

19.4 CITY PLAN - MAJOR AMENDMENT PACKAGE: STATE INTEREST REVIEW

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. DSDMIP Notice of advice to response dated 19 March 2019
2. General Major Amendment Package (01/19) – Response to DSDMIP (Confidential)
3. General Major Amendment Package (01/19) – Response to DSDMIP (Confidential)

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 seek further direction from Council on matters raised by the Department of State Development, Manufacturing, Infrastructure and Planning (the Department) in its review of the General Major Amendment Package 01/19 (GMAP) for the Redland City Plan.

BACKGROUND

At the General Meeting of 10 October 2018, a confidential report was presented to Council for the GMAP for City Plan. Council subsequently resolved to commence the amendment process pursuant to the Minister's Guidelines and Rules and submit the GMAP to the Planning Minister for the purpose of the State interest review.

On 19 December 2018, the Department issued a 'Notice of advice to change and pause the timeframe of a proposed amendment'. This notice requested that Council either makes changes to, or provides further information on, a number of proposed amendments to demonstrate they appropriately integrate State interests.

At its general meeting of 22 February 2019, Council resolved to respond to the notice from the Department. At the same time, a resolution was made to incorporate the second major amendment package 02/19 (GMAP2) into the GMAP. GMAP2 dealt with a single amendment relating to dual occupancies.

On 19 March 2019, in response to Council's resolution on the 22 February 2019 the Department issued a further 'Notice of advice to response' advising that the GMAP remained paused as Council's response did not appropriately address the matters it had previously raised. A copy of this notice is provided as Attachment 1. In particular, the Department's notice identified two outstanding items as follows:

1. Pear Street, Redland Bay zone change;
2. Tables of assessment for excavation and fill.

In addition the Department's notice also included a new matter which had not previously been raised in relation to the density of dual occupancy development.

Department officers have confirmed that the GMAP will not be further progressed until such time as Council has reconsidered its position on the three outstanding matters outlined above.

ISSUES

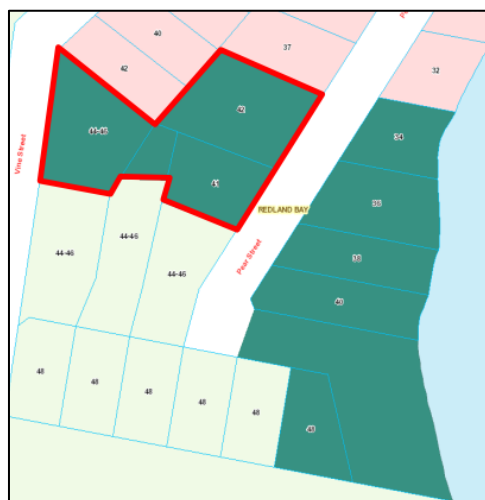
Item 1 – Pear St, Redland Bay

The report presented to Council at the general meeting on 10 October 2018, referred to this as Item 16 of the GMAP. The report considered an amendment of the existing conservation zoning of nine (9) lots to the rural zone. The report identified that the site contained significant environmental values and was subject to a number of other constraints/hazards including storm tide inundation, flood, bushfire and coastal erosion. The officer recommendation was to retain the subject allotments in the conservation zone. However, Council resolved to proceed with the proposed change to the rural zone.

In its response for the first State interest review, the Department outlined multiple issues with the change in relation to its impact on State interests. The Department concluded that *“Given the substantial constraints of the subject land, the council is requested to remove the proposed change from the amendment package”*.

At the general meeting of 22 February 2019, Council officers recommended that the amendment be withdrawn from the GMAP. However, Council resolved to proceed with the proposed amendment of four (4) lots on the western side of Pear Street (outlined in the map below). The reasons outlined were:

- Council considers these parts of the site are considered to be less constrained than lots on the eastern parts of Pear Street.
- Council believes that these allotments are subject to a lower risk of hazards than the eastern parts of the site.
- Council considers a change in zoning may facilitate the opportunity for an environmentally sensitive outdoor recreational use with associated accommodation to occur in these allotments.



