Attachment 5.5

Setbacks and site layout

Setback provisions considering impacts to the development potential of other sites

11 February 2021
# Table of Contents

1. **Purpose of report**........................................................................................................................................... 3
2. **Introduction**.................................................................................................................................................... 3
3. **Background to the amendments**.................................................................................................................. 4
4. **Analysis** .......................................................................................................................................................... 6  
   4.1 **Scope for change**...................................................................................................................................... 6  
   4.2 **Options** ................................................................................................................................................ 7
5. **Stakeholder consultation**.............................................................................................................................. 9
6. **Action/Recommendation** .............................................................................................................................. 9

**Appendix A: Proposed changes to codes** ........................................................................................................... 10
1. **Purpose of report**

On 27 October 2020, Council resolved (G20.1027.033) to make a number of refinements to the Major update 2 and 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 resolve the following item from the resolution.

   i. **Setback provisions refer to orientating design to respond to other towers (existing and approved), which provides a first-in-best-dress approach that does not consider impacts to the development potential on other sites.**

2. **Introduction**

The scenario testing presented to Council in October 2020 reported on a number of previously approved development applications that were reassessed against key amendment provisions, including the proposed overall outcomes and performance outcomes relating to urban context, setbacks and site cover included in the Low-medium, Medium and High density residential; Centre; Neighbourhood centre and Mixed use zone codes and the Light rail urban renewal area overlay code.

One of these reassessments included a Multiple dwelling and Short-term accommodation development for 108 units at 372/374 Marine Parade, Labrador. Figure 1 outlines the subject site and the built form (constructed) that was subject to the reassessment. During this process, it was observed that some of the proposed amendment setbacks and site cover Overall outcomes and Performance outcomes refer to development being responsive to existing and approved development only. It was revealed that the proposed provisions do not include any consideration of the future development potential of adjoining sites. This was considered to have implications for the City’s development objectives by rendering some sites undevelopable and unable to develop in accordance with the planned building height and density provisions in City Plan.

![Figure 1: Aerial photo of 372/374 Marine Parade, Labrador](attachment_url)
Figure 2: Street view showing interface between 372/374 and 376 Marine Parade, Labrador

Figure 2 illustrates the potential problems caused by development not considering the future development potential of adjoining sites. Due to the approved setbacks of the development at 374 and 372/374 Marine Parade, the adjoining site at 376 Marine Parade, which currently contains a two-storey residential development, may be constrained from developing to its full potential. The neighbouring development and their encroachment into the envisaged setback areas may impact the ability for 376 Marine Parade to be redeveloped in accordance with City Plan. Allowing new development to encroach within the setbacks, because of less intensive development being present or approved, may compromise the City’s long-term ability to achieve the City’s growth targets.

This scenario exemplifies the issue of ‘first in best dressed’ in relation to development approvals and highlights the need to revise the amendment to acknowledge the impact reduced setbacks can have on neighbouring undeveloped sites.

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 Low-medium density residential, Medium density residential, High density residential, Centre, Neighbourhood centre and Mixed use zone codes were amended and formed part of Item 9: Built form and urban design outcomes in the amendment.
The amendment included revised built form and character Overall outcomes in the abovementioned zone codes and revised setback and site cover Performance outcomes/Acceptable outcomes for the residential zones and Light Rail urban renewal area overlay code. An example from the Medium density residential zone code is shown below:

**Built form and character overall outcomes (Medium density residential zone)**

(e) The built form and scale of development:…

(vii) is setback from side boundaries to protect the reasonable amenity and privacy of adjoining residences, provide areas for landscaping (including provision for tall shade trees and deep planting), provide separation between buildings, ensure adequate access to natural light and natural ventilation and allow access around the building;

(viii) is setback from rear boundaries to provide areas for outdoor recreation, landscaping (including deep planting), whilst ensuring adequate access to natural light and natural ventilation;

(ix) supports compact and slender building forms (controlled through width, bulk and scale) and building separation to maintain the perception of spaciousness between buildings, with adequate separation distances between buildings to allow for natural light penetration and natural ventilation; and

(x) achieves appropriate building separation in relation to building height with separation distances increasing with building height.

