

Round the Grounds: Subdivision of dual occupancies

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Agenda

1. Definitions
2. Case study: Randwick LEP 2012
3. Codes SEPP
4. Housing SEPP
5. Case study: Willoughby LEP 2012
6. Policy considerations
7. Clause 4.6 variation requests
8. Conversion of existing buildings

Definitions (Standard LEP)

- **Dual occupancy** means a dual occupancy (attached) or a dual occupancy (detached).
- **Dual occupancy (attached)** means 2 dwellings on one lot of land that are attached to each other but does not include a secondary dwelling.
- **Dual occupancy (detached)** means 2 detached dwellings on one lot of land but does not include a secondary dwelling.
- **Semi-detached dwelling** means a dwelling that is on its own lot of land and is attached to only one other dwelling.
- **Secondary dwelling** means a self-contained dwelling that—
 - a) is established in conjunction with another dwelling (the principal dwelling), and
 - b) is on the same lot of land as the principal dwelling, and
 - c) is located within, or is attached to, or is separate from, the principal dwelling.



Definitions

- **Torrens title:** you own both the home and the land it sits on
- **Strata title:** you own the individual unit or 'lot' but you share ownership of the building that contains it and the land it sits on
- **Community title:** a combination of torrens and strata

Case study: Randwick LEP 2012

4.1 Minimum subdivision lot size

(1) The objectives of this clause are as follows—

(a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,

(b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,

(c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose.

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(4) This clause does not apply in relation to the subdivision of any land—

(a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or

(b) by any kind of subdivision under the Community Land Development Act 2021.

Case study: Randwick LEP 2012

4.1A Minimum subdivision lot size for strata plan schemes in Zone R2

(1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.

(2) This clause applies to land in Zone R2 Low Density Residential.

(3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Note—

Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.

(4) Despite subclause (3), if the subdivision is of a lot on which there is a dual occupancy (attached)—

- (a) the size of each lot resulting from the subdivision must not be less than 275m², and
- (b) 1 dwelling must be situated on each lot resulting from the subdivision.

Interpretation of cl 4.1A

DM & Longbow v Willoughby City Council (2017) 228 LGERA 342;
[2017] NSWLEC 173

MMP 888 Pty Ltd v Randwick City Council

Kelly v Randwick City Council [2018] NSWLEC 1322

Kingsford Property Developments v Randwick City Council [2019]
NSWLEC 1486

Albert Square NSW Pty Ltd v Randwick City Council [2021]
NSWLEC 1401

Barhom v Randwick City Council [2024] NSWLEC 1357

JS Architects Pty Ltd v Randwick City Council [2024] NSWLEC 1756

Strata Schemes Development Act 2015

Section 4 – definition of "lot"

"lot, in relation to a strata scheme, means one or more cubic spaces shown as a lot on a floor plan relating to the scheme, but does not include any common infrastructure, unless the common infrastructure is described on the plan, in the way prescribed by the regulations, as a part of the lot."

Section 9(1)

Subdivision of land by strata plan

Section 9(4)

Definition of current plan lot

Section 6 Boundaries of lot

(1) For the purposes of this Act, the boundaries of a lot shown on a floor plan are—

(a) except as provided by paragraph (b)—

(i) for a vertical boundary in which the base of a wall corresponds substantially with a base line—the inner surface of the wall, and

(ii) for a horizontal boundary in which a floor or ceiling joins a vertical boundary of the lot—the upper surface of the floor and the under surface of the ceiling, or

(b) the boundaries described on the floor plan relating to the lot, in the way prescribed by the regulations, by reference to a wall, floor or ceiling in a building to which the plan relates or to common infrastructure within the building.

(2) In this section—

base line—see paragraph (a) of the definition of floor plan in section 4 (1).

Section 4 Definitions

Floor area

Floor plan

Case study: Randwick LEP 2012

4.1AA Minimum subdivision lot size for community title schemes

(1) The objectives of this clause are as follows—

(a) to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.

(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 2021 of land in any of the following zones—

(a) Zone R2 Low Density Residential, but does not apply to a subdivision by the registration of a strata plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the Community Land Development Act 2021) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

(3A) Despite subclause (3), if the subdivision is of a lot on which there is a dual occupancy (attached)—

(a) the size of each lot resulting from the subdivision must not be less than 275m², and

(b) 1 dwelling must be situated on each lot resulting from the subdivision.

This clause applies despite clause 4.1.



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Case study: Randwick LEP 2012

4.1C Minimum subdivision lot size for dual occupancies

(1A) Despite any other provision of this Plan, development consent must not be granted to the subdivision of a lot on which there is a dual occupancy except in accordance with this clause.

