



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request Winston Hills - Dual Occupancy Prohibition

Gateway Determination Advice Report

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DEFINED TERMS

ABBREVIATION	DEFINITION
Commission	Independent Planning Commission of NSW
Council	City of Parramatta
Department	Department of Planning and Environment
Department's Gateway Determination Report	Department's report titled <i>Gateway determination: PP-2021-6629, Winston Hills prohibition of dual occupancies</i> , dated 10 December 2021
Department's Gateway Review Report	Department's report titled <i>Gateway Review Justification Report</i> , undated
Dual Occupancy Prohibition Map	<i>Parramatta Local Environmental Plan 2011 Dual Occupancy Prohibition Map</i>
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
Gateway Determination	Department's Gateway Determination for the Planning Proposal issued on 13 December 2021
Harmonisation Planning Proposal	The <i>Parramatta Harmonisation LEP Planning Proposal</i> (PP-2020-3106), currently before the Department for finalisation
LEP	Local Environmental Plan
LGA	Local Government Area
Material	The material reviewed by the Commission as set out in section 9 of this Advice Report
Minister	Minister for Planning and Public Spaces
Planning Proposal	<i>Planning Proposal Winston Hills - Dual Occupancy Prohibition</i> (PP-2021-6629)
PLEP 2011	<i>Parramatta Local Environmental Plan 2011</i>
PLEP 2020	Draft Parramatta Local Environmental Plan 2020
Proponent	City of Parramatta
Site	1 and 3 Simpson Street; 1, 2, 2A, 3-6 and 8 Lois Street; 5A, 51, 53, 55, 57, 59, 61, 64, 66, 68, 70, 72, 74, 76, 78, 80, and 82 Naomi Street South, Winston Hills.

1 INTRODUCTION

1. On 2 November 2021 the City of Parramatta (**Council**) lodged a Planning Proposal with the NSW Department of Planning and Environment (**Department**) seeking to amend the *Parramatta Local Environmental Plan 2011* (**PLEP 2011**) to apply the Dual Occupancy Prohibition Map to the subject Site.
2. The Site is in the City of Parramatta Local Government Area (**LGA**) and includes 27 properties on Simpson Street, Lois Street and Naomi Street South, Winston Hills (**Site**).
3. On 13 December 2021, under delegation from the then Minister for Planning and Public Spaces, the Department issued a gateway determination that the Planning Proposal should not proceed (**Gateway Determination**).
4. The Council wrote to the Department on 31 January 2022 requesting a review of the Gateway Determination.
5. On 23 March 2022, the NSW Independent Planning Commission (**Commission**) received a referral from the Department requesting advice pursuant to section 2.9(1) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to the Planning Proposal and Gateway Determination.
6. The Department's referral letter stated that the advice should include a clear and concise recommendation to the Minister's delegate confirming whether the Gateway Determination should be amended.
7. Professor Mary O'Kane AC, Chair of the Commission, nominated Professor Helen Lochhead to constitute the Commission Panel reviewing the Planning Proposal and providing advice concerning the review request.

2 SITE AND LOCALITY

8. The Site is made up of 27 residential lots, including: 1 and 3 Simpson Street; 1, 2, 2A, 3-6 and 8 Lois Street; and 5A, 51, 53, 55, 57, 59, 61, 64, 66, 68, 70, 72, 74, 76, 78, 80 and 82 Naomi Street South, Winston Hills. The Site layout is shown in **Figure 1**, below.



Figure 1: Site Layout (source: Department's Gateway Determination Report)

9. The Department's Gateway Review Justification Assessment Report (**Department's Gateway Review Report**) describes the Site and its surrounds, stating:

The [Site is] located to the west of Windsor Road, east of Model Farms Road, and directly south of the Winston Hillside Care Community, a seniors housing development. An approximately 90 metre long pedestrian path links the [Site] to Windsor Road. The [Site is] within approximately 500 metre walking distance of existing bus stops on Windsor Road (a major bus corridor) and Model Farms Road...