New Performance outcomes were also included in the Low-medium, Medium and High density residential zone codes and the Light rail urban renewal area overlay code, to strengthen policy around setbacks and site cover (example below from Medium density residential zone code):

**PO6**

Where not identified within the Light rail urban renewal area overlay map, buildings and structures are sited and designed to:

(a) maximise access to natural ventilation;

(b) allow light to penetrate into buildings, between buildings and down to the ground;

(c) not cause undue adverse amenity impact to adjoining properties;

(d) provide reasonable privacy to residents on adjoining lots;

(e) reduce the width, bulk and scale of buildings proportionate to the site;

(f) allow for off-street car parking;

(g) achieve appropriate building separation in relation to building height with separation distances increasing with building height; and

(h) be setback from boundaries and have a site cover that is balanced between built form and high quality landscaping to allow for tall shade trees, deep planting and on-site open space which contributes to residential amenity and local character.

**Note: The preparation of a site context and urban design report in accordance with SC6.12 City Plan policy – Site context and urban design is the council’s preferred method to demonstrate compliance with this performance outcome.**

The new Overall and Performance outcomes were aimed at strengthening built form provisions to ensure developments contribute positively to their context and streetscape.

During the first round of consultation, 1,419 submission points were received on Item 9: Built form improvements. Of these submissions, 32% of submissions supported (or supported in part) the proposed built form changes. Only 3% opposed the changes with the balance of submissions providing a neutral response.
4. Analysis

The Overall outcomes in the Light rail urban renewal area overlay code refer to the separation of tower form to approved or existing towers on adjoining sites. This does not necessarily include the future development rights of adjacent premises which would need to address the same benchmarks. The other abovementioned codes also included a revised urban context Performance outcome that required the built form to be orientated to positively respond to the streetscape, neighbouring buildings (existing and approved) and site characteristics.

Observations from the scenario testing suggested the codes should include consideration of the impacts that encroachments into setbacks may have on the development potential of neighbouring sites.

The long-term growth targets envisaged by City Plan rely on retaining the equitable development potential of all sites. Unless the reasonable development rights of adjoining properties are protected, it may become a matter of ‘first in best dressed’, which would jeopardise what is planned for by City Plan.

Including this matter as an assessment consideration will assist in delivering better built form outcomes, particularly in infill areas. This approach should result in more complimentary interfaces between buildings.

Updated provisions could still allow for consideration of on-site factors, such as an easement on the adjoining site, or where the adjoining site is in a different 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.

A submission was received during the consultation period which suggested additional provisions be added to include ‘trigger’ questions around the potential location of future development of adjoining properties. This was assuming they are developed to the same planning criteria and how future amenity and good urban design will be preserved in any future redevelopment of adjoining properties.

Another submission received during the second round of consultation raised concerns about the removal of the current provision in overall outcome relating to design and amenity, which states “whether intended outcomes for building form/city form and desirable building height patterns are negatively impacted, including the likelihood of undesirable local development patterns to arise if the cumulative effects of the development are considered.”

The submission suggested this provision is very useful when referring to potential impacts on future development (e.g. reduced setbacks and reduced tower separation) and should be retained.

The observations identified during scenario testing and the submissions identified above, fulfil the requirements of Section 19 of the MGRs and provide scope to propose alternative provisions to ensure the future development opportunities of adjacent sites are also taken into consideration.

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 to revise the amendment have been developed following a review of this matter.

The changes would apply to the:

- Low-medium density residential zone code;
- Medium density residential zone code;
- High density residential zone code;
- Centre zone code;
- Neighbourhood centre zone code;
- Mixed use zone code; and
- Light rail urban renewal area overlay code.