In its letter of 19 March 2019, the Department indicated that: *“the proposed zoning change at Pear Street, Redland Bay continues to cause significant adverse impacts on environmental values and is not supported. Given the substantial constraints of the land, the council is requested to remove the proposed change from the amendment package.”*

Recognising these circumstances Council needs to determine whether it retains its current position to proceed with the proposed zoning amendment of four (4) lots on the western side of Pear Street or whether it is prepared to withdraw this amendment from the proposed amendment package and advise the Department accordingly. Should Council seek to continue with the amendment, it is reasonable to expect the Minister is likely to condition its withdrawal, on the basis of inconsistency with the State Planning Policy (SPP).

Item 2 – Tables of assessment for excavation and fill

In the report presented to Council for the general meeting of 10 October 2018, Council officers recommended various amendments to the tables of assessment relating to excavation and fill. Part of these changes involved increasing the filling and excavation volume and area thresholds while at the same time elevating the level of assessment to code in areas covered by the environmental significance, flood and storm tide and waterways and wetland overlays. At the general meeting, Council amended the proposed change for accepted development to indicate that “when located in an area mapped by the environmental significance overlay, the excavation and filling is undertaken outside the canopy cover of native vegetation”.

As part of the State interest review, the Department indicated that they were not supportive of the proposed amendments changes as they were in conflict with the SPP. In particular the Department requested the following changes:

- Align the volumes for filling and excavation that is accepted development with those outlined in the SPP State Interest – Emissions and hazardous activities (acid sulfate soils), and;
- SPP State Interest Biodiversity - Remove reference to accepted development for filling and excavation within the environmental significance overlay (when excavation and filling is undertaken outside the canopy cover of native vegetation).

In response to the matters raised by the Department, Council officers in a report to the general meeting of 22 February 2019 recommended changes to the amendment as follows:

- Amendment of proposed Table 5.7.1 – Operational Works to make any filling and excavation within the acid sulphate soils thresholds assessable, as per the SPP, and;
- Amendment to make any filling and excavation within the environmental significance overlay to be code assessable.

Council, subsequently resolved to respond to the Department, agreeing to amend the tables of assessment to reflect the acid sulphate soil thresholds, but resolved that it did not agree to the proposed changes in relation to the environmental significance overlay. Instead, Council opted to retain the amendment as originally proposed for State interest review (with excavation and filling being accepted development where undertaken outside the canopy cover of vegetation mapped under the overlay).

In its letter of 19 March 2019, the Department indicated that: *“the proposed changes to the table of assessment for excavation and filling has the potential to cause significant adverse impacts on environmental values and is not supported. No further supporting information has been provided to demonstrate how this change will avoid impacts to matters of state environmental significance in accordance with the State Planning Policy, July 2017 state interest for biodiversity. The council is requested to amend the proposed change to increase the level of assessment of excavation and filling, where located within an area mapped by the Environmental Significance Overlay.”*

In reviewing the Department’s letter Council officers do not believe any additional information regarding this matter can be readily provided. Moreover, officers are satisfied that the

information already provided to the Department is sufficient for the Minister to make a decision. Recognising these circumstances Council needs to determine whether it continues to retain the amendment with excavation and filling being accepted development where undertaken outside the canopy cover of vegetation mapped or whether it is prepared to change the amendment to align with the Department’s letter. It is expected if Council seeks to continue with its current amendment the Minister is likely to condition its withdrawal, on the basis of inconsistency with the SPP.

Item 3 – Density of dual occupancy development

The original GMAP2 included a single amendment which sought to strengthen Council’s policy position to only support dual occupancies on larger lots where located in the low density residential zone. The amendment sought to include a performance outcome and overall outcome which reflected the existing acceptable outcome, which seeks that density does not exceed one dwelling per 400m². The wording of the overall outcome was also designed to align with the proposed minimum lot size overall outcome in the low density residential zone, including the same ‘note’ seeking to define how a ‘surrounding established neighbourhood’ is measured.

In its ‘Notice of advice to change and pause the timeframe of a proposed amendment’, the Department raised concerns with the note, stating that it “creates a prescriptive purpose statement and does not provide for performance-based planning outcomes”.