The surrounding area along Windsor Road is generally characterised by a mixture of low and medium density residential development, aged care housing and commercial uses, including an early learning centre, eateries, and a swimming centre. Urban bushland separates the [Site] from the lower density residential area of Winston Hills to the west

10. The Site is within Zone R2 – Low Density Residential. Dual occupancies are permitted with consent within the zone and the Site is not identified on the Dual Occupancy Prohibition Map of the PLEP 2011 (**Dual Occupancy Prohibition Map**) (see Section 7 for statutory context).
11. All lots within the Site meet the 600 m² minimum area for dual occupancies (clause 6.11(1) of PLEP 2011), except for four lots that have resulted from two recent dual occupancy developments.
12. A further two lots within the Site have development consent for new dual occupancies, and one lot is subject to a Complying Development Certificate (**CDC**) for a dual occupancy development (confirmed in Council's response to questions on notice, dated 14 April 2022). During its Site visit, the Commission observed that one of the lots with development consent for dual occupancies was undergoing construction.
13. Excluding lots for which: dual occupancies already exist (4); development consent has been granted (2); and a CDC has been obtained (1), 20 lots at the Site have the potential to accommodate dual occupancy development under existing planning controls.
14. A further four lots, located at the cul-de-sac bulb at the southern end of Naomi Street South, have street frontages that are less than 15 m wide and would not meet minimum frontage width requirements that are proposed to be introduced in the draft Parramatta LEP 2020 (**PLEP 2020**) (see Section 7.3).

3 BACKGROUND

15. In May 2016, the new City of Parramatta LGA was created from parts of the former council areas of Auburn, Holroyd, Hornsby, Parramatta and The Hills, which triggered the need for a consolidated Local Environment Plan (**LEP**) for the new LGA.
16. During 2017 and 2018 Council prepared a *Land Use Harmonisation Discussion Paper* presenting options for a new consolidated LEP, which included potential changes to dual occupancy permissibility. This included the expansion of dual occupancy prohibition areas within Winston Hills to "create consistent and logical boundaries".
17. Council invited submissions on the *Land Use Harmonisation Discussion Paper* between January 2019 and April 2019 and heard a variety of views from residents on whether dual occupancy prohibition areas should be expanded or contracted.
18. On 11 November 2019, Council endorsed the Harmonisation Planning Proposal for submission to the Department for gateway determination, and on 16 April 2020, the Department issued a Gateway Determination to proceed to public exhibition.

19. In support of the Harmonisation Planning Proposal, Council prepared a Dual Occupancies Constraints Analysis dated December 2019 (**Constraints Analysis**). The analysis involved mapping each constraint, layering the constraints and using a combined score to inform whether an area is suitable for dual occupancy development. The Constraints Analysis includes the following comments on Winston Hills:

“...Winston Hills is identified as a Special Character Area in Parramatta DCP and dual occupancies are prohibited in this area under Parramatta LEP as they are not considered compatible with the area’s character.... Outside of the Special Character Area, there are only isolated pockets of sites over 600sqm with significant constraints.”

20. Council exhibited the Harmonisation Planning Proposal including the supporting Constraints Analysis between 31 August 2020 and 12 October 2020. The Planning Proposal did not involve the expansion of dual occupancy prohibition in Winston Hills. In response, Council received two submissions and one petition from 11 properties in Simpson, Lois and Naomi Street seeking prohibition of dual occupancy development at the Site, with concerns raised regarding the potential worsening traffic and parking conditions.
21. On 29 June 2021, the Parramatta Local Planning Panel considered a report on submissions on the Harmonisation Planning Proposal and heard directly from residents of the Site. The Local Planning Panel acknowledged that the petition identified possible errors in the Constraints Analysis mapping and recommended further investigation to determine whether the Site should be identified on the Dual Occupancy Prohibition Map.
22. On 12 July 2021, Council resolved that a planning proposal should be prepared to prohibit dual occupancy at the Site by adding the properties to the Dual Occupancy Prohibition Map, and delegated responsibility to Council’s CEO to endorse the final form of the proposal, as follows:

Council prepare a separate Planning Proposal seeking to prohibit dual occupancy in Simpson Street, Lois Street and Naomi Street South, Winston Hills (by adding the properties in these streets to the areas on the Dual Occupancy Prohibition Map) and this separate Planning Proposal is pursued as a matter of urgency to minimise the amount of time when dual occupancy remains permitted in Simpson Street, Lois Street and Naomi Street South and that the CEO be delegated responsibility for endorsing the final form of the Planning Proposal documents.