(1B) Development consent may be granted to the subdivision of a lot on which there is a dual occupancy if the size of any lot resulting from the subdivision is not to be less than the minimum size shown on the Lot Size Map in relation to that lot.

(1) Development consent may also be granted to the subdivision of a lot on which there is a dual occupancy if—

- (a) the lot is not a lot in the area identified as “Area 1” on the Dual Occupancy Restriction Map, and
- (b) the area of each lot resulting from the subdivision is at least 350 square metres, and
- (c) each of the resulting lots will have one of the dwellings on it, and
- (d) the floor space ratio of each dwelling does not exceed—
 - (i) 0.4:1, or
 - (ii) any floor space ratio specified under clause 4.4A for a building on the lot, whichever is the lesser.

Case study: Randwick LEP 2012

Clause 4.2 Rural subdivision

(1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow landowners a greater chance to achieve the objectives for development in the relevant zone.

(2) This clause applies to the following rural zones—

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (baa) Zone RU3 Forestry,
- (c) Zone RU4 Primary Production Small Lots,
- (d) Zone RU6 Transition.

Note—

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape or Zone RU6 Transition.

(3) Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.

(4) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.

(5) A dwelling cannot be erected on such a lot.

Note—

A dwelling includes a rural worker's dwelling (see the definition of that term in the Dictionary).

3B.1 Codes SEPP

3B.1 Development that can be complying development under this code

(1) The following types of development are complying development under this code—

(a) the erection or alteration of, or addition to—

(i) any 1 or 2 storey dual occupancy, manor house or multi dwelling housing (terraces), or

(ii) any attached development or detached development related to any building referred to in subparagraph

(b) the conversion of an existing dwelling to a dual occupancy.

(2) For the purposes of calculating the number of storeys in a building for the purposes of this code, only those parts of a basement that comprise habitable rooms are to be counted as a storey.

(3) Lot requirements Complying development specified for this code may only be carried out on a lot that meets the following requirements—

(a) the lot must be in Zone RU5, Zone R1, Zone R2 or Zone R3,

(b) the lot must have lawful access to a public road at the completion of the development.

(4) Erection of attached development and detached development Attached development or detached development may be erected on a lot—

(a) if a dual occupancy, manor house or multi dwelling housing (terraces) exists on the lot, or

(b) if there is a current development consent or complying development certificate for the construction of a dual occupancy, manor house or multi dwelling housing (terraces) on the lot.

Note 1.

Complying development certificate has the same meaning as it has in the Act.

Note 2.

Clauses 1.17A, 1.18 and 1.19(1) set out additional requirements for complying development.



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3B.8 Codes SEPP

3B.8 Lot requirements

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

(a) 400m²,

(b) the minimum lot area specified for dual occupancies in the environmental planning instrument, other than State Environmental Planning Policy (Housing) 2021, Chapter 6, Part 2, Division 2, that applies to the land concerned.

(1A) Despite subclause (1), the area of the parent lot in development carried out by or on behalf of the Aboriginal Housing Office, the Land and Housing Corporation or a registered community housing provider, within the meaning of State Environmental Planning Policy (Housing) 2021, must not be less than 400m².

(2) The width of the parent lot must not be less than the following when measured at the building line—

(a) if the car parking space for the parent lot is accessed only from a secondary road, parallel road or lane—12m,

(b) otherwise—15m.



Part 6 Subdivisions Code of Codes SEPP

6.1 Specified development

(1) The strata subdivision of a building for which development consent or a complying development certificate was granted or issued is, for 5 years from the date the consent or certificate was granted or issued, development specified for this code.

(2) The strata subdivision of a dual occupancy, manor house or multi dwelling housing (terraces), for which a complying development certificate has been issued under the Low Rise Housing Diversity Code, is development specified for this code.

(3) If a single complying development certificate application proposes both the strata subdivision of land and the erection of a dual occupancy, manor house or multi dwelling housing (terraces) on the land, the subdivision of that land is development specified for this code.

(4) This clause does not include the strata subdivision of the following—

- (a) a secondary dwelling,
- (b) a boarding house,
- (c) a group home,
- (d) a dual occupancy (except as provided by subclause (2) or (3)).

