Attachment 5.2

Setbacks and site layout

Review of side and rear setbacks for the Centre zone

11 February 2021
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1. **Purpose of report**

On 27 October 2020, Council resolved (G20.1027.033) to make a number of refinements to the Major update 2 & 3 amendment package (“the amendment”) to better align with the endorsed policy intent and improve clarity for development assessment purposes.

This report provides analysis and recommendations to address the following item from the resolution.

   - **The requirement for Centre zone development to be setback from existing residential activities be reviewed.**

2. **Introduction**

The scenario testing presented to Council in October 2020 identified that the amendment proposes new overall outcomes for regulating side and rear setbacks in the Centre zone. The proposed provisions specify that development must be setback from boundaries, where adjoining a premises containing residential activities, to achieve reasonable amenity and privacy.

The reassessment of a mixed use development at 16-20 Seventh Avenue, Palm Beach, against the proposed changes revealed that the development would have needed to be set back along the southern boundary due to the established, but older, dwelling houses being present within the Centre zone. This centre is currently undergoing a transition from older style single dwelling houses to more intense centre and mixed-use developments (refer to **Figure 1**).

In this instance, the development would result in a rear landscape strip on the southern side of the building which may interfere with the longevity of the vegetation and provide limited benefit in the long term when the southern properties are developed in accordance with the Centre zone. This area would not, in the long term, provide great benefit to the broader community. The setback would potentially become redundant once the sites, containing the dwelling houses, were redeveloped and built to the boundary.

**Figure 1: Centre zoned land between Sixth and Seventh Avenue, Palm Beach**
3. **Background to the amendments**

On 17 October 2017, Council resolved (G17.1017.013) to implement a four-staged approach to develop the building height policy for City Plan. Phase 2 of this staged approach involved:

- a. **Utilise the findings from the Infill Capacity Assessment to inform potential updates to relevant overlay maps.**
- b. **Retain the 50% exceedance test in the Strategic Framework.**
- c. **Investigate the introduction of the Low-Medium Density Residential Zone.**
- d. **Fix the remaining anomalies between zoning, height and density across the city (excluding the Light Rail Stage 3 corridor and the Spit).**
- e. **Review available existing development data to improve the baseline for relevant overlay maps.**
- f. **Remove the optional Community Benefits Bonus Policy and replace with improved built form provisions that can be applied more broadly.**
- g. **Strengthen the scheme’s existing amenity controls to improve built form outcomes.**
- h. **Consider the introduction of an impact assessment trigger when exceeding the provisions shown on the Residential density overlay map.**

In response to item g) the Centre zone code overall outcomes were amended and formed part of Item 9: Built form and urban design outcomes in the amendment.

The change included a new overall outcome as follows:

(G) **is setback from side and rear boundaries to:**

- provide adequate space for services, utilities, maintenance and landscaping;
- achieve reasonable amenity and privacy, where adjoining a premises containing residential activities.

The new overall outcomes were aimed at strengthening the protection for residential uses adjoining centre development. Side and rear setbacks were not previously regulated by the zone code as it is promoted Centre-zoned development being built to boundary. Built to boundary development allows for the efficient use of land and avoids gaps between buildings that can potentially be unattractive and unmaintained. This approach to centre development is long established and is seen in most current centres across the City (refer to Figures 2 and 3). The new provisions specify that all development must be setback from boundaries, where adjoining a premises containing residential activities, to achieve reasonable amenity and privacy.

*Figure 2: Example of built to boundary development in the Centre zone in Burleigh (Google Maps)*
Figure 3: Example of built to boundary development in the Centre zone in Surfers Paradise (Google Maps)

In addition to the subject provision, overall outcome 6.2.5.2(2)(d)(D) states that built form:

(D) is responsive to site characteristics and neighbouring buildings (existing and approved), ensuring adequate access to natural light, natural ventilation, and ensuring reasonable amenity and privacy

This overall outcome also provides guidance on the preferred planning outcomes in relation to setbacks to other uses. The High rise accommodation design code also includes provisions to regulate the separation of towers.