4 THE PLANNING PROPOSAL

23. The Planning Proposal seeks to amend the PLEP 2011 to apply the Dual Occupancy Prohibition Map to the Site.
24. The reason for seeking to prohibit dual occupancy development at the Site is described in the Planning Proposal as follows:
- The main objective of this Planning Proposal is to prevent adverse development outcomes within the subject site by prohibiting dual occupancy development. The Planning Proposal also aims to address local community concerns regarding the impacts of increased development within the subject site.*
25. Council prepared a Site Specific Assessment in support of the Planning Proposal (**Site Specific Assessment**) which assessed the Site against the same constraints categories as were used in the Constraints Analysis. Council’s constraints mapping from the Site Specific Assessment is shown in **Figure 2** below.



Figure 2: Site Specific Assessment constraints mapping (source: Council's Site Specific Assessment)

26. The constraints scoring in the Site Specific Assessment is shown in **Table 1** below.

Table 1 – Constraints scoring from Site Specific Assessment (source: Council's Site Specific Assessment)

Constraint factors applicable	Scoring
Higher potential for traffic problems and parking congestion	2
Lack of pedestrian permeability	1
Site availability	-
Total scoring	3

27. The Site Specific Assessment found that the Site is highly constrained and should be included on the Dual Occupancy Prohibition Map, stating:

This site specific assessment has concluded the subject site should be acknowledged as being 'highly constrained' in its ability to accommodate dual occupancy development. As a result, inclusion of the subject site on the Dual Occupancy Prohibition Map would be consistent with the objectives of the Dual Occupancy Constraints Analysis and Harmonisation Planning Proposal, which seek to ensure dual occupancy development is supplied in the right locations. It is recommended the site be included on the Dual Occupancy Prohibition Map.

5 THE GATEWAY DETERMINATION

28. As set out in the Department's Gateway Determination dated 13 December 2021, the Department determined that the Planning Proposal should not proceed, for the following reasons:

1. *The planning proposal has not demonstrated strategic or site specific merit or consistency with the relevant priorities, aims or objectives of:*
 - a. *the Central City District Plan;*
 - b. *the Parramatta Local Strategic Planning Statement;*
 - c. *the Parramatta Strategic Plan;*
 - d. *the Parramatta Local Housing Strategy;*
 - e. *Section 9.1 Ministerial directions:*
 - *Direction 3.1 – Residential Zones,*
 - *Direction 3.4 – Integrating Land Use and Transport,*
 - *Direction 6.3 – Site Specific Provisions, and*
 - f. *SEPP (Exempt and Complying Development Codes) 2008.*
2. *The planning proposal does not provide sufficient evidence for the constraints identified and is inconsistent with analysis provided in support of the Parramatta Harmonisation Planning Proposal. Site specific constraints identified can be adequately addressed through other mechanisms, such as the development application process.*

6 THE GATEWAY DETERMINATION REVIEW REQUEST

29. The Council wrote to the Department on 31 January 2022, requesting a review of the Gateway Determination.

30. Council's Gateway Review Report, dated January 2022 (**Council's Gateway Review Report**) includes the Council's justification for seeking a review, responding to each of the findings in the Department's Gateway Determination Report.

31. Council's Gateway Review Report concludes:

...some of Council's strong evidence-based case for the prohibition [of] dual occupancy development in Winston Hills has not been given sufficient weight in the Department's assessment. The Department's decision that the Winston Hills PP should not proceed does not align with the strategic direction of Council's endorsed approach for Dual Occupancy development for the LGA nor is it aligned with aspects of Council's LSPS. Further, the decision not to proceed, is considered not to be in the best interests of the local community.

7 STATUTORY CONTEXT

7.1 Current Controls – Codes SEPP

32. The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)* provides a pathway for CDCs for dual occupancy developments.

33. Under Division 2, clause 1.18 of the Codes SEPP, dual occupancy development is only complying development if it is permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.

