1 pursuant to Part 4 Section 16.1 of the Minister's Guideline and Rules under the *Planning Act 2016*;
2. submit the proposed major amendment to the Planning Minister and request the amendment is considered as part of General Major Amendment Package approved by Council at its General Meeting on 10 October 2018; and
3. maintain the contents and attachments of this report as confidential until such time that the amendment package is released for public consultation, subject to Council and Ministerial approval.

### Option Two

That Council resolves to proceed with a major amendment to City Plan and selects one of the other options identified in this report.

### Option Three

That Council resolves to not proceed with an amendment to City Plan.

## OFFICER'S RECOMMENDATION

That Council resolves to:

1. commence a major amendment of City Plan as outlined in Attachment 1 pursuant to Part 4 Section 16.1 of the Minister's Guideline and Rules under the *Planning Act 2016*;
2. submit the proposed major amendment to the Planning Minister and request the amendment is considered as part of General Major Amendment Package approved by Council at its General Meeting on 10 October 2018; and
3. maintain the contents and attachments of this report as confidential until such time that the amendment package is released for public consultation, subject to Council and Ministerial approval.

# Attachment 1: Proposed Major Amendment to the Redland City Plan

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## DUAL OCCUPANCY DENSITY IN THE LOW DENSITY RESIDENTIAL ZONE

### Proposed City Plan Amendments

The proposed amendment to the Planning Scheme is as follows:

#### 6.2.1.2 Purpose

1. The purpose of the low density residential zone code is to provide for residential areas with a high level of amenity and characterised by dwelling houses on a range of lot sizes which achieve a general sense of openness and low density streetscapes.
2. The purpose of the code will be achieved through the following overall outcomes:
  - a) the low density residential zone consists predominantly of dwelling houses with some dual occupancies (other than in the LDR1 large lot, and LDR2 park residential and LDR4 Kinross Road precincts within this zone);
  - b) development maintains a low density streetscape character;
  - c) where not within a particular precinct, lot sizes are not reduced below 400m<sup>2</sup>, unless the resultant lots are consistent with the density and character of the surrounding established neighbourhood;
  - d) where not within a particular precinct, the density of dual occupancy development is not to exceed one dwelling per 400m<sup>2</sup> of site area, unless the resultant development is consistent with the density and character of the surrounding established neighbourhood;

Note – The ‘surrounding established neighbourhood’ for the purposes of the above overall outcome is taken to be land within the same zone and precinct, and within a defined street block or within 100m of the subject site.

  - e) uses which provide a community service function, such as a community use may be established where they are small scale, do not significantly detract from residential amenity, do not compromise the role of any centre and are located on a collector or higher order road;
  - f) shops, offices and food and drink outlets are not established;
  - g) buildings are of a house-like scale;
  - h) home based businesses are undertaken where they do not detract from the residential amenity of the area; and
  - i) development creates a safe, comfortable and convenient pedestrian environment within and external to the site, and facilitates a high level of accessibility and permeability for pedestrians and cyclists.
3. The purpose of the zone will also be achieved through the following additional overall outcomes for particular precincts:
  - a) Precinct LDR1: large lot residential:
    - i. the precinct retains a very low density residential character;
    - ii. retention of habitat within the precinct is maximised;
    - iii. housing forms are limited to dwelling houses; and
    - iv. lot sizes are not reduced below 2,000m<sup>2</sup>, unless the resultant lots are consistent with the density and character of the surrounding established neighbourhood.

**Table 6.2.1.3.1—Benchmarks for development that is accepted subject to requirements and assessable development**

Performance outcomes	Acceptable outcomes
For development that is accepted subject to requirements and assessable development	
<b>Dual occupancies</b>	
<b>PO1</b> Housing in the precinct LDR1 large lot or precinct LDR2 park residential or precinct LDR4 Kinross is limited to dwelling houses.	<b>AO1.1</b> Dual occupancies are not established in precinct LDR1 large lot or precinct LDR2 park residential or precinct LDR4 Kinross Road.
<b>PO2</b> In all other areas, dual occupancies occur on larger lots and in a form that is consistent with the low density, open and low-rise character of the locality. The density of development is not to exceed one dwelling per 400m <sup>2</sup> of site area.	<b>AO2.1</b> Density does not exceed one dwelling per 400m <sup>2</sup> of site area.
	<b>AO2.2</b> The site has a minimum frontage of 20m.

### **Officer Recommendation**

It is recommended that Council amend the Redland City Plan in accordance with the proposed amendment outlined above.