

PLANNING PROPOSAL

**Minimum lot size standards for
manor houses and multi-dwelling housing (terraces)
(*Low rise medium density housing*)**

30 April 2019



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1. Introduction

1.1 Description of this planning proposal

This planning proposal is made in relation to Clause 4.1A: Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat building of the *Woollahra Local Environmental Plan 2014* (LEP). The objective of the planning proposal is to amend Clause 4.1A of Woollahra LEP 2014 to insert minimum lot size standards of 700 square metres for manor houses and multi dwelling housing (terraces).

This planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the two documents prepared by the NSW Department of Planning and Environment titled *A Guide to Preparing Planning Proposals* (August 2016) and *A Guide to Preparing Local Environmental Plans* (August 2016).

The requirements for a planning proposal are provided in sections 2 to 9 as follows:

- 2 Existing planning controls
- 3 Objective of planning proposal
- 4 Explanation of provisions
- 5 Justification
- 6 Mapping
- 7 Community consultation
- 8 Project timeline

Supplementary material is provided in the appendices:

Appendix 1 – Environmental Planning Committee Agenda – 4 June 2018

Appendix 2 – Environmental Planning Committee Agenda – 18 March 2019

1.2 Background

On 6 April 2018 amendments were made to the NSW planning framework to facilitate the development of Low Rise Medium Density Housing. The amendments came into effect on 6 July 2018 and introduced a range of changes to the following:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP). The key change involves the introduction of the new *Low Rise Medium Density Housing Code* (the Code) which will form part of the Codes SEPP.
- Various local environmental plans – either directly or through the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument), which is the template for LEPs.
- *Environmental Planning and Assessment Regulation 2000* (the Regulation).

The potential implications of the amendments were reported to the Environmental Planning Committee on 4 June 2018, refer to **Appendix 1**. Following this meeting, on 18 June 2018 Council resolved the following:

- A. *THAT Council note that a formal submission has been made to the Minister for Planning requesting a deferred commencement of the Low Rise Medium Density Housing Code and Low Rise Medium Density Design Guide. The Council also notes the Minister for Planning's intention to provide notice to councils that commencement of the Code and Guide will be deferred to allow them to investigate options for providing additional housing envisaged in the Code. Staff are requested to follow up the submission to the Minister for Planning with a view to taking up the deferred commencement for Woollahra, noting that the deferral would allow Council time to investigate the impact of the Code and Guide on our LGA. Staff are requested to follow up the submission to the Minister for Planning.*
- B. *THAT the review of the Woollahra LEP 2014 in relation to the Code, as resolved by Council on 21 May 2018, be extended to include an associated review of the Woollahra DCP 2015. This review will examine amendments required to the DCP for manor houses and multi-dwelling housing (terraces), which will be permitted with development consent under Woollahra LEP 2014 as a result of the amendments to the complying development framework for NSW. The review shall also include reference to the housing target in the Eastern City District Plan and the impact on services and infrastructure within the R2 Low Density Residential Zone and the R3 Medium Density Residential Zone.*
- C. *THAT the reviews described above be reported to the Environmental Planning Committee for consideration.*

1.2.1 Deferral of Low Rise Medium Density Housing Code

In response to part A of Council's resolution of 18 June 2018, a submission was made to the Minister of Planning requesting the deferred commencement of the Code. On 6 July 2018, Council staff notified Councillors by email, that the Minister for Planning published the *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2017*. The Amendment deferred the application of the Code to land in the Woollahra local government area (LGA) (and 40 other LGAs in NSW) until 1 July 2019. The deferral has allowed staff time to investigate the impact of the Code on the Woollahra LGA, consult with the Department of Planning about the policy implication of the changes to the planning framework and prepare appropriate amendments to our current suite of controls.

1.2.2 Review of Woollahra LEP 2014 and Woollahra DCP 2015

In response to part B of Council's resolution of 18 June 2018, it is noted that:

1. The review of the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) in relation to the Code was addressed in the report to the Environmental Planning Committee on 4 June 2018 (**Appendix 1**):

With regard to the potential removal of medium types of dwellings from the R2 and R3 zones, the Standard Instrument mandates the land uses within each zone. That is, Council cannot seek an alteration to the mandated permitted or prohibited uses. For the R3 zone, these mandated uses include multi-dwelling housing.

As the amendment to the Standard Instrument will result in manor houses and multi-dwelling housing (terraces) being permissible in zones where multi-dwelling housing is allowed, it is highly unlikely that the State Government will allow Woollahra to remove these development types from the R3 zone. A request of this nature would be contrary to the overarching intention of both the Standard Instrument and the new Code.

2. The review of the *Woollahra Development Control Plan 2015* (Woollahra DCP 2015) relating to manor houses and multi dwelling housing (terraces) is the subject of this report.
3. The requested reference to the housing target in the Eastern City District Plan (the District Plan) and the impact on services and infrastructure within the R2 Low Density Residential Zone (R2 zone) and the R3 Medium Density Residential Zone (R3 zone) will be considered in the upcoming housing strategy. Council is required to prepare a housing strategy in order to give effect to the Eastern City District Plan prepared by the Greater Sydney Commission. The housing strategy will be reported to a future meeting of the Environmental Planning Committee.

1.2.3 Low rise medium density housing

Low rise medium density housing is defined as three development types, limited to 1 or 2 storeys in height.

Dual occupancies are defined in the Standard Instrument—Principal Local Environmental Plan as:

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.

