

**Subject:** Further Report – Response to New Medium Density Housing Code  
**Record No:** SU6580 – 23677/18  
**Division:** Environmental Services Division  
**Author(s):** Christopher Pelcz

---

## **Executive Summary**

Council resolved that staff investigate and submit a report to the next Council meeting on implications and unintended consequences of the new State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2017, Medium Density Housing Code and Design Guide.

While Council supports and encourages housing diversity, the provisions of the Code and Guide have not taken into account the Lane Cove Local Government Area (LGA) local planning context with regards to multi dwelling housing.

Council's Local Environmental Plan 1987 contained specific controls that were developed to differentiate between townhouses and villas based on the local context (see **AT-1**)

Prior to the 2010 comprehensive Local Environmental Plan, Council wrote to the Department of Planning in 2006 to seek confirmation that if Council continued to permit multi dwelling housing in its R2 Low Density Residential zone that it could be limited to allow only single storey dwellings (villas) and not townhouses.

**The Department responded in 2006 by supporting the inclusion of 'multi dwelling housing' in the R2 Low Density Residential zone with a height control of 5 metres (limiting it to single storey).** To storey townhouses were to be located in the R3 Medium Density Residential zone in order to be consistent with Council's long standing planning approach.

Therefore, given the local planning context surrounding multi dwelling housing, it is considered appropriate to submit a Planning Proposal requesting removal of the land use 'multi dwelling housing' from the R2 Low Density Residential zone and any planning controls that support it.

## **Background**

In the mid 1990's, the NSW State Government sought more housing diversity and density in inner city areas. A review conducted by Council staff in the mid 1990's revealed that Lane Cove's housing stock at the time was predominantly made up of either detached houses or flats.

Based on this, a housing strategy was developed to increase zones which encouraged townhouses and villas within the LGA. Council's Local Environmental Plan 1987 contained specific controls that were developed to differentiate between townhouses and villas based on the local context. This was reflected in the planning definitions:

- *"townhouse means a dwelling in a two-storey building containing three or more dwellings, and within the curtilage of which pedestrian access and open space exclusive to each dwelling is provided.*
- *villa home means a building of one but not more than one residential storey containing two or more dwellings within the curtilage of which pedestrian access and open space exclusive to each dwelling is provided".*

Different bulk and scale requirements of both types of development were also incorporated. Villa homes only permitted a floor space ratio of 0.4:1 and the total number of dwellings could not exceed one dwelling for each 350 m<sup>2</sup>. However, the scale of townhouses varied depending on the zoning, for example:

- Townhouses in zones 2 (b) and (c) permitted a floor space ratio of 0.6:1 and the total number of dwellings could not exceed one dwelling for each 250 m<sup>2</sup>.
- Townhouses in zone 2 (b1) permitted a floor space ratio of 0.5:1 and the total number of dwellings could not exceed one dwelling for each 300 m<sup>2</sup>.

These controls demonstrated an appropriate contextualised response to increasing housing diversity and stock. It sought to ensure that different development types would respond to local housing needs at the time. However, this differentiation was not initially recognised when Council came to undertake its comprehensive Local Environmental Plan in 2006.

Under the NSW Standard Instrument Order 2006, Council's were required to standardise their LEP's including zones and definitions. This meant that a number of local land use definitions were no longer able to be used – including villa homes or townhouses. For example "villa homes" which were previously permitted in the detached zone Residential 2(a1) were replaced with the closest definition, being 'multi dwelling housing':-

- *3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.*

Council wrote to the Department in 2006 advising that both land uses should be separately defined as they served different purposes and sought and received confirmation that if Council permitted multi dwelling housing in its R2 Low Density Residential zone that the height could be limited to allow only single storey dwellings (villas) and not townhouses.

Villas serve an important housing role for elderly and disabled residents dispersed within the low density areas; it was not conceivable that they would ever contribute in large numbers to achieve the State Government's housing targets for the LGA. Council's housing strategy focused on higher density R4 zones close to transport nodes and amenities.

**The Department responded in 2006 by supporting the inclusion of 'multi dwelling housing' in the R2 Low Density Residential zone with a height control of 5 metres (limiting it to single storey).** Townhouses (terraces) were to be located in the R3 Medium Density Residential zone in order to be consistent with Council's long standing planning approach.

The Draft Local Environmental Plan was subject to extensive community consultation between December 2007 and July 2008. The community did not raise concern about villa homes being made permissible in the R2 Low Density Residential zone under the 'multi dwelling housing' term, on the basis that it would be single storey and appropriately controlled. Council made its final decision on this basis and the Standard Instrument LEP was gazetted on 19 February 2010.

Since its implementation, only one Development Application has been received for single storey villas in Lane Cove, whilst over 3500 units have been approved.

## Discussion

The new Medium Density Housing Code and Design Guide will supersede Council's planning controls by permitting villas and terraces/townhouses in the R2 zone, because the Code permits both villas and terraces to a height of 8.5 metres, overriding Council's height control of 5 metres.

The following shows a comparison of the primary controls of the existing Local Environmental Plan 2009 and the new Code for multi dwelling housing in the R2 Low Density Residential Zone:-

	Existing LEP	Proposed (New Code)
Height	5 metres (single storey)	8.5 metres (two storey)
FSR	0.4:1, e.g. on 600sqm land, 240sqm GFA	0.6:1, e.g. on 600sqm land, 360sqm GFA

While the LEP controls will remain in place for any application which cannot meet the complying development process, a large number of properties will be able to use the new Code with the higher FSR 0.6:1. As a comparison, Council's R2 zone for a house is 0.5:1 and the older R4 zones have an FSR of 0.8:1.