7.2 Current Controls – PLEP 2011

34. Under PLEP 2011, the land zoning for the Site is R2 – Low Density Residential. Dual occupancies are permitted with consent within the zone.
35. Clause 6.11 of PLEP 2011 specifies minimum site areas and other controls applying to dual occupancies, as follows:

6.11 Dual occupancies on land in Zones R2, R3 and R4:

(1) Development consent may only be granted to development for the purpose of a dual occupancy on a lot in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential if the lot has an area of not less than 600 square metres.

(2) Without limiting subclause (1), development consent may only be granted to development for the purpose of a dual occupancy (detached) on land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential if the land—

(a) contains a heritage item, or

(b) contains 2 street frontages.

(3) Despite any other provision of this Plan, development consent must not be granted to development for the purpose of a dual occupancy on land shown coloured purple and edged heavy black on the Dual Occupancy Prohibition Map.

36. Clause 6.11(3) of PLEP 2011 prohibits dual occupancy on land identified on the Dual Occupancy Prohibition Map.

7.3 Proposed Controls – PLEP 2020

37. PLEP 2020 is the subject of the Harmonisation Planning Proposal which is currently before the Department for finalisation.
38. PLEP 2020 maintains the minimum lot size requirements for dual occupancies from PLEP 2011 and specifies a minimum frontage to a public road of 15 metres as a prerequisite for dual occupancy development within Zone R2 Low Density Residential.
39. The PLEP 2020 Draft Dual Occupancy Prohibition Map, dated September 2021, includes new and expanded dual occupancy prohibition areas in the LGA, however, the dual occupancy prohibition area within Winston Hills is unchanged.
40. The Planning Proposal for the subject Site in Winston Hills currently under Gateway Review by the Commission seeks to expand the prohibition area to include this Site.

8 THE COMMISSION'S MEETINGS

41. As part of its advice, the Commission met with the stakeholders listed in **Table 2**, below. All meeting and site inspection notes were made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available
Department	11 April 2022	14 April 2022
Council	11 April 2022	14 April 2022
Site Inspection	5 April 2022	12 April 2022

42. In preparing its advice, the Commission did not seek public submissions, however correspondence was received from a resident of the Site that was made publicly available on the Commission's webpage for this matter. The correspondence reiterated concerns that had been raised through the Council's consultation process and also stated that community concerns were not accurately represented in the Planning Proposal.

9 MATERIAL REVIEWED

43. In this review, the Commission has carefully considered the following documents (**Material**):

Council:

- Dual Occupancy Constraints Analysis, dated 2019
- Report to the Local Planning Panel and Minutes, dated 29 June 2021
- Report to Council and Resolution, dated 12 July 2021
- Gateway Review Report, dated January 2022
- Site Specific Assessment, undated
- Planning Proposal, dated October 2021
- Gateway Determination Review Application Form, dated 31 January 2022
- Transcript and presentation from the Commission's meeting with Council held on 11 April 2022
- Questions on notice response, dated 14 April 2022

Department:

- Approval of Council's Local Housing Strategy, dated 29 July 2021
- Gateway Determination Report, dated 10 December 2021
- Gateway Determination, dated 13 December 2021
- Gateway Review Justification Assessment report, undated
- Transcript and presentation from the Commission's meeting with the Department held on 11 April 2022
- Questions on notice response, dated 14 April 2022

Other:

- Correspondence from a resident, dated 11 April 2022

10 KEY ISSUES

10.1 Traffic and Parking

44. Council's Site Specific Assessment identifies '*Higher potential for traffic problems and parking congestion*' as the main constraint to dual occupancy development at the Site. Traffic and parking was also a key concern raised by residents during the Council's consultation on the Harmonisation Planning Proposal, including the potential for increased street parking to restrict emergency and service vehicle access and egress.
45. Council's response to the Commission, dated 14 April 2022, regarding questions on notice, confirmed that Lois Street and Naomi Street both have widths of 7.3 metres from kerb to kerb. Council's Constraints Analysis categorised streets as narrow if they have widths under 7.5 metres.