Manor houses and multi dwelling housing (terraces) are defined in the Codes SEPP as:

manor house means a residential flat building containing 3 or 4 dwellings, where:

- (a) each dwelling is attached to another dwelling by a common wall or floor, and
- (b) at least 1 dwelling is partially or wholly located above another dwelling, and
- (c) the building contains no more than 2 storeys (excluding any basement).

multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads

1.2.4 Development permissibility for development that requires consent

The *Environmental Planning and Assessment Act 1979* (the Act) specifies that where development needs consent, it may be obtained through a complying development certificate (CDC) or a development application (DA).

If a proposal for a permissible land use cannot be obtained as a CDC because it does not fully comply with the specified development standards, an applicant may seek consent through the DA process.

1.2.5 Low rise medium density housing permitted with a development application

As noted above, from 1 July 2019, manor houses and multi dwelling housing (terraces) will be permissible with development consent (as a DA) in the Woollahra LGA. These development types will only be permissible in the R3 zone under the Codes SEPP, and not in the R2 zone. Dual occupancies are already permissible with consent in the R2 and R3 zones in the Woollahra LGA.

On 18 June 2018, Council resolved to review the controls and standards in the Woollahra LEP 2014 and Woollahra DCP 2015, to ensure manor houses and multi dwelling housing (terraces) meet the desired future character of the Woollahra LGA. The Woollahra LEP 2014 and Woollahra DCP 2015 already contains specific controls for dual occupancy development.

1.2.6 Low Rise Medium Density Design Guide for Development Applications

The *Low Rise Medium Density Design Guide for Development Applications* (DA Design Guide) commenced on 6 July 2018 to provide design guidance and best practice design controls and standards for low rise medium density development requiring development consent. The Regulation requires councils to consider the DA Design Guide when assessing DAs for this type of development, until development controls and standards for these new housing types are adopted. In developing appropriate controls for their LGA, councils have the option of adopting the DA Design Guide in full, or in part, as part of a new or existing development control plan (DCP). Once a council has planning controls in place for manor houses and terraces, the council will no longer be required to consider the DA Design Guide.

1.2.7 Council resolution

On 18 March 2019, a report recommending the preparation of a planning proposal and draft DCP was presented to the Environmental Planning Committee (**Appendix 2**). On 25 March 2019, Council resolved:

- A. *THAT Council prepare a planning proposal to amend clause 4.1A of Woollahra LEP 2014 by inserting minimum lot size standards for manor houses and multi dwelling housing (terraces).*
- B. *THAT a draft development control plan be prepared to amend various sections of the Woollahra Development Control Plan 2015, to insert references to manor houses and multi dwelling housing (terraces), as described in detail in **Annexure 4** of the report to the Environmental Planning Committee meeting on 18 March 2019.*
- C. *THAT the planning proposal and draft development control plan be referred to the Woollahra Local Planning Panel for advice.*
- D. *THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.*
- E. *THAT Council does not support any move towards incorporating manor houses or multiple dwellings beyond the R3 Zone.*

2 Existing relevant planning controls

The existing relevant planning standards to this planning proposal are Clause 4.1A of the Woollahra LEP 2014, shown below.

4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

- (1) *The objective of this clause is to achieve planned residential density in certain zones consistent with the desired future character of the neighbourhood.*
- (2) *Development consent may be granted to development on a lot in a zone shown in Column 2 of the table to this clause for a purpose shown in Column 1 of the table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the table.*

Column 1	Column 2	Column 3
<i>Dual occupancy (attached)</i>	<i>Zone R2 Low Density Residential</i>	<i>460 square metres</i>
<i>Dual occupancy (detached)</i>	<i>Zone R2 Low Density Residential</i>	<i>930 square metres</i>
<i>Dual occupancy (attached)</i>	<i>Zone R3 Medium Density Residential</i>	<i>460 square metres</i>
<i>Dual occupancy (detached)</i>	<i>Zone R3 Medium Density Residential</i>	<i>460 square metres</i>
<i>Multi dwelling housing</i>	<i>Zone R3 Medium Density Residential</i>	<i>700 square metres</i>
<i>Residential flat building</i>	<i>Zone R3 Medium Density Residential</i>	<i>700 square metres</i>

3 Objectives of the planning proposal

The objective of the planning proposal is to amend Woollahra LEP 2014 to add minimum lot size standards of 700 square metres for manor houses and multi dwelling housing (terraces).

4 Explanation of provisions

The planning proposal seeks to amend Clause 4.1A of Woollahra LEP 2014 by:

- Adding the words ‘manor house’ and ‘multi dwelling housing (terraces)’ to the title of the clause.
- Table column 1 – adding ‘manor house’ and ‘multi dwelling housing (terraces)’ rows.
- Table column 2 – adding ‘Zone R3 Medium Density Residential’ in the corresponding rows in column 1 to ‘manor house’ and ‘multi dwelling housing (terraces)’.
- Table column 3 – adding ‘700 square metres’ in corresponding rows in column 1 to ‘manor house’ and ‘multi dwelling housing (terraces)’.

It is anticipated that the amended Clause 4.1A will appear in Woollahra LEP 2014, in a manner similar to that shown below. The proposed amendments are shown as inserted text coloured in blue and underlined: [inserted text](#).