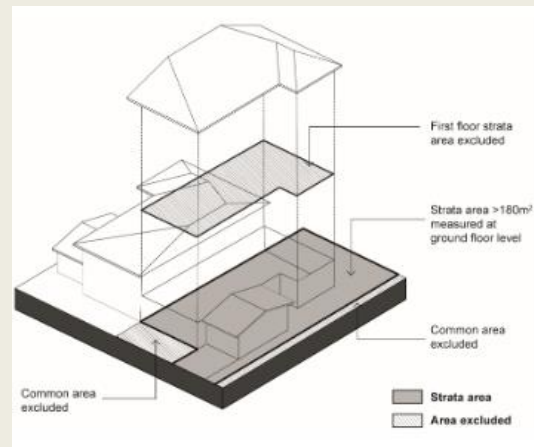


Part 6 Subdivisions Code of Codes SEPP

6.2 Development standards

The standards specified for that development are as follows—

- (a) that the subdivision must not contravene any condition of any development consent or complying development certificate applying to the development,
- (b) in the case of a dual occupancy or multi dwelling housing (terraces)—
 - (i) each dwelling must have lawful frontage to a public road (other than a lane), and
 - (ii) no dwelling must be located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot), and
 - (iii) each resulting lot must have a minimum width (measured at the building line) of 6m,
- (c) in the case of a dual occupancy where no part of a dwelling is located above any part of another dwelling or multi dwelling housing (terraces), the strata area (being the area of the ground floor of all dwellings) is not less than 180m².



1.19(3B) of Codes SEPP

1.19 Land on which complying development may not be carried out

(3B) Development specified in the Low Rise Housing Diversity Code is not complying development under that code if the development is—

- (a) for the purposes of dual occupancies, and
- (b) carried out on land in Zone R2 Low Density Residential, and
- (c) permitted with development consent under State Environmental Planning Policy (Housing) 2021, Chapter 6, Part 2, Division 1 but not under another environmental planning instrument.

- dual occupancies carried out in Zone R2 that are now permitted with consent under the new Part 12 of the Housing SEPP are *not* complying developing under the Low Rise Housing Diversity Code. However, this does not apply to any dual occupancies which were already permitted in Zone R2 under the relevant local environmental plan.



Chapter 6 Part 2 Housing SEPP

- Development for the purposes of dual occupancies or semi-detached dwellings is permitted with development consent on land to which this chapter applies in Zone R2 Low Density Residential.
- Subject to landscaping requirements
- A number of non-discretionary development standards apply



Chapter 6 Part 2 Housing SEPP

169 Non-discretionary development standards—subdivision for dual occupancies

(1) This section applies to development involving subdivision for the **purposes of dual occupancies on land in a low and mid rise housing area** in the following zones—

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential.

(2) This section applies only if—

- (a) development consent was granted for the dual occupancy on or after 28 February 2025, or**
- (b) the development results from a development application made on or after 28 February 2025 for the subdivision of the land and the erection of a dual occupancy on the land.**

(3) The following non-discretionary development standards apply—

- (a) each resulting lot must contain no more than 1 dwelling,
- (b) each resulting lot must be at least 6m wide at the front building line,
- (c) each resulting lot must have lawful access and frontage to a public road,
- (d) each resulting lot must have an area of at least 225m²,
- (e) each resulting lot must not be a battle-axe lot.

(4) This section does not apply to strata subdivision.

Willoughby LEP 2012 – Case Study

- 4.1 Minimum subdivision lot size
 - Essentially follows the SI clause for minimum lot sizes with an extra clause about battleaxes.
 - Previous iteration of clause included '*(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*'
- 4.1C Minimum subdivision lot size for dual occupancies
 - *(1A) Despite any other provision of this Plan, development consent must not be granted to the subdivision of a lot on which there is a dual occupancy except in accordance with this clause.*
 - *(1B) Development consent may be granted to the subdivision of a lot on which there is a dual occupancy if the size of any lot resulting from the subdivision is not to be less than the minimum size shown on the Lot Size Map in relation to that lot.*
 - *(1) Development consent may also be granted to the subdivision of a lot on which there is a dual occupancy if—*
 - *(a) the lot is not a lot in the area identified as “Area 1” on the Dual Occupancy Restriction Map, and*
 - *(b) the area of each lot resulting from the subdivision is at least 350 square metres, and*
 - *(c) each of the resulting lots will have one of the dwellings on it, and*
 - *(d) the floor space ratio of each dwelling does not exceed—*
 - *(i) 0.4:1, or*
 - *(ii) any floor space ratio specified under clause 4.4A for a building on the lot,*
 - *whichever is the lesser.*

Willoughby LEP 2012 – Case Study

DM & Longbow Pty Ltd v Willoughby City Council [2017] NSWLEC 1358

- Approved the development of a dual occupancy but dismissed the appeal directed to the subdivision of the site due to lots being undersized.
- Cmr Dixon held that cl 4.1 (3) which excludes strata subdivisions did not apply to the proposed dual oc subdivision.
- However cl4.6(6) of the WLEP prohibited the grant of consent to a subdivision that would result in two or more lots of less than the minimum subdivision lot size.