46. Council's Site Specific Assessment summarises traffic constraints as follows:

The concentration of narrow streets and dead ends in the subject site indicates a street pattern that poorly facilitates vehicle access and movement. Lois Street is of particular concern, as in addition to being a narrow street, it remains the only through access in and out of the subject site. Over time, access into the site via Lois Street may become increasingly difficult, particularly as demand for on-street parking increases and local traffic becomes more frequent with additional dwellings in the area. The concentration of dead ends to the north and south of the site, isolates it from opportunities to park elsewhere. Furthermore, the dead ends to the north of the site at Simpson Street and Naomi Street South are not designed as "Y" or "U" shaped turning heads but are rectangular stub roads. The design of these stubs will likely exacerbate difficulties in vehicle manoeuvrability, particularly for heavy vehicles such as waste vehicles, fire engines and the like.

47. The demand for on-street parking may increase as a result of higher density, however, this may be partially offset by the availability of off-street parking in new garages and on new driveways. The Planning Proposal does not clearly demonstrate that dual occupancy development at the Site would result in a significant increase in demand for on-street parking.
48. On-street parking spaces are likely to be removed with an increase in dual occupancy development as vehicle crossovers are added or widened, thereby limiting kerbside parking capacity. Whilst reduced on-street parking availability may have flow on effects to nearby streets, it may also mitigate parking-related congestion and allow for freer movement of large emergency and service vehicles, which was a key concern raised by both residents and the Council.
49. The Commission acknowledges that, with or without on-street parking, the dead-ends and width of the streets could pose some limitations on large vehicle manoeuvrability. However, the Commission considers that these existing constraints are unlikely to be exacerbated by an increase in dual occupancy development particularly with less on-street parking.

10.2 Pedestrian Permeability

50. The Planning Proposal identified 'Lack of pedestrian permeability' as a key constraint at the Site.
51. The methodology for assessing permeability set out in the Constraints Analysis stated:
- Areas with a street pattern characterised by large blocks and concentrations of long curvilinear streets with dead-ends and fewer direct pedestrian links encourage car use over walking as they often require residents to walk relatively long distances along indirect routes to get to anywhere. This acts as a barrier to accessing local shops, services, transport and neighbours. These are not ideal locations for higher density development.*
52. During its site inspection, the Commission observed the pedestrian path connecting Naomi Street South to Windsor Road and nearby bus stops. The Commission considers that the Site, with its relatively short streets, and direct pedestrian access to Windsor Road, is not subject to poor pedestrian permeability.

10.3 Consistency with Key Policies

53. The Department's Gateway Determination found that the Planning Proposal is inconsistent with the relevant priorities, aims or objectives of:
- the Central City District Plan;

- the Parramatta Local Strategic Planning Statement;
- the Parramatta Strategic Plan;
- the Parramatta Local Housing Strategy;
- Section 9.1 Ministerial directions:
 - Direction 3.1 – Residential Zones,
 - Direction 3.4 – Integrating Land Use and Transport,
 - Direction 6.3 – Site Specific Provisions, and
- SEPP (Exempt and Complying Development Codes) 2008.

The Commission's consideration of these policies and plans is set out in the following sections.

Central City District Plan, Planning Priority C1: Planning for a city supported by infrastructure

54. Planning Priority C1 of the Central City District Plan promotes the alignment of planned growth with infrastructure, and infrastructure with forecast growth, as well as the optimisation of infrastructure use.
55. The Department's Gateway Report states that infrastructure availability at the Site is sufficient to accommodate the potential uplift in housing from dual occupancy development and that any additional demands can be addressed at the development application stage.
56. Council's Gateway Review Report raises concerns that the local road network demonstrates unique limitations that would pose challenges to land use and transport integration if increased densities were to occur.
57. It is acknowledged that the CDC pathway would not necessarily present the same opportunity for Council to engage with applicants regarding infrastructure sufficiency as the development application process does. Therefore, prohibiting dual occupancy development on the basis of insufficient infrastructure may be appropriate. However, as discussed in Section 10.2 above, the Commission has found that the Planning Proposal does not demonstrate that the local road infrastructure is so constrained as to justify prohibition of dual occupancy development. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with Planning Priority C1.