4.1A Minimum lot sizes for dual occupancies, [manor houses and multi dwelling housing \(terraces\)](#), multi dwelling housing and residential flat buildings

- (1) *The objective of this clause is to achieve planned residential density in certain zones consistent with the desired future character of the neighbourhood.*
- (2) *Development consent may be granted to development on a lot in a zone shown in Column 2 of the table to this clause for a purpose shown in Column 1 of the table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the table.*

Column 1	Column 2	Column 3
Dual occupancy (attached)	Zone R2 Low Density Residential	460 square metres
Dual occupancy (detached)	Zone R2 Low Density Residential	930 square metres
Dual occupancy (attached)	Zone R3 Medium Density Residential	460 square metres
Dual occupancy (detached)	Zone R3 Medium Density Residential	460 square metres
Manor house	Zone R3 Medium Density Residential	700 square metres
Multi dwelling housing (terraces)	Zone R3 Medium Density Residential	700 square metres
Multi dwelling housing	Zone R3 Medium Density Residential	700 square metres
Residential flat building	Zone R3 Medium Density Residential	700 square metres

5 Justification

The planning proposal has strategic merit. The key reasons to amend Woollahra LEP 2014 are:

- To apply a consistent minimum lot size standards to similar development types. The Codes SEPP definitions for manor houses and multi dwelling housing (terraces) state that:
 - manor house means a residential flat building; and
 - multi dwelling housing (terraces) means multi dwelling housing.

Therefore, for consistency in Woollahra LEP 2014, manor houses and multi dwelling housing (terraces) should reflect the 700 square metre minimum lot size of residential flat buildings and multi dwelling housing.

- To maintain and enhance the existing and desired future character of the LGA of large suburban lot subdivision which permits large dwellings, large private landscaped areas, a mature tree canopy and view sharing to Sydney Harbour, the Sydney CBD and North Sydney skyline and the Pacific Ocean.

These matters are further discussed below in part 5.1 to 5.3. The numbering below reflects the justification question numbering from *A Guide to Preparing Planning Proposals* (August 2016).

5.1 Need for planning proposal

1. Is the planning proposal a result of any strategic study or report?

Yes.

The planning proposal responds to the amendments in the NSW planning framework to facilitate the development of Low Rise Medium Density Housing, as described in the background section of this report.

Additionally, the minimum lot size standard of 700 square metres for residential flat buildings and multi dwelling housing was established as part of the investigation to transition Woollahra LEP 1995 to the new standard instrument LEP for Woollahra (Woollahra LEP 2014). A discussion paper about lot sizes was exhibited as part of the investigations for the draft Woollahra Local Environmental Plan 2013 (which became Woollahra LEP 2014). The discussion paper is attached at Appendix 3.

The discussion paper explains that lot size standards seek to provide a minimum amount of land that will allow development that is consistent with the desired future character of the Woollahra LGA, and provide amenity to residents within the proposed development and to the adjoining properties. As discussed in section 5, above, the existing and desired future character of the LGA is one of large suburban lot subdivision which permits large dwellings, large private landscaped areas, a mature tree canopy and view sharing to Sydney Harbour, the Sydney CBD and North Sydney skyline and the Pacific Ocean.

The rationale for adopting a minimum lot size standard of 700 square metre for residential flat buildings and multi dwelling housing was based on applying a minimum lot size of 230 square metres per dwelling. Under the Woollahra LEP 1995, the minimum lot size standard for residential flat buildings and multi dwelling housing was 700 square metres, and the minimum number of dwellings for both these land uses was three. Therefore, 230 square metres x 3 dwellings = 700 square metres (when rounded up). The 230 square metres per dwelling measure reflected the intent of clause 10B(2) of Woollahra LEP 95, which required 930 square metres for an residential flat buildings containing four or more dwellings. That is, 930 square metres ÷ 4 dwellings = 230 square metres.

It was considered that this approach would not encourage one land use over another, but would leave the development applicant free to select the preferred residential use based on the parent lot size and characteristics.

2. Is the planning proposal the best means of achieving the objectives, or is there a better way?

Yes. The objective of the planning proposal is to amend Woollahra LEP 2014 to add minimum lot size standards of 700 square metres for manor houses and multi dwelling housing (terraces). The best and only means of achieving this objective is through the planning proposal process.

5.2 Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional, subregional strategy or district plan or strategy (including exhibited draft plans or strategies)?

Yes. The planning proposal is consistent with the relevant objectives of the *Greater Sydney Region Plan: A Metropolis of Three Cities* (2018) (the Regional Plan) and the relevant actions of the *Eastern City District Plan* (2018) (the District Plan), as discussed below.

Greater Sydney Regional Plan: A Metropolis of Three Cities

The Regional Plan is the Greater Sydney Commission's 40 year vision for Greater Sydney. It is the regional strategic plan that is intended to guide growth and change to meet the needs of Sydney's growing population.

The planning proposal is generally consistent with the directions of the Regional Plan, particularly in relation to the objectives and strategies listed below.

- Objective 12: Great places that bring people together
 - Strategy 12.1 - Using a place-based and collaborative approach throughout planning, design, development and management, deliver great places by:
 - recognising and celebrating the character of a place and its people

The character of development in the majority of suburbs of Woollahra is based on large suburban lot subdivision. This is particularly true of the suburbs of Bellevue Hill, Darling Point, Double Bay, Point Piper, Rose Bay and Vacluse. Maintaining a consistent large minimum lot size in the majority of the LGA will recognise and celebrate the LGA's development character. This approach is consistent with strategy 12.1.

- Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced
 - Strategy 27.1 - Protect and enhance biodiversity by:
 - managing urban bushland and remnant vegetation as green infrastructure
 - managing urban development and urban bushland to reduce edge-effect impacts

The bushland and biodiversity of the Woollahra LGA exists within parks such as the Sydney Harbour National Park, Nielsen Park, Cooper Park and Trumper Park, as well as within the landscaped areas of large development lots. Maintaining consistent minimum lot size in the majority of the LGA will permit the retention and creation of large landscaped areas on private land and contribute to protecting and enhancing bushland and biodiversity in the LGA. This approach is consistent with objective 27.