In order for the new Medium Density Code to apply, the existing lot:

- Must be a minimum of 600 m<sup>2</sup> to create multi dwelling housing (terraces) and a minimum of 750 m<sup>2</sup> (for attached dual occupancies) & 900 m<sup>2</sup> (for detached dual occupancies);
- Cannot be a battle-axe lot (defined as having an access handle of any shape);
- Cannot be creating a multi dwelling housing (terraces) on bush fire prone land;
- Cannot be a flood control lot;
- Cannot be a draft or heritage item;
- Cannot be in a draft or heritage conservation area;
- Cannot be in an Environmental Protection Area;
- Cannot be in a Foreshore building area; or
- Cannot be land reserved for public purposes (i.e. Land reserved for Acquisition).

Whilst this eliminates a large number of properties from being able to utilise the new Medium Density Code for multi dwelling housing (terraces/townhouses), it is important to note that many of the eligible properties (circa 2000) are adjacent to the Lane Cove River.

Council's existing LEP objective for the R2 Low Density zone is to 'encourage new dwelling houses that are not highly visible when viewed from the Lane Cove River'. As the adjacent foreshore area is not excluded from the Code and Design Guide, it would apply to the areas adjacent to the Lane Cove River. Foreshore areas have a greater visual impact and are environmentally more sensitive than flat suburban land. It would be highly inappropriate to permit bulkier, intense development, which would not be subject to professional scrutiny from architects, planners and engineers, to minimise impacts.

## LEP Amendments

The provisions of the new Code are considered to be appropriate for dual occupancies. Both Council's minimum lot sizes and prohibition of dual occupancy subdivisions will remain in effect.

Multi dwelling housing of the type proposed in the Code are also appropriate in the R3 Medium Density Residential zone, as the existing controls allow for two storey townhouses / terraces. The Code will allow a streamlined assessment process in this zone.

**Extraordinary Meeting of Council Meeting 1 May 2018**  
**FURTHER REPORT – RESPONSE TO NEW MEDIUM DENSITY HOUSING CODE**

However, it is not desirable to allow townhouses / terraces in the R2 Low Density Residential zone, which was only ever envisaged to accommodate ‘multi dwelling housing’ that was low scale, single storey villas. Given Council’s housing strategy does not rely on villa developments to achieve the LGA’s housing targets, it is proposed that Council submit a Planning Proposal to remove ‘multi dwelling housing’ from the R2 Low Density Residential zone. This is not only reasonable and justified in a policy sense, but critical to maintain the local character and built form. Allowing multi dwelling housing to continue as a permissible land use in the R2 zone (with the Code superseding Council’s existing controls) would result in an unacceptable and unintended planning outcome.

In the previous Council report the option of controlling ‘multi dwelling housing’ by inclusion of a minimum land size of 750sqm in the LEP was floated. Upon further consideration it is clear that it would not be possible to have a land size that would permit villas but not terraces / townhouse or vice versa, and therefore it is not to be further pursued.

## **Community Consultation**

### Statement of Intent

The consultation is designed to seek public comment on a planning proposal to remove ‘multi dwelling housing’ from the R2 Low Density Residential zone under LEP 2009. Any comments received will be reviewed and evaluated to determine whether or not to proceed. The consultation would occur upon Gateway approval being granted for exhibition of the draft LEP. It is not considered necessary to undertake the consultation for the normal six week period, as the Planning Proposal effectively only seeks to retain the status quo.

### Method

<b>Level of Participation</b>	Inform	Consult
<b>Form of Participation</b>	Open	Open
<b>Target Audience</b>	Lane Cove Community and community groups	Lane Cove Community and community groups
<b>Proposed Medium</b>	Advertisement, eNewsletter	Public Exhibition, and Website Exhibition
<b>Indicative Timing</b>	Minimum time period specified in the Gateway determination.	Minimum time period specified in the Gateway determination.

## **Conclusion**

The Lane Cove LGA is undergoing change, and places a priority on creating places that provide a range of housing choice built on a foundation of an increase in density in locations within proximity to transport, such as in St Leonards, or near shops/services, such as near the Lane Cove Village.

Much of the R2 zoned land impacted by the Code is not near the above services or centres and a large proportion of this land is along the Lane Cove River.

Council’s commitment to permit multi dwelling housing in its R2 Low Density Residential zone was to provide only single-level villa housing with a garden, which was endorsed by the Department in 2006.

Given that multi dwelling housing was created only to permit single storey villa homes in the R2 Low Density Residential zone and not townhouses or terraces, it is considered appropriate that this land use be removed from the zone along with the supporting height and floor space ratio controls given the unintended impacts of the new Medium Density Housing Code.

## RECOMMENDATION

That Council submit a Planning Proposal to prohibit the land use 'multi dwelling housing' in the R2 Low Density Residential zone, along with removing all supporting height and floor space ratio controls that restrict development to a single storey development.

Michael Mason  
**Executive Manager**  
**Environmental Services Division**

## ATTACHMENTS:

<b>AT-1</b> <a href="#">View</a>	Extract from Lane Cove Local Environmental Plan 1987 - repealed version	3 Pages	
<b>AT-2</b> <a href="#">View</a>	Low Rise Medium Density Code (April 2018)	74 Pages	Available Electronically
<b>AT-3</b> <a href="#">View</a>	Fact Sheet Low Rise Medium Density Code	2 Pages	