

## 6.2.4 Minimum Residential Lot Size and Multi Unit Housing

REPORT BY THE MANAGER STRATEGIC PLANNING TO 7 MAY 2014 COUNCIL MEETING

Change to Minimum Lot Size

GOV400038, LAN900046

### RECOMMENDATION

#### That:

1. **the report by the Manager Strategic Planning on the Minimum Residential Lot Size and Multi Unit Housing be received;**
2. **there be no change to the minimum lot size for residential land in the Local Environmental Plan 2012;**
3. **a planning proposal be prepared for consideration with the next amendment to the Local Environmental Plan which would seek to reduce the minimum lot size for multi unit housing from 400m<sup>2</sup> to 300m<sup>2</sup>.**

### Executive summary

The purpose of this report is twofold:

1. To investigate a request to reduce the minimum residential lot size across all residential zones to facilitate a land subdivision without the necessity to erect the dwelling prior to release of the linen plan; and
2. To recommend an amendment to the LEP to facilitate the subdivision of multi unit development consistent with the current minimum lot size of dual occupancy development.

The Local Environmental Plan 2012 (LEP) deals with subdivision of land in the residential zones as separate from development for dwellings, dual occupancy and multi unit housing in the same zones. Generally, the provision of the LEP provide for these two types of applications to be combined into a single application, for example dual occupancy and subdivision. Particular issues arise when a combined application for multi units housing for three or four units and subdivision is received whereby the LEP does not allow the subdivision to be considered if it will result in a lot less than 400m<sup>2</sup> as opposed to 300m<sup>2</sup> for attached dual occupancy which appears to be an anomaly.

The report provides an overview of desired outcomes in terms of facilitating a more streamlined development application process and high standard built product and how this might be better achieved though an amendment to the LEP as it relates to the minimum lot size for multi unit housing rather than a reduction in the residential minimum lot size generally.

### Detailed report

#### *REDUCTION OF THE MINIMUM RESIDENTIAL LOT SIZE*

The Mid-Western Regional Local Environmental Plan 2012 (LEP) includes General Residential R1 and Medium Density Residential R3 zones as defined by the Land Zoning Map and minimum lot

size (MLS) for residential subdivision of 600m<sup>2</sup>, or in the case of some land in the Saleyards Lane and Caerleon precincts a 450m<sup>2</sup> MLS as defined by the Lot Size Map.

The 600m<sup>2</sup> MLS is an historical figure carried from previous planning instruments and facilitates the development of a moderately sized single dwelling. Typically, a residential subdivision will have a range of lot sizes catering for both single dwellings and dual occupancy. Once a lot has been created the owner or developer has the opportunity to develop that land for the purpose of a dwelling under the Complying Development Certificate (CDC) process. This means that Council have no discretion in terms of how the built product will appear. The same circumstance would apply if the MLS was 400m<sup>2</sup>; Council would have no control over the design and layout of dwellings on the lots and there is no mechanism to facilitate this. The inability to assess the potential impacts of overshadowing and privacy increases the potential impact on existing adjoining owners. In addition, despite the minimum lot size, much of the recent subdivision activity in Mudgee has resulted in the average lot size across a development of closer to 800m<sup>2</sup> than 600m<sup>2</sup>. Any reduction of the MLS below 400m<sup>2</sup> will provide an additional opportunity for undesirable re-subdivision of larger lots and therefore impact on existing residential areas. Council has already witnessed some of the impacts through the development of battleaxe dual occupancies and has taken steps to discourage this form of development. Reduction of the minimum lot size to 400 m<sup>2</sup> across the residential zone would undermine this initiative.

The ability to subdivide land to smaller lots sizes needs to be addressed at the earliest stage of the subdivision design to facilitate good outcomes. Smaller lots can provide a good living environment where they are located to maximum access to facilities such as neighbourhood shopping centres or park facilities. In addition, by designating the minimum lot size when the land is zoned, the expectation of the form of development is established from the beginning. Retro fitting a smaller residential lot size to existing zone will result in a conflict between the existing development and expectation of the existing residents and the new development.

It is current Council practice to release the linen plan of a multi unit development or a dual occupancy at the lock up stage of the development. This allows the subdivision to be referred to the Land and Property Information to complete the subdivision whilst the dwelling is being completed. If the linen was released at the same time as the construction certificate Council cannot enforce that the dwelling be constructed in accordance with the approved plan. A different design can be approved under a Complying Development Certificate without referral to Council or consultation with the neighbours. The best way to limit potential conflicts to designate those areas that Council wants a smaller residential lot size when zoning the land this provides surety and transparency to both the developer and existing community.

#### *SUBDIVISION OF MULTI UNIT DEVELOPMENTS.*

Dual occupancy development essentially takes two forms; attached and detached. There are different requirements in terms of the lot sizes and how that then relates to the ability to subdivide. This is discussed further below.