- Objective 28: Scenic and cultural landscapes are protected
 - Strategy 28.1 Identify and protect scenic and cultural landscapes.
 - Strategy 28.2 Enhance and protect views of scenic and cultural landscapes from the public realm.

The scenic and cultural landscape of the Woollahra LGA is one of large suburban lot subdivision which permits large dwellings, large private landscaped areas, a mature tree canopy and view sharing to Sydney Harbour, the Sydney CBD and North Sydney skyline and the Pacific Ocean. This is particularly true of the suburbs of Bellevue Hill, Darling Point, Double Bay, Point Piper, Rose Bay and Vaucluse. Maintaining a consistent large minimum lot size in the majority of the LGA is consistent with Council's desired future character for the LGA. Large suburban lot subdivision will protect the existing scenic and cultural landscapes, and enhance and protect views of scenic and cultural landscapes from the public realm. This approach is consistent with objective 28.

Eastern City District Plan

The planning principles and actions set out in the District Plans seek to ensure that all councils implement the Regional Plan. Woollahra is located in the Eastern City District. The planning proposal is generally consistent with the objectives of the District Plan, particularly in relation to the planning priorities and actions listed below.

- Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage

Action 18. Using a place-based and collaborative approach throughout planning, design, development and management, deliver great places by:

- e. recognising and celebrating the character of a place and its people

The character of development in the majority of suburbs of Woollahra is one of large suburban lot subdivision with large dwellings, large private landscaped areas, a mature tree canopy and views to Sydney Harbour, the Sydney CBD and North Sydney skyline and the Pacific Ocean. This is particularly true of the suburbs of Bellevue Hill, Darling Point, Double Bay, Point Piper, Rose Bay and Vaucluse. Maintaining a large minimum lot size in the majority of the LGA will meet action 18 (e) by recognising and celebrating the LGA's development character and Council's desired future character for the LGA.

- Planning Priority E15: Protecting and enhancing bushland and biodiversity

Action 62. Protect and enhance biodiversity by:

- b. managing urban bushland and remnant vegetation as green infrastructure
- c. managing urban development and urban bushland to reduce edge-effect impacts

The bushland and biodiversity of the Woollahra LGA exists within parks such as the Sydney Harbour National Park, Nielsen Park, Cooper Park and Trumper Park, as well as within the large landscaped areas and mature tree canopy existing on large development lots. Maintaining a large minimum lot size in the majority of the LGA will permit the retention and creation of a green grid of urban bushland within large landscaped areas on private land. The grid will contribute to protecting and enhancing bushland and biodiversity in the LGA by linking large parks as part of a green infrastructure network. This approach is consistent with action 62.

- Planning Priority E16: Protecting and enhancing scenic and cultural landscapes

Action 63. Identify and protect scenic and cultural landscapes.

Action 64. Enhance and protect views of scenic and cultural landscapes from the public realm.

The scenic and cultural landscape of the Woollahra LGA is one of large suburban lot subdivision which permits large dwellings, large private landscaped areas, a mature tree canopy and view sharing to Sydney Harbour, the Sydney CBD and North Sydney skyline and the Pacific Ocean. This is particularly true of the suburbs of Bellevue Hill, Darling Point, Double Bay, Point Piper, Rose Bay and Vaucluse. Maintaining a consistent large minimum lot size in the majority of the LGA is consistent with Council's desired future character for the LGA. Large suburban lot subdivision will protect the existing scenic and cultural landscapes, and enhance and protect views of scenic and cultural landscapes from the public realm. This approach is consistent with actions 63 and 64.

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Yes. The planning proposal is consistent with the Council's Community Strategic Plan titled *Woollahra 2030 – our community, our place, our plan*. Notably, the planning proposal meets the following strategy theme, goals and strategies:

- Theme: Quality places and spaces
 - Goal 4 (Well planned neighbourhood)
 - Strategy 4.1 – Encourage and ensure high quality planning and urban design outcomes
 - Strategy 4.6 – Ensure that planning and building requirements are complied with
 - Goal 5: Liveable places
 - Strategy 5.5 – Enhance the physical environment of our local suburbs, neighbourhoods and town centres

5. Is the planning proposal consistent with applicable State environmental planning policies?

Yes. The planning proposal is consistent with the *Standard Instrument – Principal Local Environmental Plan* and other applicable State environmental planning policies (refer to **Schedule 1**).

6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. The planning proposal is consistent with applicable section 9.1 directions (refer to **Schedule 2**).

5.3 Environmental, social and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The planning proposal is not likely to adversely impact on critical habitats or threatened species, populations or ecological communities, or their habitats. The proposal will result in larger lot sizes for the construction of manor houses and multi dwelling housing (terraces) than would otherwise be required under the Codes SEPP and the DA Design Guide. It will not permit additional development in any areas with critical habitats or threatened species, populations or ecological communities, or their habitats.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. There are no likely negative environmental effects associated with the planning proposal. The proposed amendments are administrative in nature and unlikely to result in any environmental effects. Development applications based on the proposed changes to the Woollahra LEP 2014 will be subject to a detailed assessment, where the environmental effects are considered. This assessment will consider consistency with the desired future character of the neighbourhood.