Officer’s reviewed the comments and advised that with the note removed, the remaining overall outcome still clearly indicated Council’s preferred position that dual occupancies should only occur on larger lots, whilst not prohibiting approval of an application which proposes a higher density, therefore allowing for performance based planning. Council resolved to adopt the officer recommendation to proceed with the amendment without the note as follows:

<p>6.2.1.2 Purpose</p> <p>2. The purpose of the code will be achieved through the following overall outcomes:</p> <ul style="list-style-type: none"> c. where not within a particular precinct, lot sizes are not reduced below 400m², 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 400m² of site area, unless the resultant development is consistent with the density and character of the surrounding established neighbourhood; <p>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.</p>	
<p>Table 6.2.1.3.1—Benchmarks for development that is accepted subject to requirements and assessable development</p>	
<p>Performance outcomes</p>	<p>Acceptable outcomes</p>
<p>PO1 Housing in the precinct LDR1 large lot or precinct LDR2 park residential or precinct LDR4 Kinross Road is limited to dwelling houses.</p>	<p>AO1.1 Dual occupancies are not established in precinct LDR1 large lot or precinct LDR2 park residential or precinct LDR4 Kinross Road.</p>
<p>PO2 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 400m² of site area.</p>	<p>AO2.1 Density does not exceed one dwelling per 400m² of site area.</p> <p>AO2.2 The site has a minimum frontage of 20m.</p>

In its letter of 19 March 2019, the Department indicated that: *“The proposed change to performance outcome 2 will create a prescriptive assessment benchmark which is against the principles of Queensland’s planning system. The Council is requested to amend performance outcome 2 in accordance with the principles of Queensland’s planning system. The proposed changes should include a clear hierarchy between the proposed change to performance outcome 2 and the proposed overall outcome 2 (d).”*

Taking into account the Department’s position, it is recommended that Council amend the wording of the performance outcome as follows:

PO2

In all other areas, dual occupancies occur on larger lots greater than or equal to 800m² in area, and unless in a form that is consistent with the low density, open and low-rise character of the locality.

Preliminary discussions have indicated that the amended PO2 is likely to satisfy the Department’s requirements.

DISCUSSION OF OPTIONS

In relation to the Pear Street and excavation and fill items, Council has the option to resolve to change the amendment package as requested by the Department (option 2), or continue to maintain its position as adopted at the general meeting of 22 February 2019 (option 1). This report therefore has not delved into the planning merits of the issues, as the decision by Council on the policy positions has already been made. This report is more about the State Interest Review process. It is expected that if Council choose option 1 (maintain current position), that the Department will issue conditions which require the Department’s position to be adopted prior to going to advertising.

In relation to the third item (dual occupancy density), this is a new issue which was not raised as part of the initial State Interest Review. The Department has requested that PO2 is drafted as a performance based outcome. Given that the overall outcome is also drafted as a performance based outcome, there is minimal difference in the likely development outcomes by also making the performance outcome more performance based. By including the density target as an acceptable, performance and overall outcome, the Council position is clearly defined. However, under a performance based planning system, there does need to be opportunity to demonstrate that an alternative development proposal is suitable. Therefore the same position (adopt the Department’s requirements) has been proposed in both outcomes.

STRATEGIC IMPLICATIONS**Legislative Requirements**

The GMAP has been prepared in accordance with the *Planning Act 2016* and Minister’s Guidelines and Rules. Council must continue to follow the process set out in the legislative framework under which the proposed amendment was prepared.

Risk Management

Undertaking amendments to the planning scheme will ensure the document remains current and consistent with community expectations. Mandatory public consultation requirements (as per the Minister’s Guidelines and Rules) for major planning scheme amendments will also ensure the community is given the opportunity to provide feedback on any proposed changes.

Financial

The amendments to the planning scheme are being funded as part of the operating budget of the City Planning and Assessment Group.

People

The staff resourcing required to facilitate the proposed amendment to the Planning Scheme are primarily drawn from the Strategic Planning Unit of the City Planning and Assessment Group.

Environmental

Environmental matters have been discussed, where relevant.

Social

Social matters have been discussed, where relevant.

Alignment with Council's Policy and Plans

The proposed amendment package 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 improving efficiencies in the City Plan.

