

Planning Services

Gateway Determination Report

LGA	Canterbury Bankstown
PPA	Canterbury Bankstown Council
NAME	Proposal to amend residential uses in the R2 Low Density Residential zone
NUMBER	PP 2018 BANKS 005 00
LEP TO BE AMENDED	Bankstown Local Environmental Plan 2015
ADDRESS	All land zoned R2 Low Density Residential under Bankstown LEP 2015
RECEIVED	11 May 2018
FILE NO.	IRF18/3325
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

This planning proposal seeks to prohibit on land zoned R2 Low Density Residential under Bankstown Local Environmental Plan 2015 (Bankstown LEP 2015).

The planning proposal also seeks to amend State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to align the Low Rise to Medium Density House Code controls with Council's current requirements. This request falls outside the scope for planning proposals seeking to amend environmental planning instruments for local areas.

The planning proposal has been prepared in response to the Low Rise Medium Density Housing Code (the Code), has amended State Environmental Planning Policy (Exempt and Complying Development Code) 2008 (Codes SEPP). The Code permits construction of medium-density housing under a complying development certificate and enables subdivision of this development, but only where this development fully complies with the provisions of the Code.

The Code commenced on 6 July 2018 and permits the new types of medium-density development, being manor houses and multi-dwelling housing (terraces), as Complying Development in residential zones where multi-dwelling housing is currently permitted under a council's Local Environmental Plan (in this case Bankstown LEP 2015).

Deferral of commencement of the Low Rise Medium Density Housing Code

Since the submission of this planning proposal to the Department of Planning and Environment for Gateway determination, the Minister granted Canterbury Bankstown Council deferral of the commencement of the Code until 1 July 2019 or until Council prepares a local housing strategy and finalised this planning proposal, whichever is sooner (**Attachment E**).

The intent of this planning proposal to remove multi-dwelling housing as a permitted development with consent on land zoned R2 Low Density Residential under Bankstown LEP 2015, to ensure that this type of development is not be permitted under the Code and to preclude manor homes and multi-dwelling housing (terraces) from being additionally permitted in the R2 zone once the Code does apply on 1 July 2019.

Site description

The planning proposal applies to land zoned R2 Low Density Residential under the Bankstown LEP 2015. Refer to **Attachment G** for a map of the area of the R2-zoned land under the Bankstown LEP.

Summary of recommendation

It is recommended the planning proposal proceed to exhibition to seek community comments regarding removing multi-dwelling housing as a permissible use in the R2 Low Density Residential Zone under the Bankstown LEP 2015 subject to the following conditions:

- Council is to provide more information in relation to land within the boundaries of the former Bankstown local government area:
 - the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential in the local government area (LGA);
 - the number of lots that would be eligible for manor homes/multi-dwelling housing under the Low Rise Medium Density Housing Code in the R2 Low Density Residential and R3 Medium Density Residential zones, taking into account the SEPP exclusions (such as sites below the minimum lot size and land subject to heritage provisions);
 - the number of approved multi-dwelling housing developments and dual occupancy developments in the R2 Low Density Residential and R3 Medium Density Residential zones in the LGA in the past five years;
 - whether the proposal is supported by a housing strategy that has been developed in consultation with the community; and
 - include a new saving transition clause to ensure that proposed amendments do not affect any development applications or appeal processes.
- Council should amend the planning proposal to include this information and submit it to the Department for review prior to exhibition of the planning proposal;
- the planning proposal should be amended to remove the request and associated discussion on the current development standards in the Canterbury and Bankstown LEPs, where this seeks to overrule the dual occupancy controls in the Code. The planning proposal cannot achieve a change to the SEPP for the LEP controls to override the controls in the Code; and

- Council must write to all affected landowners about the exhibition of the proposal and exhibit the proposal for 28 days.