9. Has the planning proposal adequately addressed any social and economic effects?

Yes. The planning proposal will have a positive social effect. The planning proposal will create consistency in development standards of the Woollahra LEP 2014 in that the minimum lot size standard for manor houses and multi dwelling housing (terraces) will reflect the 700 square metre minimum lot size of residential flat buildings and multi dwelling housing. This consistency will allow Council to meet the objective of Clause 4.1A of the Woollahra LEP 2014 to achieve planned residential density in certain zones consistent with the desired future character of the neighbourhood.

It is not anticipated that the planning proposal will have any negative social and economic effects which need to be addressed as part of the proposal.

5.4 State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

Yes. The planning proposal is administrative in nature and is unlikely to create any additional infrastructure demand. If required by the gateway determination, consultation will be undertaken with public utility companies, service providers and emergency services during the public exhibition.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

This section will be completed following consultation with public authorities identified in the gateway determination. Any public authorities identified by the Minister, the Minister's delegate and Department of Planning and Environment will be consulted during the public exhibition of the planning proposal.

6 Mapping

The objective of the planning proposal is to amend Woollahra LEP 2014 to add minimum lot size standards of 700 square metres for manor houses and multi dwelling housing (terraces). There are no mapping amendments proposed or required to Woollahra LEP 2014.

7 Community consultation

The public exhibition will be undertaken in accordance with the requirements of the Act and the *Environmental Planning and Assessment Regulation 2000*.

The planning proposal will be exhibited for a minimum of 28 days.

Public notification of the exhibition will comprise:

- A weekly notice in the local newspaper (the Wentworth Courier) for the duration of the exhibition period.
- A notice on Council's website.
- Local community groups.

During the exhibition period the following material will be available on Council's website and in the customer service area at Woollahra Council offices:

- The planning proposal, in the form approved by the gateway determination.
- The gateway determination.
- Information relied upon by the planning proposal, such as relevant Council and consultant reports.

8 Project timeline

As Council is authorised to exercise the functions of the Minister for Planning under section 3.36 of the *Environmental Planning and Assessment Act 1979*, the proposed timeline for completion is as follows:

Plan-making step	Estimated completion
Environmental Planning Committee recommends proceeding	18 March 2019
Council resolution to proceed	25 March 2019
Local Planning Panel provides advice	18 April 2019
Council resolution to proceed	May 2019
Gateway determination	July 2019
Completion of technical assessment	None required
Public exhibition period	August 2019
Government agency consultation	Same time as public exhibition period
Submissions assessment	September 2019
Council assessment of planning proposal post exhibition	October 2019
Council decision to make the LEP amendment	November 2019
Council to liaise with Parliamentary Counsel to prepare LEP amendment	December 2019
Forward LEP amendment to Minister and Department of Planning and Environment for notification	January 2020
Notification of the approved LEP	February 2020

Schedules

Schedule 1 – Consistency with State environmental planning policies

State environmental planning policy	Comment on consistency
SEPP No 1 – Development Standards	Not applicable
SEPP No 19 – Bushland in Urban Areas	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 21 – Caravan Parks	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 30 – Intensive Agriculture	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 33 – Hazardous and Offensive Development	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 36 – Manufactured Home Estates	Not applicable
SEPP No 44 – Koala Habitat Protection	Not applicable
SEPP No 47 – Moore Park Showground	Not applicable
SEPP No 50 – Canal Estate Development	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable
SEPP No 55 – Remediation of Land	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 62 – Sustainable Aquaculture	Not applicable
SEPP No 64 – Advertising and Signage	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 65 – Design Quality of Residential Apartment Development	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 70 – Affordable Housing (Revised Schemes)	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.

State environmental planning policy	Comment on consistency
SEPP (Affordable Rental Housing) 2009	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Building Sustainability Index: BASIX) 2004	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Coastal Management) 2018	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Exempt and Complying Development Codes) 2008	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Housing for Seniors or People with a Disability) 2004	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Infrastructure)	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Kosciuszko National Park - Alpine Resorts) 2007	Not applicable
SEPP (Kurnell Peninsula) 1989	Not applicable
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Miscellaneous Consent Provisions) 2007	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Penrith Lakes Scheme) 1989	Not applicable
SEPP (Rural Lands) 2008	Not applicable
SEPP (State and Regional Development) 2011	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (State Significant Precincts) 2005	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Sydney Drinking Water Catchment) 2011	Not applicable
SEPP (Sydney Region Growth Centres) 2006	Not applicable
SEPP (Three Ports) 2013	Not applicable
SEPP (Urban Renewal) 2010	Not applicable

State environmental planning policy	Comment on consistency
SEPP (Vegetation in Non-Rural Areas) 2017	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Western Sydney Employment Area) 2009	Not applicable
SEPP (Western Sydney Parklands) 2009	Not applicable

Sydney Regional Environmental Plans – now deemed State Environmental Planning Policies	Comment on consistency
SREP No 8 (Central Coast Plateau Areas)	Not applicable
SREP No 9 - Extractive Industry (No 2 - 1995)	Not applicable
SREP No 16 – Walsh Bay	Not applicable
SREP No 20 - Hawkesbury- Nepean River (No 2 - 1997)	Not applicable
SREP No 24 - Homebush Bay Area	Not applicable
SREP No 26 – City West	Not applicable
SREP No 30 - St Marys	Not applicable
SREP No 33 - Cooks Cove	Not applicable
SREP (Sydney Harbour Catchment) 2005	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.