CONSULTATION

A number of Council groups were consulted in the preparation of the amendment package. In addition, the following consultation has occurred in relation to the first State interest review:

Consulted	Date	Comment
Department of State Development, Manufacturing, Infrastructure and Planning	Ongoing discussions with State officers regarding Pause Notices between December 2018 and March 2019.	Discussions regarding changes and information requested by the Department.

OPTIONS

Option One

That Council resolves to:

1. respond to the Department of State Development, Manufacturing, Infrastructure and Planning to address requested changes outlined in the 'Notice of advice to response' dated 19 March 2019, as set out in Attachment 2; and
2. maintain this report and attachments as confidential until the proposed amendment package commences public consultation as per the Minister's Guidelines and Rules, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

Option Two

That Council resolves to:

1. respond to the Department of State Development, Manufacturing, Infrastructure and Planning to address requested changes outlined in the 'Notice of advice to response' dated 19 March 2019, as set out in Attachment 3, or as otherwise directed by Council;
2. maintain this report and attachments as confidential until the proposed amendment package commences public consultation as per the Minister's Guidelines and Rules, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

OFFICER'S RECOMMENDATION

That Council resolves to:

1. respond to the Department of State Development, Manufacturing, Infrastructure and Planning to address requested changes outlined in the 'Notice of advice to response' dated 19 March 2019, as set out in Attachment 2; and
2. maintain this report and attachments as confidential until the proposed amendment package commences public consultation as per the Minister's Guidelines and Rules, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.



Department of
**State Development,
Manufacturing,
Infrastructure and Planning**

Our reference: MC18/7212 / MA-00023

19 March 2019

Mr Andrew Chesterman
Chief Executive Officer
Redland City Council
PO Box 21
CLEVELAND QLD 4163

Via email: stephen.hill@redland.qld.gov.au

Attention: Stephen Hill

Dear Sir,

Notice of advice to response

Thank you for your letter received on 27 February 2019 advising of Redland City Council's (the council) response to the notice of advice to change and to pause the timeframe for the proposed General Major Amendment 1 (the proposed amendment) to the *Redland City Plan 2018*.

The Department of State Development, Manufacturing, Infrastructure and Planning (the department) has undertaken a review of the response and has determined that the response does not appropriately address the matters raised in the notice issued on 19 December 2018. Given this, the proposed amendment will remain paused under chapter 2, part 4, section 17.3 and chapter 2, part 5, sections 23.1 of the *Minister's Guidelines and Rules*.

As previously identified, the proposed zoning change at Pear Street, Redland Bay continues to cause significant adverse impacts on environmental values and is not supported. Given the substantial constraints of the land, the council is requested to remove the proposed change from the amendment package.

Further, the proposed changes to the table of assessment for excavation and filling also has the potential to cause significant adverse impacts on environmental values and is not supported. No further supporting information has been provided to demonstrate how this change will avoid impacts to matters of state environmental significance in accordance with the *State Planning Policy, July 2017* state interest for biodiversity. The council is requested to amend the proposed change to increase the level of assessment of excavation and filling, where located within an area mapped by the Environmental Significance Overlay.

Further, the department acknowledges receipt of the council's request to withdraw of General Major Amendment 2. As requested, the proposed changes to the Low Density Residential Zone code are now being considered under the proposed amendment. The proposed change to performance outcome 2 will create a prescriptive assessment benchmark which is against the principles of Queensland's planning system. The council is requested to amend performance outcome 2 in accordance with the principles of Queensland's planning system. The proposed changes should include a clear hierarchy between the proposed change to performance outcome 2 and the proposed overall outcome 2 (d).

If you require further information, I encourage you to contact Ashleigh Slater, Principal Planning Officer, Planning and Development Services, on 07 5644 3221 or by email at bestplanning-SEQS@dsdmip.qld.gov.au.