The two options are outlined below:

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<tr>
<th></th>
<th>Option</th>
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</table>
| 1 | Include a statutory note within the setback and site cover Performance outcomes and Overall outcomes that states that development should maintain the equitable development opportunities for surrounding sites, as envisaged by the City Plan. The proposed note would read as follows:  

**Note:** Development should maintain equitable development opportunities as envisaged by City Plan for surrounding sites by not compromising the ability of the surrounding sites to be developed in accordance with City Plan. |
| 2 | Include a new provision in the Overall outcomes and relevant Performance outcomes relating to setbacks and site cover to read as follows:  

**Built form and character overall outcomes**

(e) The built form and scale of development:…

(xi) has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.  

**Performance outcomes (example from the Medium density residential zone)**

**Setbacks and Site cover**

PO Where not identified within the Light rail urban renewal area overlay map, buildings and structures are sited and designed to:

(a) maximise access to natural ventilation;
(b) allow light to penetrate into buildings, between buildings and down to the ground;
(c) not cause undue adverse amenity impact to adjoining properties;
(d) provide reasonable privacy to residents on adjoining lots;
(e) reduce the width, bulk and scale of buildings proportionate to the site;
(f) allow for off-street car parking;
(g) achieve appropriate building separation in relation to building height with separation distances increasing with building height; and
(h) be setback from boundaries and have a site cover that is balanced between built form and high quality landscaping to allow for tall shade trees, deep planting and on-site open space which contributes to residential amenity and local character; and

(i) not restrict the ability of surrounding sites to be developed in accordance with City Plan.  

**Note:** The preparation of a site context and urban design report in accordance with SC6.12 City Plan policy – Site context and urban design is the council’s preferred method to demonstrate compliance with this performance outcome. |

Note: Blue shading represents the recommended option.
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>
</table>
| 1. Include a statutory note within the setback and site cover Performance outcomes and Overall outcomes that states that development should maintain the equitable development opportunities for surrounding sites, as envisaged by the City Plan. | • The note would assist in clarifying the performance outcomes relating to built form and setbacks.  
• This proposed amendment is considered to be 'not significantly different' and would not need to be publicly advertised for submissions. | • As an note, the change would not be as strong as if it formed part of the Performance outcome.                                                                                                               |
| 2. Include a new provision in the Overall outcomes and relevant Performance outcomes relating to setbacks and site cover | • Development would be required to maintain equitable development opportunities for surrounding sites by not restricting the ability of surrounding sites to be developed in accordance with City Plan.  
• All sites across the City would have their potential development rights considered by adjoining development.  
• There would be no implied ‘first in, best dressed’ principle adopted.  
• The proposed change would strengthen policy and provide assessment officers additional criteria to assess proposed setbacks. | • Could be considered by the development industry as an additional barrier to development.  
• Assessing development potential of adjoining sites may require a developer to prepare development concepts for the subject properties. |

Note: Blue shading represents the recommended option.

After considering the advantages and disadvantages of the two options, it is recommended that amending the Overall outcomes and Performance outcomes in the relevant zone codes and in the Light rail urban renewal area overlay code as proposed in Option 2 be implemented. This change would offer the following benefits:

- Protect the redevelopment opportunities of adjoining sites (allowing them to develop to their potential consistent with City Plan).
- Strengthen the assessment benchmarks for setbacks and provide additional criteria for assessment officers to use when considering setbacks.
- Protect the City’s development capacity (without sterilising sites for redevelopment) assisting in achieving City Plan objectives, including dwelling targets.

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</td>
<td>Economy, Planning &amp; Environment</td>
</tr>
<tr>
<td>Acting City Architect</td>
<td></td>
</tr>
<tr>
<td>Roger Sharpe,</td>
<td>Economy, Planning &amp; Environment</td>
</tr>
<tr>
<td>Executive Coordinator Planning Assessment</td>
<td></td>
</tr>
<tr>
<td>Steve Brett</td>
<td>Economy, Planning &amp; Environment</td>
</tr>
<tr>
<td>Executive Coordinator Major Assessment</td>
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</tr>
</tbody>
</table>

6. **Action/Recommendation**

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

1. Update the Low-medium, Medium and High density residential zone, Centre zone, Neighbourhood centre zone, Mixed use zone and Light rail urban renewal area overlay codes as shown in Appendix A.
Appendix A: Proposed changes to codes

1. Low-medium density residential zone

(a) Include a new overall outcome within the Built form and character overall outcomes:

(e) The built form and scale of development:

(1) has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.