Schedule 2 – Compliance with section 9.1 directions

Manor house and multi dwelling housing (terraces)		
Direction		Applicable/comment
1	Employment and resources	
1	Business and industrial zones	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this direction.
1.2-1.5	Directions 1.2-1.5	Not applicable. These directions are not relevant to the Sydney metropolitan area.
2	Environment and heritage	
2.1	Environment protection zones	Not applicable. The planning proposal does not apply to land within an environmental protection zone or land identified for environmental protection.
2.2	Coastal protection	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this direction.
2.3	Heritage conservation	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this direction.
2.4	Recreation vehicle areas	Not applicable. The planning proposal will not allow land to be developed for a recreation vehicle area.
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable. The planning proposal does not apply to land in the Far North Coast.
3	Housing, infrastructure and urban development	
3.1	Residential zones	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this direction.
3.2	Caravan parks and manufactured home estates	Not applicable. The planning proposal does not affect caravan parks and manufactured home estates.
3.3	Home occupations	Not applicable. The planning proposal does not affect home occupations in dwelling houses.
3.4	Integrating land use and transport	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this direction.

Manor house and multi dwelling housing (terraces)		
Direction		Applicable/comment
3.5	Development near licensed aerodromes	Not applicable. The planning proposal does not apply to land near a licensed aerodrome.
3.6	Shooting ranges	Not applicable. The planning proposal does not apply to land adjacent to or adjoining an existing shooting range.
4	Hazard and risk	
4.1	Acid sulfate soils	Applicable. Consistent. Existing acid sulfate soils provisions will not be altered by the planning proposal.
4.2	Mine subsidence and unstable land	Not applicable. The planning proposal does not apply to land within a proclaimed Mine Subsidence District or to land identified as unstable.
4.3	Flood prone land	Applicable. Consistent. Existing flood prone land provisions will not be altered by the planning proposal.
4.4	Planning for bushfire protection	Not applicable. The planning proposal does not apply to land mapped as bushfire prone land.
5	Regional planning	
5.1 - 5.9	Strategies 5.1-5.9	Not applicable. These strategies do not apply to the Woollahra LGA.
5.10	Implementation of Regional Plans	Not applicable. No regional (or district) plan applies to the Woollahra LGA.
6	Local plan making	
6.1	Approval and referral requirements	Applicable. Consistent. The proposal does not include provisions that require development applications to be referred externally and is not related to designated development.
6.2	Reserving land for public purposes	Applicable. Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3	Site specific provisions	Not applicable. The planning proposal does not allow a particular development to be carried out.

Manor house and multi dwelling housing (terraces)		
Direction		Applicable/comment
7	Metropolitan Planning	
7.1	Implementation of <i>A Metropolis of Three Cities</i> (March 2018)	Applicable. Consistent. The planning proposal is consistent with the objectives of <i>A Metropolis of Three Cities</i> , particularly Objective 12, 27 and 28.
7.2	Implementation of Greater Macarthur Land Release Investigation	Not applicable.
7.3	Parramatta Road Corridor Urban Transformation Strategy	Not applicable.

Supplementary material

Appendix 1 – Environmental Planning Committee Agenda – 4 June 2018

Appendix 2 – Environmental Planning Committee Agenda – 18 March 2019 (annexures removed)

Appendix 3 – Discussion Paper (Chapter 4 – Lot Size) – Draft Woollahra Local Environmental Plan 2013

Item No:	R2 Recommendation to Council
Subject:	LOW RISE MEDIUM DENSITY HOUSING CODE AND DESIGN GUIDE
Author:	Jorge Alvarez, Senior Strategic Planner
Approvers:	Anne White, Team Leader - Strategic Planning Chris Bluett, Manager - Strategic Planning Allan Coker, Director - Planning & Development
File No:	18/64150
Reason for Report:	To report to Council of the introduction of the Low Rise Medium Density Code and Design Guide

Recommendation:

- A. THAT the report on the Low Rise Medium Density Housing Code and the Low Rise Medium Density Design Guide be received and noted.
- B. THAT the review of the Woollahra LEP 2014 in relation to the Code, as resolved by Council on 21 May 2018, be extended to include an associated review of the Woollahra DCP 2015. This review will examine amendments required to the DCP for manor houses and multi-dwelling housing (terraces), which will be permitted with development consent under the WLEP 2014 as a result of the amendments to the complying development framework for NSW.
- C. THAT the reviews described above be reported to the Environmental Planning Committee for consideration.

1 Summary

Complying development is a type of development which satisfies specified development standards and which may be granted through a complying development certificate (CDC) rather than a development application (DA). On 6 April 2018 amendments to the current complying development framework in New South Wales were published on the NSW Legislation Website.

The amendments, which will come into effect on 6 July 2018, will introduce a range of changes to the following:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP).
- Various local environmental plans – either directly or through the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument), which is the template for LEPs.
- *Environmental Planning and Assessment Regulation 2000* (the Regulation).

The key change involves the introduction of the new *Low Rise Medium Density Housing Code* (the Code) which will form part of the Codes SEPP.

The package of amendments will permit as complying development, the erection of, or alterations and additions to, three development types (limited to 1 or 2 storeys in height). These three development types are:

- Dual occupancy – being 2 dwellings either attached or detached on one lot of land.
- Manor house – being a type of residential flat building containing 3 or 4 attached dwellings.

- Multi-dwelling housing (terraces) – being 3 or more attached dwellings on one lot of land, facing and generally aligned along one or more public roads.

The amendments also permit as complying development any attached development or detached development related to the three development types. This will include development such as decks, patios, pergolas, terraces, cabanas, garden sheds, carports, garages and above ground rainwater tanks.