Central City District Plan, Planning Priority C5: Planning for a city supported by infrastructure

58. Planning Priority C5 of the Central City District Plan promotes greater housing supply in the right places and more diverse and affordable housing.
59. The Department's Gateway Report states that the Planning Proposal will "*reduce the opportunity for greater housing supply and diversity and affordability of the subject sites*".
60. Council's Gateway Review Report states that the Planning Proposal is consistent with Planning Priority C5, reiterating concerns that narrow streets and the road layout will impede vehicle manoeuvrability and are not suited to additional traffic.
61. Council's Gateway Review Report also states that the Site is "*constrained by 'site availability' with limited sites being able to comply with the minimum lot size requirements*". However, Council confirmed in its meeting with the Commission that all lots at the Site meet the minimum lot size of 600 m², except the four lots that have arisen from existing dual occupancies.

62. As discussed in Section 10.2 above, it has not been demonstrated that the local road network is a major constraint to increased density at the Site. The Commission agrees with the Department's finding that the Planning Proposal would reduce housing supply, diversity and affordability at the Site, and is accordingly inconsistent with Planning Priority C5 of the Central City District Plan.

Central City District Plan, Planning Priority C16 – Increasing urban tree canopy cover and delivering Green grid connections

63. Planning Priority C16 of the Central City District Plan promotes the retention and expansion of urban tree canopy cover.
64. The Department's Gateway Report states that the Planning Proposal is inconsistent with Planning Priority C16 as tree canopy cover and additional driveway requirements can be balanced through the development consent process and it is therefore not necessary to prohibit dual occupancy development to safeguard the tree canopy.
65. Council's Gateway Review Report states that prohibiting dual occupancy development would give the Council confidence that the existing mature tree canopy will be retained and noted that secondary dwelling development would have a lesser impact as a result of smaller development footprints.
66. In its meeting with the Commission, Council also raised concerns that the availability of the CDC pathway meant that the Council may be deprived of an opportunity to address the potential impacts of dual occupancy development as there will not be the same opportunity for engagement as occurs with applicants for development applications.
67. The Commission acknowledges that the CDC pathway would not necessarily present the same opportunity for Council to engage with applicants regarding any impacts on tree canopy cover as the development consent process does. Therefore, prohibiting dual occupancy development because of high levels of tree canopy cover may be appropriate, rather than relying on the default restrictions on tree felling in Part 3A, Division 2 of the Codes SEPP. However, tree cover impacts were not found to be a constraint to dual occupancy development at the Site in the Constraints Analysis or the Site Specific Assessment.
68. The Commission also notes that the wide verges provide opportunity for Council to introduce street tree planting to increase the tree canopy.

Local Strategic Planning Statement

69. The Department's Gateway Determination found that the Planning Proposal is inconsistent with the Parramatta Local Strategic Planning Statement, which sets out a 20-year land-use planning vision for the Parramatta LGA.
70. The Department's Gateway Report states that the Planning Proposal includes insufficient evidence that expanding the prohibition of dual occupancies would lead to rationalisation of land uses. The Department also notes that the Planning Proposal is inconsistent with its recommendations regarding the Parramatta Local Housing Strategy 2021, requiring Council to demonstrate initiatives to achieve housing diversity.
71. Council's Gateway Review Report states that *"despite the proposal to prohibit dual occupancy development within the subject site, there remains a strong emphasis by Council to ensure a supply of diverse housing forms, delivered through efficient, place based outcomes in Growth precincts."*

72. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with the Local Strategic Planning Statement, noting that the proposal does not contribute to housing diversity and the Constraints Analysis does not identify a strategic need for expansion of dual occupancy prohibition in Winston Hills.

Parramatta 2038 Community Strategic Plan

73. The Department's Gateway Determination Report found that the Planning Proposal is inconsistent with the Parramatta 2038 Community Strategic Plan as it does not *"effectively or efficiently manage the growth of the City to ensure increased housing density and diversity as part of an improved quality of life for local communities"*.
74. Council's Gateway Review Report notes that the objective of the Planning Proposal is *"to prevent adverse development outcomes within the subject site by prohibiting dual occupancy development, which will support effective management of density in Winston Hills"*.
75. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with the Parramatta 2038 Community Strategic Plan, noting that the Constraints Analysis does not identify a strategic need for expansion of dual occupancy prohibition in the Winston Hills area and the Site Specific Assessment does not include sufficient evidence to demonstrate that the Site is highly constrained.