Junn v Willoughby City Council [2020] NSWLEC 1459

- Court interpreted cl 4.1C operates despite any other provision of the WLEP, meaning that it addresses a specific subdivision situation – being subdivision of dual occupancy
- Court interpreted Cl 4.1 (4) as a carve out of the application of cl 4.1 only
- Cl 4.1 places controls on subdivisions generally, regardless of the specific type of development
- Cl 4.1C(1B) captures both torrens and strata subdivisions, not just torrens (as argued by Applicant)

***Dallad Pty Ltd v Woollahra Municipal Council* [2023]**

NSWLEC 1021

- The site was zoned R3 Medium Density Residential under the Woollahra Local Environmental Plan 2014 (WLEP 2014) and semi-detached dwellings were a nominate permissible use in the R3 zone.
- Issue: Whether the Torrens title subdivision was in breach of cl 6.5 of WLEP 2014.
- Clause 6.5 of WLEP was in the following terms:
 - 6.5 Particular dual occupancy subdivisions must not be approved*
 - 1. Development consent must not be granted for a subdivision that would create separate titles for each of the 2 dwellings resulting from a dual occupancy development.*
 - 2. This clause does not apply in relation to a subdivision under—*
 - a. the Community Land Development Act 1989 (NSW), or*
 - b. the Strata Schemes (Freehold Development) Act 1973 (NSW).*
- Court held that development consent could not be granted for a subdivision that would create separate titles for each of the two dwellings resulting from a dual occupancy, because cl 6.5 of WLEP 2014 is a prohibition, and not a development standard
- Court allowed a strata subdivision as it interpreted cl 6.5 as only precluding Torrens subdivision

Two-lot Torrens v Strata

Torrens	Strata
You own both the home and the land it sits on	You own the individual 'lot' but share ownership of the land it sits on including communal spaces e.g. driveways, pools, gyms, barbecue areas
Higher development cost – setting up separate utilities	Lower development cost – some shared utilities
Higher value on market	Lower value on market
Autonomy – no approval required except from Council	Shared responsibility and ownership – may require approval from co-owners for common areas
	Administrative requirements – but some exceptions for two-lot strata schemes

Two-lot Torrens v Strata

Torrens

Additional FSR 'entitlement'

Clause 4.4 of RLEP – Floor Space Ratio

(2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed:

- (a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or
- (b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or
- (c) if the lot is more than 600 square metres—0.6:1.

(2B) Despite subclause (2), there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.

Fragmentation?

Strata

Avoiding sliding scale

Fragmentation?

Strata Schemes Management Act 2015

Dual Occupancies

- No formal election is required for a strata committee, each lot automatically has one representative.
- Quorum achieved when both owners are present
- Can be self-managed
- Must hold an annual general meeting
 - Annual strata report to be completed within 3 months of AGM
- Can be exempt from annual strata reporting and building insurance if:
 - Buildings in each lot are physically detached
 - There are no other buildings (or parts of) outside the lots
 - The owners pass a unanimous resolution to not have building insurance and/or a capital works fund and 10-year capital works plan (s74(5) and s 80)
- Standard management and administrative duties under the SSMA apply, including compliance, reporting, maintenance, and record-keeping with some exceptions
- Must maintain an administrative fund – insurance & general maintenance
- Exempt from auditing of accounts and financial statements (s 95)

Case study: Randwick LEP 2012

Clause 4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.



Clause 4.6 Variation Requests

- **RLEP Amendment 2012 Amendment No 9** commenced on 1 September 2023
 - Reduced minimum lot size for strata subdivision to 275m²
 - Amended area requirement for dual occupancy to 550m²
- **Barhom v Randwick City Council [2024] NSWLEC 1357**
 - The 'existence' of the amendment could be considered as an environmental planning ground even if precluded from
 - *"The environmental planning ground sufficient to justify the contravention of the standard is the compliance of the proposed strata lots with the current minimum subdivision strata lot size of 275m²."*
 - Upheld cl 4.6 request

Converting existing buildings to dual occupancies

- Depending on LEP, it is possible to convert a dwelling and secondary dwelling into a dual oc & subdivision with minimal works proposed: *Peden v Lake Macquarie City Council* [2024] NSWLEC 2

QUESTIONS?



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