Also commencing on 6 July 2018 is the *Low Rise Medium Density Design Guide* (the Guide) which is referenced in the Code. The design of the three development types; dual occupancy, manor house and a multi-dwelling house (terraces) as complying development, must be consistent with the relevant design criteria in the Guide.

The application of the Code and Guide is regulated by the permissibility provisions, general land exclusions and prerequisites set out in the Codes SEPP and in the amendment to the Standard Instrument. As a result, dual occupancy development which is currently permissible with consent in the *R2 Low Density Residential Zone* (R2 zone) and the *R3 Medium Density Residential Zone* (R3 zone) under *Woollahra Local Environmental Plan 2014* (WLEP 2014) will be permissible as complying development in the Codes SEPP in those two zones.

Manor houses and multi-dwelling housing (terraces) will become permissible uses in the R3 zone under WLEP 2014, and therefore will be permissible as complying development in the Codes SEPP in that zone. However, manor houses and multi-dwelling housing (terraces) will not become permissible uses in the R2 zone

It is important to note that while the three development types will be established as complying development in certain zones under the Codes SEPP, they may not be carried out on certain excluded land. This excluded land includes:

- Land that comprises, or on which there is a heritage item (state or local), a draft heritage item or land subject to an interim heritage order.
- Land within a heritage conservation area or a draft heritage conservation area.
- Land that is reserved for a public purpose.
- Land identified on the Acid Sulfate Soils Map as being Class 1 or Class 2.
- Land in the foreshore area (which is land between a foreshore building line and the mean high water mark).

Additionally, certain development will not be complying development under the new Code. This includes:

- Development on a battle-axe lot.
- The erection of a building over a registered easement.
- The alteration of, or an addition to, a garage or carport that is located forward of the building line.

The Code and the Guide establish a wide range of development standards for the three development types. The standards within the Code relate to matters including:

- built form, such as minimum lot area, maximum building height, gross floor area, boundary setbacks, length of boundary walls, dwelling configuration,

- landscaping,
- amenity, such as window configuration, privacy screens,
- car parking and vehicle access.

The design criteria in the Guide address matters such as solar access, natural ventilation, private open space, landscaping and privacy. Complying development must demonstrate compliance with the Guide by way of a “design verification statement” completed by a registered architect or a person accredited as a building designer.

As noted above, a manor house and multi-dwelling housing (terraces) will be permissible with consent either through a complying development certificate application or a development application. This means that where a manor house or multi-dwelling house (terrace) proposal cannot meet the exclusions, restrictions and development standards set out in the Code/Guide for complying development, it can be submitted to Council as a development application. For this reason, it is necessary to introduce specific controls in the *Woollahra Development Control Plan 2015* (WDCP) for manor houses and multi-dwelling housing (terraces).

Having reviewed the matter of permissibility, land exclusions, relevant development standards and recent complying development certificates (CDCs), the potential impact of the amendments to the Woollahra LGA is likely to be low for the following reasons:

- The new types of complying development will not be permissible on all R2 and R3 zoned land, due to the restrictions on permissibility and other exclusions.
- Where the new types of complying development will be permissible, it will be restricted by various development standards.
- There has been very little take up of complying development for new dwelling houses under existing complying development provisions.
- Rather than using the CDC process, DAs are likely to remain the more desirable option for developers due to their ability to permit similar or greater development potential in terms of maximum gross floor area (GFA).

2 Background

2.1 Complying development

Complying development is a fast-track approval process for straightforward residential, commercial and industrial development. If the application meets specific criteria, it can be determined by a council or private accredited certifier. No DA is required. Instead a CDC is issued permitting development.

2.2 Existing complying residential development Codes

The Codes SEPP currently sets the framework to permit one and two-storey freestanding dwelling houses which fully comply with the relevant development standards, to be approved as complying development. The Codes SEPP already applies to WMC, but we have received only a few CDCs for new dwelling houses. The most frequent use of the Codes SEPP for residential development has been for “alterations and additions”.

2.3 Low Rise Medium Density Housing Code

The Department of Planning and Environment (the DPE) has stated that the aim for the new Code and Guide is to provide more housing choice, improve housing affordability, facilitate faster housing approvals and deliver a diverse range of housing options.

The Code will permit one and two storey dual occupancies, manor houses and multi-dwelling houses (terraces) to be carried out as complying development. The Guide will supplement the design standards for development included in the Code.

2.4 Commencement

The Code and Guide will commence on 6 July 2018.

2.5 Public consultation by the DPE

2.5.1 Discussion paper

In late 2015 / early 2016, the DPE exhibited a discussion paper to provide recommendations on additional housing types that could be included as complying development in the Codes SEPP. These housing types included two storey dual occupancies, manor homes, townhouses and terraces. In this paper, these housing types were referred to as the “missing middle” (i.e. not single dwellings and not residential flat buildings).

On 1 March 2016 Council staff made a detailed submission on the discussion paper. (see **Annexure 1**).

2.5.2 Draft Medium Density Housing Code and Design Guide

In late 2016, the DPE exhibited a draft version of the Code and Guide to allow the public to comment on the initiative. The following documents were exhibited:

1. Explanation of Intended Effects for a proposed “Medium Density Housing” Code of the Codes SEPP.
2. “Draft Medium Density Design Guide” to supplement the standards of the draft Code, and direct the design of medium density development, through the use of development principles, standards and controls.