Parramatta Local Housing Strategy 2021

76. The Department's Gateway Determination Report found that the Planning Proposal is inconsistent with the Parramatta Local Housing Strategy 2021 as inadequate justification has been provided to support the prohibition of dual occupancies at the Site and the Department's assessment of Parramatta's Local Housing Strategy required Council to demonstrate initiatives to achieve housing diversity.
77. The Council's Gateway Review Report notes that *"the impact of prohibiting dual occupancies within the subject site is minor and that housing diversity is to be explored in future Growth Precincts where more effective place-based outcomes can be achieved"*.
78. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with the Parramatta 2038 Community Strategic Plan, noting that the Site Specific Assessment does not include sufficient evidence to demonstrate that the Site is highly constrained.

Section 9.1 Ministerial Directions, Direction 6.1 – Residential Zones

79. The Department's Gateway Determination found that the Planning Proposal was inconsistent with the then Section 9.1 Ministerial Direction 3.1 – Residential Zones (now Direction 6.1 – Residential Zones), which states that planning proposals must not contain provisions that will reduce the permissible residential density of land.
80. The Council's Gateway Review Report states that the number of dwellings that the prohibition would prevent is minor and that the Council is exceeding its targets for housing delivery in the LGA.
81. The capacity for dual occupancy development at the Site represents a potential increase in residential density and housing choice. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with Direction 6.1 – Residential Zones as it would reduce the permissible residential density of the Site.

Section 9.1 Ministerial Directions, Direction 5.1 – Integrating Land Use and Transport

82. The Department's Gateway Determination found that the Planning Proposal was inconsistent with the then Section 9.1 Ministerial Direction 3.4 – Integrating Land Use and Transport (now Direction 5.1 – Integrating Land Use and Transport),
83. The Department's Gateway Determination Report stated that *"the proposal seeks to restrict the development of additional housing in proximity to existing public transport links located within 800 metres on Windsor Road"*.
84. The Council's Gateway Review Report states that the Site *"is not constrained by access to public transport instead, the street network is characterised by a concentration of dead-end streets that isolate the subject land and therefore, do not support dual occupancy development"*.
85. The Commission notes that Windsor Road is readily accessible from the Site by road, despite not being directly connected. Based on the Commission's measurements, the distance from the southern terminus of Naomi Street South to the intersection of Model Farms Road with Windsor Road is less than 600 metres by road. Additionally, the nearest bus stops are approximately 600 to 800 metres from the farthest point of the Site, including the additional distance to reach the closest crossing of Windsor Road. The Site is therefore not considered to be isolated from the transport network.
86. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with Direction 5.1 – Integrating Land Use and Transport as the proposal would restrict the development of additional housing in proximity to existing transport links.

Section 9.1 Ministerial Directions, Direction 1.4 – Site Specific Provisions

87. The Department's Gateway Determination found that the Planning Proposal was inconsistent with the then Section 9.1 Ministerial Direction 6.3 – Site Specific Provisions (now Direction 1.4 – Site Specific Provisions), which discourages unnecessarily restrictive site specific planning controls.
88. The Department's Gateway Determination Report stated that the Planning Proposal *"seeks to introduce a site specific prohibition provision for the subject site which is considered unnecessarily restrictive"* and *"there is insufficient justification to support the need for this prohibition"*.
89. The Council's Gateway Review Report does not respond to the Department's findings regarding Direction 1.4 Site Specific Provisions. However, the Planning Proposal states that it does not introduce any site specific provisions and is therefore consistent with the direction.
90. The Commission notes that Direction 1.4 applies to planning proposals that will allow a particular development to be carried out. The Commission considers that Direction 1.4 does not apply to the Planning Proposal as it relates to 27 individual lots, not a particular development.

SEPP (Exempt and Complying Development Codes) 2008

91. The Department's Gateway Determination found that the Planning Proposal is inconsistent with the Codes SEPP as it is *"inconsistent with the aims of this SEPP to provide [a] streamlined assessment process for the development of dual occupancies"*.