It is considered that the planning proposal is suitable to proceed to Gateway determination because:

- multi-dwelling housing is not permitted in the R2 zone in the Canterbury LEP 2012, so the LEPs will align;
- the types of multi-dwelling housing including manor houses and terraces that will be permitted as complying development under the Code may be incompatible with the intended low-density character and objectives of the R2 zoned-land;
- Council has advised that its adopted local area plans identify the best locations for medium-density housing across the former Bankstown LGA; and
- Council has also demonstrated a good record of efficiently delivering medium-density housing, removing existing obstacles to delivering this form of housing and providing a variety of housing choice in areas that are zoned for medium-density housing.

PROPOSAL

Objectives or intended outcomes

The planning proposal seeks to prohibit multi-dwelling housing in the R2 Low Density Residential zone under Bankstown LEP 2015 to ensure development in this zone is characterised as low density and that permitted development is compatible with the visual amenity of these zoned areas.

The planning proposal also seeks to amend State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to align the Low Rise to Medium Density House Code controls with Council's current requirements.

Explanation of provisions

The following amendment is proposed to the Bankstown LEP 2015:

- amend the land-use table for the R2 Low Density Residential zone to delete multi-dwelling housing as development permitted with consent.

Once this amendment is finalised, 'manor houses' and 'multi-dwelling houses (terraces)' will not be permitted in the R2 Low Density Residential zone, as the Codes SEPP only permits this type of development in zones where multi-dwelling housing is a permissible use.

The planning proposal also seeks to amend the dual occupancy development standards in the Codes SEPP with the current standards for dual occupancies under the Bankstown LEP 2015. There are no provisions within the planning proposal to address this change through an LEP amendment. These amendments fall outside the scope for planning proposals seeking to amend environmental planning instruments for local areas. Therefore, prior to community consultation and exhibition, Council is required to remove reference to amendments to the Codes SEPP and/or the Code in its planning proposal.

Mapping

Maps have not been included with the proposal. There are no proposed amendments to the LEP maps as part of the planning proposal.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the direct result of a strategic study or report.

The planning proposal is a result of a mayoral minute considered at a Council meeting, which identified the need to prepare a planning proposal to protect the Canterbury Bankstown community from the future impacts of the Code.

Council's review of the Code identifies that it has the potential to significantly impact on the character and amenity of low-density suburban neighbourhoods. To minimise impacts of the Code, Council submitted the planning proposal to remove multi-dwelling housing as a permitted use in the R2 zone of the Bankstown LEP 2015. This restricts medium-density development to zones where development density is expected and characteristic.

It is considered that this amendment to the Bankstown LEP 2015 through a planning proposal is the best way to achieve this objective.

The planning proposal does not address any amendments to the Bankstown and Canterbury LEPs to address Council's concerns with the dual occupancy requirements for complying development under the Code. However, Council raised concerns with the floor space ratio controls for dual occupancies under the Code and would like these to be consistent with Council's requirements.

The planning proposal is not able to give effect to changes to the Code controls for dual occupancies. Council can, however, consider what amendments it may wish to make to the minimum allotment size for dual occupancies under its respective LEPs to correspond to the requirements of the Code, which rely on Council's LEPs.

Given the Minister has granted Council a one-year deferral of the Code until 1 July 2019, dual occupancies will not be permitted to be developed or subdivided in accordance with the Code until then. Council can therefore consider separate amendments to its LEPs that may achieve the outcome sought in the Code once it comes into effect on 1 July 2019.

It is recommended that the information and discussion requesting amendments to the dual occupancy controls under the Code be removed from the planning proposal. A condition is attached to the Gateway to reflect.

STRATEGIC ASSESSMENT

Greater Sydney Region Plan

The Greater Sydney Region Plan was released by the Greater Sydney Commission on 18 March 2018. It provides a 40-year vision for Greater Sydney and is designed to inform district and local plans and the assessment of planning proposals.

The proposal is generally consistent with the objectives and actions for liveability in the plan.

While the plan emphasises the need to provide a greater housing supply and a range of housing types, it also recognises Council's role in confirming which parts of its local areas are suitable for additional medium-density development. Council has advised it has prepared local area plans to identify the best location for medium-density housing across the LGA and consider these types of development are best located in areas where increased density in development is considered appropriate.