In addition the LEP provides for the development of *multi dwelling housing*, defined as three or more dwellings whether attached or detached on a single lot of land, and *residential flat buildings* which is a single building containing three or more dwellings (Note: this is not a form of development typical in the LGA)

The specific provisions in the LEP are as follows:

#### **4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings**

(1) *The objective of this clause is to achieve planned residential density in certain zones.*

(2) *This clause applies to the following land:*

- (a) *land within Zone R1 General Residential,*
  - (b) *land within Zone R3 Medium Density Residential,*
  - (c) *land in Rylstone or Kandos that is within Zone RU5 Village.*
- (3) *Despite any other provision of this plan, development consent may be granted to development on land to which this clause applies:*
- (a) *for the purposes of a dual occupancy (attached), if the area of the lot is equal to or greater than 600 square metres, or*
  - (b) *for the purpose of a dual occupancy (detached), if the area of the lot is equal to or greater than 800 square metres, or*
  - (c) *for the purposes of multi dwelling housing, if the area of the lot is equal to or greater than 1,200 square metres, or*
  - (d) *for the purposes of a residential flat building, if the area of the lot is equal to or greater than 1,200 square metres.*

In addition there are provisions that facilitate subdivision of land below the MLS in certain circumstances.

#### **4.1B Exceptions to minimum lot sizes for certain residential development**

- (1) *This clause applies to the following land:*
- (a) *land within Zone R1 General Residential,*
  - (b) *land within Zone R3 Medium Density Residential,*
  - (c) *land in Rylstone or Kandos that is within Zone RU5 Village.*
- (2) *Despite any other provision of this Plan, development consent may be granted to the subdivision of land to which this clause applies if:*
- (a) *multi dwelling housing or a dual occupancy is lawfully erected on the land, and*
  - (b) *the area of each resulting lot will not be less than:*
    - (i) *300 square metres for a dual occupancy (attached), or*
    - (ii) *400 square metres for a dual occupancy (detached) or multi dwelling housing, and*
  - (c) *only one dwelling will be located on each lot resulting from the subdivision.*
- (3) *Development consent may be granted to a single development application for development to which this clause applies that is both of the following:*
- (a) *the subdivision of land into 2 or more lots,*
  - (b) *the erection of a dual occupancy (attached), dual occupancy (detached) or multi dwelling housing on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
    - (i) *300 square metres for a dual occupancy (attached), or*
    - (ii) *400 square metres for a dual occupancy (detached) or multi dwelling housing.*

Of particular interest are dual occupancies and multi dwelling housing where the application is for three or four free standing dwellings. In such cases the circumstance may arise whereby the development proponent could undertake the development as attached dual occupancy with a minimum subdivision lot size of 300m<sup>2</sup> rather than multi dwelling housing which has a 400m<sup>2</sup> MLS.

This was the case in a recent development in Gulgong. Clause 4.1A(2)(b)(ii) of the LEP allows for subdivision of multi dwelling housing. The clause stipulates a minimum area of 400m<sup>2</sup> per lot/unit. The four units in the Gulgong case failed to meet this requirement. The same outcome could have

been achieved by subdividing the parent 1300m<sup>2</sup> lot into two 650m<sup>2</sup> lots, then make an application for an attached dual occupancy on each of the 650m<sup>2</sup> lots and then subdividing those lots to create lots of 325m<sup>2</sup> each with a unit attached.

While it may not be in the best interest of Council to revise down the MLS for residential lots generally, consideration could be given to a review of the MLS for multi unit housing in clause 4.1B(2) and (3) from 400m<sup>2</sup> to 300m<sup>2</sup>. Multi unit housing is, in terms of gross floor area generally of a scale consistent with if not less than attached dual occupancy, therefore, to have the MLS align with attached rather than detached dual occupancy would make practical sense as well as reducing the labyrinth of processes that a proponent could go through (as described in the example above) to achieve the same built outcome.

In order to avoid this scenario again and to provide a more efficient and streamlined development process, an amendment to the LEP to amend clause 4.1B(2) and (3) from 400m<sup>2</sup> to 300m<sup>2</sup> for multi unit housing. Further, it is recommended that this amendment be incorporated into the next planning proposal to be considered by Council.

### Financial and Operational Plan implications

Not applicable.

### Community Plan implications

Not applicable.

ELIZABETH DENSLEY  
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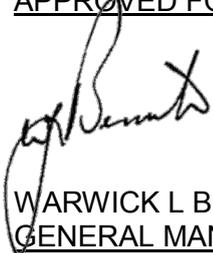


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8 April 2014

*Attachments:* Nil

APPROVED FOR SUBMISSION:



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