Yours sincerely



Gareth Richardson
Manager, Planning and Development Services (SEQ South)

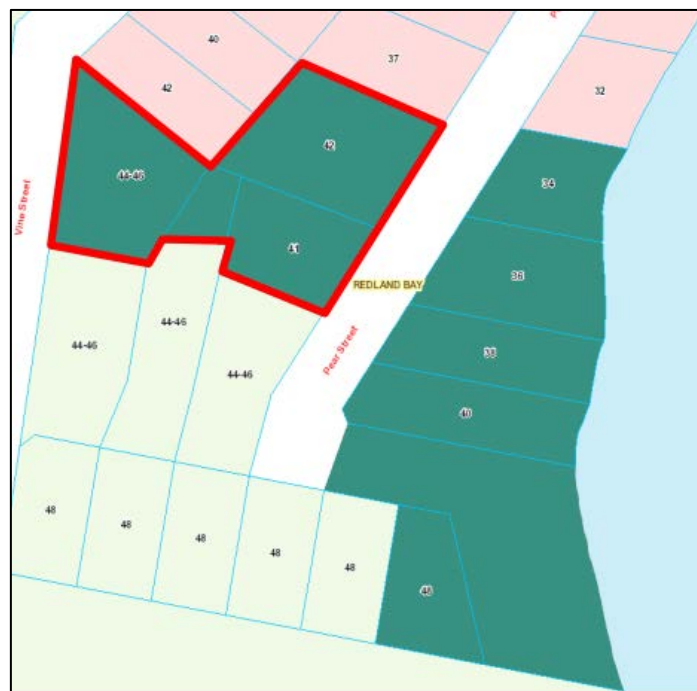
Attachment 2: General Major Amendment Package (01/19) – Response to DSDMIP (Confidential)

Item 1 – Pear St, Redland Bay

Council resolves to not support the requested zone changes in Pear Street as outlined in the Department’s letter dated 19 March 2019 and maintains its proposed amendment to include the lots west of Pear Street in the rural zone. These lots include:

- 44-46 Pear Street, Redland Bay (Lot 70 on SL5956 and part of Lot 91 on SL5946);
- 41 Pear Street, Redland Bay (Lot 89 on SL5946)
- 42 Vine Street, Redland Bay (Lot 88 on RP72092).

The subject lots are shown in the map below.



Item 2 – Tables of assessment for excavation and fill

Council resolves to not support the requested changes in relation to the Environmental Significance Overlay Proposed Table 5.7.1 – Operational Works as outlined in the Department’s letter dated 19 March 2019.

Council maintains its proposed amendment which maintains proposed filling and excavation located outside the canopy cover of native vegetation mapped under the Environmental Significance overlay as accepted development. As outlined in Proposed Table 5.7.1 – Operational Work where proposed filling and excavation is proposed under the canopy cover of native vegetation mapped under the Environmental Significance overlay the level of assessment is elevated to code assessable.

For the Department’s reference, proposed changes for filling and excavation in the Conservation zone (as per Item 9 of the General Major Amendment Package) are also shown below, to remove any ambiguity and highlight all proposed changes to the table of assessment.

Proposed Table 5.7.1 – Operational works

Zone	Categories of development and assessment	Assessment benchmarks for assessable development and requirements for accepted development
Excavation and Filling		
All zones	Accepted	
	<p>If carried out by Redland City Council; or</p> <p>(1) the excavation or filling proposed does not exceed a depth of 300mm on its own or when combined with any previous excavation or filling;</p> <p>(2) the excavation or filling does not exceed:</p> <p>a. 600m² in area; or</p> <p>b. a volume of 50m³; and</p> <p>(3) where involving a retaining wall, the retaining wall is not greater than 1m in height</p> <p>If the proposed filling or excavation:</p> <p>(1) does not involve:</p> <p>a. excavation of 100m³ or more at or below 5m AHD; or</p> <p>b. filling of 500m³ with an average depth of 0.5m or more on land below 5m AHD; and</p> <p>(2) does not exceed a depth of 750mm on its own or when combined with any previous excavation or filling; and</p> <p>(3) is not located in an area mapped by any of the following overlay:</p> <p>a. Flood or Storm Tide Hazard Overlay (Flood Prone Area sub-category only); or</p> <p>b. Coastal Protection (Erosion Prone Area) Overlay; or</p> <p>c. Waterway Corridors and Wetlands Overlay</p> <p>(4) Is undertaken outside the canopy cover of native vegetation when located in an area mapped by the Environmental Significance Overlay.</p>	
	<p>Accepted subject to requirements</p> <p>Editor's note—Unless otherwise specified, development that is accepted subject to requirements will become code assessable when not complying with an acceptable outcome. However, it will only be assessable against the corresponding performance outcome (refer section 5.3.3 (2)).</p>	
	If not accepted or code assessable	Infrastructure works code
Code assessment		