South District Plan

The Greater Sydney Commission released the South District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the South District while improving the district's social, economic and environmental assets.

The proposal is generally consistent with the liveability planning priorities under the plan.

The plan sets a five-year housing target of 13,250 dwellings by 2021. Council states that it has demonstrated a record of delivering medium-density housing and removing obstacles to delivering this type of housing through the adoption of local area plans. Council has provided figures indicating it delivered 1853 new dwellings in 2014/15 and 1572 new dwellings in 2015/16, with approximately half of the new dwellings in the form of medium-density housing.

Local

Council recently exhibited its draft community strategic plan. It identifies the community's desire for better-designed and well-managed development, including medium-density housing.

Council is concerned that the Code will allow forms of medium-density housing, particularly manor houses and multi-dwelling housing (terraces), in the R2 Low Density Residential zone as complying development, and that these forms of development are not considered to be compatible with the character and amenity of development in this zone.

Council will undertake a strategic planning review and housing strategy to ensure its LEP aligns with the directions of the South District Plan. Council has also highlighted its intent to consolidate residential development strategies for Bankstown and Canterbury into a single housing strategy.

Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all section 9.1 Directions except for Direction 3.1 Residential Zones.

Council states that the planning proposal is consistent with this Direction as it will protect low-density residential neighbourhoods from impacts associated with increased forms of development such as manor houses, terraces and dual occupancies under the new Code. Council has provided justification for its assessment, advising that it has a demonstrated record of efficiently delivering medium-density housing, removing existing obstacles to delivering this form of housing and providing a variety of housing choice in areas that are zoned for medium-density housing.

The Department considers that further information is required to address consistency with this Direction as it may reduce dwelling potential and housing choice by removing this type of development from the R2 Low Density Residential zone. The Department notes the justification Council has provided and the intent of the planning proposal.

A Gateway condition is recommended to require further information to address and further justify this inconsistency in relation to Bankstown LEP 2015:

- the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential; and
- the number of lots that would be eligible for manor homes/multi-dwelling housing under the Code in the R2 Low Density Residential and R3 Medium Density Residential zones, taking into account the SEPP exclusions.

It is considered suitable to allow the proposal to progress with the inconsistency with this Direction remaining unresolved. This will also allow further consultation and quantitative analysis, which can then be considered prior to plan-making and will determine if the inconsistency is of minor significance.

State environmental planning policies (SEPPs)

State Environmental Planning Policy (Affordable Rental Housing) 2009

The intent of the Affordable Housing SEPP is to increase the supply and diversity of affordable rental housing.

Under the SEPP, a multi-dwelling housing development that is used for affordable housing and complies with the requirements of the SEPP may be subject to a bonus floor space ratio.

The removal of multi-dwelling housing from the R2 Low Density Residential zone would preclude this type of development from being carried out under the SEPP.

The planning proposal will not limit the potential for affordable medium-density housing under the SEPP elsewhere in the LGA on land zoned R3 Medium Density Residential, R4 High Density Residential and B6 Enterprise Corridor.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

On 6 April 2018, the new Low Rise Medium Density Housing Code was published and came into effect on 6 July 2018 for councils where a deferral to the Code was not provided.

The Code aims to provide greater housing choice and facilitate faster housing approvals for medium-density housing. It allows one-storey and two-storey dual occupancies, manor houses and multi-dwelling housing (terraces) to be developed in accordance with a complying development certificate provided this development fully accords with the requirements of the Code.

In relation to the planning proposal, the Code will additionally permit manor houses and multi-dwelling housing (terraces) in zones where multi-dwelling housing is currently permitted under Council's LEP. As such, the proposal to remove multi-dwelling housing from the R2 Low Density Residential zone will preclude these types of developments from being carried out pursuant to the Code.

A Gateway condition is recommended requiring Council to provide a quantitative analysis demonstrating the number of lots that would be eligible for manor houses/multi-dwelling housing permitted under the Code, taking into account land excluded from the Code.

Once this information has been provided, further assessment will be undertaken at a plan-making stage to understand the impacts of the planning proposal on the Code to determine the acceptability of the proposal.