(b) Include a new sub-provision to the relevant Performance outcomes

PO6
Where not identified within the Light rail urban renewal area overlay map, buildings and structures are sited and designed to:
(a) maximise access to natural ventilation;
(b) allow light to penetrate into buildings, between buildings and down to the ground;
(c) not cause significant and undue adverse amenity impact to adjoining properties;
(d) provide reasonable privacy to residents on adjoining lots;
(e) reduce the width, bulk and scale of buildings proportionate to the site;
(f) allow for off-street car parking;
(g) achieve appropriate building separation in relation to building height with separation distances increasing with building height; and
(h) be setback from boundaries and have a site cover that is balanced between built form and high quality landscaping to allow for tall shade trees, deep planting and on-site open space which contributes to residential amenity and local character, and
(i) not restrict the ability of surrounding sites to be developed in accordance with City Plan.

Note: The preparation of a Site context and urban design report in accordance with SC6.12 City Plan Policy – Site context and urban design is the Council’s preferred method of addressing this performance outcome.

2. Medium density residential zone

(a) Include a new overall outcome within the Built form and character overall outcomes:

(e) The built form and scale of development:

(1) has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.

(b) Include a new sub-provision in Performance outcome 6

PO6
Where not identified within the Light rail urban renewal area overlay map, buildings and structures are sited and designed to:
(a) maximise access to natural ventilation;
(b) allow light to penetrate into buildings, between buildings and down to the ground;
(c) not cause undue adverse amenity impact to adjoining properties;
(d) provide reasonable privacy to residents on adjoining lots;
(e) reduce the width, bulk and scale of buildings proportionate to the site;
(f) allow for off-street car parking;
(g) achieve appropriate building separation in relation to building height with separation distances increasing with building height; and
(h) be setback from boundaries and have a site cover that is balanced between built form and high quality landscaping to allow for tall shade trees, deep planting and on-site open space which contributes to residential amenity and local character.
quality landscaping to allow for tall shade trees, deep planting and on-site open space which contributes to residential amenity and local character; and

(i) not restrict the ability of surrounding sites to be developed in accordance with City Plan.

Note: The preparation of a site context and urban design report in accordance with SC6.12 City Plan policy – Site context and urban design is the council’s preferred method to demonstrate compliance with this performance outcome.

3. High density residential zone

(a) Include a new overall outcome within the Built form and character overall outcomes:

(e) The built form and scale of development:

   (viii) has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.

(b) Include a new sub-provision to the relevant Performance outcome

PO5
Where not identified within the Light rail urban renewal area overlay map, buildings and structures are sited and designed to:
(a) maximise access to natural ventilation;
(b) allow light to penetrate into buildings, between buildings and down to the ground;
(c) not cause undue adverse amenity impact to adjoining properties;
(d) provide reasonable privacy to residents on adjoining lots;
(e) reduce the width, bulk and scale of buildings to achieve compact building forms for buildings and provide tall slender towers in a landscape setting;
(f) allow for off-street car parking;
(g) achieve appropriate building separation in relation to building height with separation distances increasing with building height to create an open skyline and perception of spaciousness;
(h) be setback from boundaries and have a site cover that is balanced between built form and high quality landscaping to allow for tall shade trees, deep planting and on-site open space which contributes to residential amenity and local character, and

(i) avoid excessively large floor plates by dividing a single building into multiple buildings; and

(i) not restrict the ability of surrounding sites to be developed in accordance with City Plan.