	If exceeding a volume of 50m ³ If not accepted	Healthy waters code Infrastructure works code
Conservation zone	Accepted	
	If undertake by Redland City Council	
	Code assessment	
	If not accepted	Healthy waters code Infrastructure works code

Item 3 – Density of dual occupancy development

Council resolves to support the requested changes related to the density of dual occupancy development as outlined in the Department’s letter dated 19 March 2019 and amend Probable Solution PO2.

Current proposal:

PO2

~~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 400m² of site area.~~

Updated proposal:

PO2

In all other areas, dual occupancies occur on larger lots greater than or equal to 800m² in area, and unless in a form that is consistent with the low density, open and low-rise character of the locality.

Attachment 3: General Major Amendment Package (01/19) – Response to DSDMIP (Confidential)

Item 1 – Pear St, Redland Bay

Council resolves to support the requested zone changes in Pear Street as outlined in the Department’s letter dated 19 March 2019 and withdraws the proposed zone amendment retaining the lots in the Conservation zone.

Item 2 – Tables of assessment for excavation and fill

Council resolves to support the requested changes in the Tables of assessment for excavation and fill as outlined in the Department’s letter dated 19 March 2019. The Department’s concerns regarding SPP State Interests are noted and reflected in the new proposed Table 5.7.1 – Operational Work below. For the Department’s reference, proposed changes for filling and excavation in the Conservation zone (as per Item 9 of the General Major Amendment Package) are also shown below, to remove any ambiguity and highlight all proposed changes to the table of assessment.

Proposed Table 5.7.1 – Operational works

Zone	Categories of development and assessment	Assessment benchmarks for assessable development and requirements for accepted development
Excavation and Filling		
All zones	<p>Accepted</p> <p>If carried out by Redland City Council; or</p> <p>(1) the excavation or filling proposed does not exceed a depth of 300mm on its own or when combined with any previous excavation or filling;</p> <p>(2) the excavation or filling does not exceed:</p> <p>a. 600m² in area; or</p> <p>b. a volume of 50m³; and</p> <p>(3) where involving a retaining wall, the retaining wall is not greater than 1m in height</p> <p>If the proposed filling or excavation:</p> <p>(1) does not involve:</p> <p>a. excavation of 100m³ or more at or below 5m AHD; or</p> <p>b. filling of 500m³ with an average depth of 0.5m or more on land below 5m AHD; and</p> <p>(2) does not exceed a depth of 750mm on its own or when combined with any previous excavation or filling; and</p> <p>(3) is not located in an area mapped by any of</p>	

	<p>the following overlay:</p> <ul style="list-style-type: none"> a. Flood or Storm Tide Hazard Overlay (Flood Prone Area sub-category only); or b. Coastal Protection (Erosion Prone Area) Overlay; or c. Environmental Significance Overlay; or d. Waterway Corridors and Wetlands Overlay 	
	<p>Accepted subject to requirements</p> <p>Editor's note—Unless otherwise specified, development that is accepted subject to requirements will become code assessable when not complying with an acceptable outcome. However, it will only be assessable against the corresponding performance outcome (refer section 5.3.3 (2)).</p>	
	If not accepted or code assessable	Infrastructure works code
	<p>Code assessment</p>	
	If exceeding a volume of 50m ³	Healthy waters code
	If not accepted	Infrastructure works code
Conservation zone	<p>Accepted</p>	
	If undertake by Redland City Council	
	<p>Code assessment</p>	
	If not accepted	Healthy waters code Infrastructure works code

Item 3 – Density of dual occupancy development

Council resolves to support the requested changes related to the density of dual occupancy development as outlined in the Department's letter dated 19 March 2019 and amend Probable Solution PO2.

Current proposal:

PO2

~~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 400m² of site area.~~

Updated proposal:

PO2

In all other areas, dual occupancies occur on larger lots greater than or equal to 800m² in area, and unless in a form that is consistent with the low density, open and low-rise character of the locality.