The planning proposal is generally consistent with all other relevant SEPPs.

SITE-SPECIFIC ASSESSMENT

Social

The proposal aims to retain the scale and character of the R2 Low Density Residential zone consistent with the zone objectives. This seeks to ensure that development will be consistent with the existing level of services and infrastructure, and will be compatible in scale with the desired future character for this zone.

Environmental

There are no critical habitats, threatened species or ecological communities that would be impacted by this proposal.

Economic

It is recommended that affected landowners be informed of the planning proposal and its exhibition, and be given suitable time to make their own assessment on the matter.

The issues raised in submissions will be considered as part of the finalisation of the proposal, including the consideration of section 9.1 Direction 3.1 Residential Zones and the impacts of the Code.

CONSULTATION

Community

A Gateway condition is included requiring Council to write to all affected landowners at exhibition of the proposal explaining the proposed changes and what they mean for the landowner.

An exhibition of 28 days is considered acceptable to allow all affected landowners to review the material, seek their own advice and make a submission to Council.

Agencies

Consultation with other agencies is not considered necessary. The proposal will not increase demands on infrastructure or impact on the natural environment or heritage values.

SAVINGS AND TRANSITIONAL PROVISIONS

A condition should be included in the gateway determination that requires a savings and transition provision for any development applications lodged and not determined to ensure the proponents are not adversely impacted on by the changes proposed.

TIME FRAME

The project timeline provided in the planning proposal indicates a time frame of 12 months from issue of the Gateway determination to complete the LEP amendment.

The LEP should be completed by 1 July 2019, consistent with the Minister's letter allowing the deferral from the Code until this time.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the plan-making authority. Given the implications of the proposal to amend a state policy, it is recommended that Council should not be authorised to be the local plan-making authority to make this plan due to the inconsistency with the 9.1 Direction.

CONCLUSION

The planning proposal is supported because:

- multi-dwelling housing is not a permitted use in the R2 zone under the Standard Instrument and a similar approach is already adopted in the Canterbury LEP 2012, where multi-dwelling housing is not permitted in the R2 zone;
- the types of multi-dwelling housing including manor houses and terraces that will be permitted as complying development under the Code may be incompatible with the intended low-density character and objectives of the R2 zoned-land;
- Council has advised that its adopted local area plans identify the best locations for medium-density housing across the former Bankstown LGA; and
- Council has also demonstrated a good record of efficiently delivering medium-density housing, removing existing obstacles to delivering this form of housing and providing a variety of housing choice in areas that are zoned for medium-density housing.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Direction 3.1 Residential Zones is unresolved.

It is recommended that the delegate of the Greater Sydney Commission determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - a) remove references to controls relating to dual occupancy development;
 - b) provide a quantitative analysis in relation to land under Bankstown LEP 2015 to assess the impacts of the proposal on housing diversity and supply as follows:
 - i. the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential;
 - ii. the number of lots eligible for manor houses/multi-dwelling housing under the Low Rise Medium Density Housing Code in the R2 Low Density Residential and R3 Medium Density Residential zones, taking into account the SEPP exclusions; and
 - iii. the number of multi-dwelling housing and dual occupancy developments approved in the R2 Low Density Residential and R3 Medium Density Residential zones in this area in the past five years; and
 - (c) explain whether the proposal is supported by a housing strategy that has been developed in consultation with the community; and
 - (d) include a new savings transition clause to ensure that proposed amendments do not affect any development applications or appeal processes.
2. The revised planning proposal is to be updated in accordance with condition 1 and forwarded to the Department for review and approval prior to exhibition.

3. Council should write to all affected landowners about the exhibition of the proposal outlining the effect of the proposed changes.
4. The planning proposal should be made available for community consultation for a minimum of 28 days.
5. The time frame for completing the LEP is by 1 July 2019.



Laura Locke
Team Leader, Sydney Region East



Amanda Harvey
Director, Sydney Region East
Planning Services

Contact Officer: Charlene Nelson
Senior Planning Officer, Sydney Region East,
Phone: 9274 6570