4. Analysis

Table SC1.1.2: Defined activity groups of City Plan, defines Residential activities as any one of the following land uses:

- Caretakers accommodation
- Community residence
- Dual occupancy
- Dwelling house
- Dwelling unit
- Home based business
- Multiple dwellings
- Relocatable home park
- Residential care facility
- Retirement facility
- Rooming accommodation

Any one of these activities located within the Centre zone, would require new Centre development to be setback from the adjoining boundary. However, a single dwelling house, located within the Centre, would generally be the most sensitive land use that would require careful setback consideration. Setbacks are not currently regulated in the current version of the Centre zone. Figure 4 illustrates an example of an older style residential use, surrounded by commercial development in the Centre zone.
During the scenario testing, the reassessment of a mixed use development at 16-20 Seventh Avenue, Palm Beach revealed that the proposed mix-use development would have needed to be set back along the southern boundary due to the established older style dwelling houses being present. Figure 1 outlines the site and the hypothetical setback that would be required to the southern residential properties. This setback consideration potentially created an inefficient use of land and landscaping that wouldn't serve any purpose when the adjoining residential dwellings are ultimately redeveloped in accordance with the zone.

Having regard to the earlier resolution from 17 October 2017, it is acknowledged that the endorsed policy stance was to provide for setbacks from side and rear boundaries to achieve reasonable amenity and privacy, where adjoining a premises containing residential activities. The example provided in Figure 4illustrates the impacts it can have on the commercial frontage.

Further analysis of Centre zoned areas across the City were reviewed to identify whether there were any other original dwelling houses still present within the Centre zone areas.

From the analysis of 33 Centre zoned areas across the City, only five centres contained existing dwelling houses, dual occupancies or multiple dwellings that have not been redeveloped in line with the Centre zoning. The following Centres were therefore the only Centres that were impacted by the new setback provisions included in the amendment:

- Pimpama;
- Nerang (Nerang Street)
- Mudgeeraba Village;
- Palm Beach; and
- Tugun (O’Connor Street).

Aerial photographs of each of these Centres, identifying the existing dwelling houses (or multiple dwellings/dual occupancies), are identified in Appendix A.

It should be noted that the Mudgeeraba Village Centre is subject to the Mudgeeraba village character overlay which applies alternative setbacks to the zone code. As a result, Mudgeeraba Village is not impacted by the setback changes proposed in the amendment.

The analysis revealed that residential zones were generally present at the edge/interface with the Centre zone. A residential zone is defined by the Planning Regulation as one of the following City Plan zones:
• Low density residential zone
• Low-medium density residential zone
• Medium density residential zone
• High density residential zone

4.1 Scope for change

The amendment is currently in the public consultation phase of the statutory amendment process under the Minister’s Guidelines and Rules (MGR). The MGR provides that, during this stage of the process, the amendment can only be changed to:

a) address issues raised in submissions;
b) amend a drafting error; or
c) address new or changed planning circumstances or information.

The scenario testing presented to Council in October 2020 is considered to be new planning information. The scenario testing included the following observation:

- The current version of city plan does not include any provisions relating to side and rear setbacks, while MU2&3 specifies that development must be setbacks to achieve a reasonable amenity and privacy, where adjoining a premises containing residential activities. This centre is currently undergoing a transition from older style single dwelling houses to more intense residential developments. As a result of being one of the first site in this block to redevelopment, the development would need to provide setbacks and landscaping areas to surrounding residential development that will be redeveloped at a later date. In this instance, the development would result in a landscape strip not visible from the street and on the southern side of the building which may interfere with the longevity of the vegetation.

- Development within the centre zone is typically more intense and provides little to no setbacks to surrounding properties. As such it is reasonable to assume that sites within the centre zone will be redeveloped in accordance with this development pattern.

Council is able to make changes to address this observation under the MGR.

Further, any change that is ‘significantly different’ is required to undergo further public engagement for a minimum of 20 business days. This matter is discussed within the options section.

4.2 Options

Two options have been developed following a review of this matter. The two options are:

<table>
<thead>
<tr>
<th></th>
<th><strong>No change</strong></th>
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<tbody>
<tr>
<td>1</td>
<td>Retain the wording as previously consulted on to provide a setback to existing residential activities within the Centre zone.</td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th><strong>Change to provide setbacks to residential zones, rather than all existing residential activities</strong></th>
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<tbody>
<tr>
<td>2</td>
<td>Amend the provision to read:</td>
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<tr>
<td></td>
<td>The built form and scale of development:</td>
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<tr>
<td></td>
<td>(G) is setback from side and rear boundaries to:</td>
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<tr>
<td></td>
<td>• provide adequate space for services, utilities, maintenance and landscaping;</td>
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<tr>
<td></td>
<td>• achieve reasonable amenity and privacy, where adjoining a premises containing residential activities residential zone.</td>
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To determine the preferred option, the following advantages and disadvantages were identified and assessed:

<table>
<thead>
<tr>
<th>Proposed Option</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. No change - Retain the wording as previously consulted on to provide a setback to existing residential activities within the Centre zone.</td>
<td>• Existing residential uses established in the zone are provided protection from encroaching new Centre development.</td>
<td>• New development is required to provide setbacks and landscaping to uses that are not likely to remain for the long-term, and are no longer consistent with the zoning intent (being established residential land uses awaiting redevelopment).</td>
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<td></td>
<td>• Creates unattractive/ unmaintained gaps in the built form, reducing the ability to achieve a continuous active road frontage in accordance with the zone.</td>
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<td>• The proposed setbacks will likely become redundant when the lot containing the established residential use (e.g. dwelling house) is redeveloped in accordance with the zone.</td>
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<td></td>
<td>• The proposed landscaping may not be viewable or become compromised by future development built on the boundary (on the lot containing the established residential use).</td>
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<td></td>
<td>• Rundown/unmaintained residential uses are afforded protection from redeveloping sites. This protection of amenity may delay the future redevelopment of the sites containing the residential uses (a lot of existing dwelling houses present in the Centre zone are in poor condition and unmaintained).</td>
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<td></td>
<td>• The requirement for a setback and landscaping along the boundary adjoining the established dwelling house may defer the timing of redevelopment.</td>
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### Proposed Option

**2. Update the provision to provide for setbacks to residential zones, rather than existing residential activities.**

<table>
<thead>
<tr>
<th>Proposed Option</th>
<th>Advantages</th>
<th>Disadvantages</th>
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<tr>
<td></td>
<td>- Allows Centre zoned sites to increase the use of the site.</td>
<td>- Restricts the application of the provision to the edge of the Centre (where the Centre zone abuts a Residential zone).</td>
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<td>- Maintains setbacks to abutting residential zones (containing long-term residential uses).</td>
<td>- Short term amenity impacts for sites containing residential uses in Centre zones until they redevelop</td>
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<td></td>
<td>- Allows new Centre development to build to the side boundaries creating a continuous active frontage in accordance with the zone.</td>
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<tr>
<td></td>
<td>- Helps to improve the useability of the provision. Residential uses include a broad range of uses (as outlined in Section of this report). It may be difficult to determine whether a setback to multiple dwellings or an aged care premise is required as they are envisaged land uses in the Centre zone.</td>
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After considering the advantages and disadvantages of both options, it is recommended that amending the overall outcomes (as proposed in Option 2) be implemented. Amending the provisions would offer the following benefits:

- Promote a built form consistent with the Centre zone (continuous active frontages, discouraging dwelling houses);
- Encourage the timely transformation of the emerging centre; and
- Allow for the efficient use of land.

This change is considered to be 'significantly different' and would require readvertising.

### 5. Stakeholder consultation

The following stakeholders have been engaged in the preparation of this report:

<table>
<thead>
<tr>
<th>Name and/or Title of the Stakeholder Consulted</th>
<th>Directorate or Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lily Chan Acting City Architect</td>
<td>Economy, Planning &amp; Environment</td>
</tr>
<tr>
<td>Roger Sharpe Executive Coordinator Planning Assessment</td>
<td>Economy, Planning &amp; Environment</td>
</tr>
<tr>
<td>Steve Brett Executive Coordinator Major Assessment</td>
<td>Economy, Planning &amp; Environment</td>
</tr>
<tr>
<td>Gavin Collar Supervising Planner, Planning Appeals &amp; Research</td>
<td>Economy, Planning &amp; Environment</td>
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6. **Action/Recommendation**

It is recommended the Major update 2 & 3 amendment package be changed as follows:

1. **Overall outcomes:**

   6.2.5.2 (2)(d)(i)

   The built form and scale of development:

   (G) is setback from side and rear boundaries to:

   - provide adequate space for services, utilities, maintenance and landscaping;
   - achieve reasonable amenity and privacy, where adjoining a premises containing residential activities *residential zone*. 
Appendix A: Aerial photographs of the Centres, containing existing residential activities (dwelling houses, multiple dwellings or dual occupancies).