Note: The preparation of a site context and urban design report in accordance with SC6.12 City Plan policy – Site context and urban design is the council’s preferred method to demonstrate compliance with this performance outcome.

4. Centre zone

(a) Include a new overall outcome within the Built form and character overall outcomes:

(d) The built form and scale of development:

   (H) has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.
5. Neighbourhood centre zone

(a) Include a new overall outcome within the Built form and character overall outcomes:

(h) The built form and scale of development:

(vii) has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.

(b) Include a new sub-provision to the relevant Performance outcome

PO9

Setbacks:
(a) allow buildings to address and actively interface with streets and public spaces;
(b) provide additional width to the public realm and additional space for road side dining opportunities; and
(c) assist in the protection of adjacent amenity; and
(d) do not restrict the ability of surrounding sites to be developed in accordance with City Plan.

Note: The preparation of a Site context and urban design report in accordance with SC6.12 City Plan Policy – Site context and urban design is the Council’s preferred method of addressing this performance outcome.

6. Mixed use zone

(a) Include a new overall outcome within the Built form and character overall outcomes:

(g) The built form and scale of development:

(vii) has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.

(b) Include a new sub-provision to the relevant Performance outcome

PO9

Setbacks:
(a) allow buildings to address and actively interface with streets and public spaces;
(b) provide additional width to the public realm and additional space for road side dining opportunities;
(c) assist in the protection of adjacent amenity; and
(d) are substantial to the motorway and rail corridors to enable wide landscape buffers; and
(e) do not restrict the ability of surrounding sites to be developed in accordance with City Plan.

Note: The preparation of a Site context and urban design report in accordance with SC6.12 City Plan Policy – Site context and urban design is the Council’s preferred method of addressing this performance outcome.
7. Light rail urban renewal area overlay code

(a) Include a new overall outcome within the Responsive overall outcomes:

Responsive:

(g) Development has setbacks that do not restrict the ability of surrounding sites to develop in accordance with City Plan.

(b) Include a new sub-provision to the relevant Performance outcome

Table 8.2.12-2: Additional provisions for assessable development in the Primary focus area and Secondary focus area

PO10
Tower form is sited and designed in a manner, which:
(a) is appropriately separated in relation to its height to achieve natural ventilation and allow light to penetrate into buildings;
(b) orientates and positively responds to the streetscape and adjoining buildings intended to remain in the Light rail urban renewal area (existing and approved);
(c) has a site cover that provides slender tower forms;
(d) has tower separation that promotes an open skyline; and
(e) avoids large floor plates by dividing a single building into multiple buildings; and
(f) does not restrict the ability of surrounding sites to be developed in accordance with City Plan.

Table 8.2.12-5: Additional provisions for assessable development in the Frame Area and Transition Area

Tower base
PO15
Development where involving a tower base is sited and designed in a manner, which:
(a) is setback from the street to allow for high quality landscaping (including deep planting);
(b) is setback to the side and rear to create a sense of spaciousness and allows for:
   (i) natural light penetration to the ground;
   (ii) natural ventilation around the tower base; and
   (iii) maintenance access, services and utilities;
(c) does not restrict the ability of surrounding sites to be developed in accordance with City Plan; and
   (cd) the site cover allows the tower base, at ground level, to be open to the sky.

Tower
PO16
Tower form is sited and designed in a manner, which:
(a) is appropriately separated in relation to its height to achieve natural ventilation and allow light to penetrate into buildings;
(b) orientates and responds to the streetscape and adjoining buildings intended to remain in the Light rail urban renewal area (existing and approved);
(c) has a site cover that provides slender tower forms;
(d) has tower separation that promote an open skyline; and
(e) avoids large floor plates by dividing a single building into multiple buildings; and
(f) does not restrict the ability of surrounding sites to be developed in accordance with City Plan.

Note: The proposed recommendations for the Light rail urban renewal area overlay code are closely related to changes recommended in Attachment 6.2: Building configuration – Use of the term ‘tower’