92. Council's Gateway Review Report states that *"The provisions of this SEPP relating to the Low-Rise Housing Diversity Code will cease to apply to the subject land if dual occupancy development is prohibited on the land as per the intent of this Planning Proposal"*.
93. The Commission acknowledges that the Codes SEPP and the CDC pathway could reduce the opportunities for Council and residents to engage with applicants to address potential impacts of proposed dual occupancy developments. However, the Codes SEPP does include appropriate controls to protect amenity and to prevent or mitigate the potential impacts of development.
94. The Dual Occupancy Prohibition Map is an established mechanism for prohibiting dual occupancy development in the LGA. Although the Commission considers that expansion of the Dual Occupancy Prohibition Map within the LGA is not inconsistent with the intent of the Codes SEPP, the Planning Proposal seeks to apply the map to an isolated parcel of land without sufficient strategic justification or evidence that dual occupancy development would be inappropriate in the area.


10.4 Strategic and Site Specific Merit

95. The Department's Gateway Review Report summarised the findings of the Gateway Report, stating that the Planning Proposal:
- *Did not demonstrate strategic or site specific merit or consistency with the relevant priorities, aims or objectives of the relevant State and local planning strategies, including the Central City District Plan and Section 9.1 Direction 3.1 Residential Zones.*
 - *Was inconsistent with the key aims of these strategies and policies to encourage additional housing supply and diversity in suitable residential areas and efficient use of infrastructure.*
 - *Did not provide adequate justification and evidence for why a minor potential increase in housing (through dual occupancy development) in an existing residential area that is well serviced with infrastructure is inappropriate and should be prohibited.*
 - *Did not provide sufficient evidence for the constraints identified and was inconsistent with analysis provided in support of the Harmonisation proposal. The Department also considered that the site specific constraints identified 4 could be adequately addressed through other mechanisms, such as the development application process*
96. Council's *Land Use Harmonisation Discussion Paper* included the following statement on the strategic intent behind potentially expanding dual occupancy prohibition in Winston Hills:
- This will avoid creating isolated pockets of land where different planning controls apply, taking into account natural barriers, such as main roads and large open spaces, and areas of contiguous local character*
97. The correspondence received from a resident of the Site, dated 31 March 2022, noted that the option of expanding dual occupancy prohibition to eastern Winston Hills would have *"resolved the obvious anomaly between equivalent properties on different sides of Windsor Road, previously under different Councils but now in the same North Rocks Ward"*.

98. Council's Constraints Analysis identified only isolated pockets of highly constrained land in Winston Hills and determined that expansion of dual occupancy prohibition in this area was not strategically justified.
99. Noting that Windsor Road, to the east of the Site, is a main road and would be considered a natural barrier as described in the Constraints Analysis and that Northmead Gully forms another natural barrier to the west of the Site, the Commission considers that dual occupancy permissibility need not be consistent with these areas. However, given the small scale of the Site, consistency with the immediately adjoining land where Dual Occupancy Development is permissible does seem appropriate.
100. The Planning Proposal sought to address potential errors in the Constraints Analysis mapping, as acknowledged by the Local Planning Panel. The Commission considers that the Site Specific Analysis may correct some assumptions in the Constraints Analysis, but lacks comparative data and analysis that would justify the creation of a small, isolated pocket of land where different planning controls apply to the immediately surrounding land.
101. The Commission agrees with the Department's finding that the Planning Proposal does not include sufficient evidence to demonstrate significant constraints to dual occupancy development within the Site.
102. The Commission is of the view that the Planning Proposal lacks adequate strategic or justification to apply the Dual Occupancy Prohibition Map to the Site.

11 THE COMMISSION'S ADVICE

103. The Commission has undertaken a review of the Gateway Determination as requested by the Department in its letter received on 23 March 2022. In doing so, the Commission has considered the Material listed in Section 9.
104. The Commission has considered the background to the Planning Proposal, including the community's response to the Harmonisation Planning Proposal, and concerns regarding the Constraints Analysis and the accuracy of the assessment of road layout constraints at the Site.
105. Notwithstanding any localised inaccuracies within the Constraints Analysis, the Commission considers that the Planning Proposal does not include sufficient evidence to demonstrate that the Site is highly constrained or to justify diverging from Council's strategic decision to maintain dual occupancy in this part of Winston Hills.
106. The Commission's advice to the Minister's delegate is that the Gateway determination issued on 13 December 2021 should not be amended and that the Planning Proposal should not be given a Gateway to proceed.



Professor Helen Lochhead (Chair)
Member of the Commission