On 19 December 2016 Council staff made a detailed submission to these draft documents. (see **Annexure 2**). In this submission, staff identified that they did not support expanding complying development to include two storey medium density housing in the Woollahra LGA. The main reasons the proposal was not supported were:

- The draft Code would override and disregard the local planning controls developed in consultation with the local community.
- The draft Code and design Guide did not address the existing or desired future character of any area to which they apply.
- The proposed design verification statements that check the merits of a development against design criteria are prepared by the designer of a proposed development, and are not independently corroborated.
- The proposed articulation zone standard would permit certain development beyond the minimum building setbacks set out in the draft Code.
- Complying development could exceed the 8.5 or 9m height limit on sloping sites because excavation is permitted and non-habitable rooms are not included in calculating height in storeys.
- The Code does not allow for the assessment of amenity impacts on neighbouring land.
- The testing process for the standards and controls of the draft Code and Guide were not sufficiently robust, particularly on irregular sites.
- The existing complying development framework has a significant number of shortfalls which will be amplified by expanding complying development.

Amendments to the draft Code and Guide as a result of public consultation

The public consultation process has resulted in minor changes to the Code and Guide, as well as amendments to the *Environmental Planning and Assessment Act 1979* (the Act) regarding complying development as of 1 March 2018.

3 Description of the complying development amendments

3.1 Components of the amendments

The amendments comprise four main components:

1. Introduce a new “Low Rise Medium Density Housing” Code (Part 3B) into the Codes SEPP. The Code will outline the permissibility and development standards for dual occupancy, manor house, and multi-dwelling (terrace) housing which can be approved as complying development, as well as associated detached development on the same lot of land, such as garages and detached studios.
2. Amend the “Subdivisions” Code (Part 6) of the Codes SEPP with additional provisions for low rise medium density housing, including the permissibility of Torrens subdivision for dual occupancies (located side by side) and terraces.
3. Issue the “Low Density Medium Density Design Guide” to guide development permissible under the new Code. A set of development principles, objectives, design criteria and guidelines complement the standards in the Code. The Guide has the same relationship to the Code that the DPE’s “Apartment Design Guide” for residential flat buildings has to development applications assessed under *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65).
4. Amend the associated planning regulation and instruments to allow the Code and Guide to come into effect:
 - Amendment to the Regulation - *Environmental Planning and Assessment Amendment (Low Rise Medium Density Housing) Regulation 2017*.
 - Amendment to the Standard Instrument - *Standard Instrument (Local Environmental Plans) Order 2006*.
 - Amendment to a number of existing sections of the Codes SEPP.

3.2 Component 1: Low Rise Medium Density Housing Code

3.2.1 Low rise medium density development types

The Code will permit “low rise (one and two storey) medium density housing” to be treated as complying development. The Code relates to the following housing types:

- dual occupancy,
- manor house, and
- multi-dwelling housing (terraces).

A description of each housing type is included in the table below.

Table 1: Low rise medium density housing types

Housing type	Definition
	<p>dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.</p> <p>dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.</p> <p>Note. Dual occupancies are a type of residential accommodation.</p>
	<p>manor house means a building containing 3 or 4 dwellings, where:</p> <ul style="list-style-type: none"> (a) each dwelling is attached to another dwelling by a common wall or floor, and (b) at least 1 dwelling is partially or wholly located above another dwelling, and (c) the building contains no more than 2 storeys (excluding any basement). <p>Note. Manor houses are a type of residential flat building.</p>
	<p>multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.</p> <p>Note. Multi dwelling housing is a type of residential accommodation.</p>

3.2.2 Permissibility

In association with the Code, amendments will be made to the Standard Instrument and consequently Local Environmental Plans (LEPs), to make manor houses and multi-dwelling housing (terraces) permissible on certain land. The amendments state that manor houses must be permitted wherever multi-dwelling development is permitted, and multi-dwelling housing (terraces) cannot be prohibited in a zone where multi-dwelling housing is permitted. The permissibility of these uses within an LEP will also permit them to be approved as complying development. No such amendment is proposed for dual occupancy development.

As a result:

- Dual occupancies are currently permissible in both the R2 and R3 zones of the WLEP 2014 and this will not change.
- Manor houses will be added as a permissible use in the R3 zone of the WLEP 2014.
- Multi-dwelling housing (terraces) will be added as a permissible use in the R3 zone of the WLEP 2014.
- This increased permissibility will have the effect of making these additional land uses permissible as complying development under the Codes SEPP.

3.2.3 Exclusions

The existing exclusions to complying development will not change. Complying development is not permitted on:

- Land that comprises, or on which there is a heritage item (state or local), a draft heritage item or land subject to an interim heritage order.
- Land within a heritage conservation area or a draft heritage conservation area.
- Land that is reserved for a public purpose.
- Land identified on an Acid Sulfate Soils Map as being Class 1 or Class 2.
- Land in a foreshore area (which is land between a foreshore building line and the mean high water mark of an adjacent natural waterbody).

Note: Flood control lots are not excluded.

The following development is also not permitted as complying development in the Code:

- erection, alterations and additions to a roof terrace on the top most roof of a building,
- development on a battle-axe lot,
- development that is attached to a secondary dwelling or group home, and
- alterations and additions to a garage or carport that is located forward of the building line.

3.2.4 Development standards and design criteria

The Code establishes development standards and the Guide establishes design criteria for the approval of low rise medium density housing as complying development. The table below shows a summary of the key standards. A more detailed summary is attached (see **Annexure 3**).

Table 2: Low rise medium density housing Code - main standards summary

Housing type Standard	Dual occupancy (side by side)	Manor house and Dual occupancy (above and below)	Multi dwelling housing (terraces)	Detached development
Application	Dual occupancies (where no part of a dwelling is located above any part of another dwelling) + alterations and additions.	Manor houses and Dual occupancies (where part of a dwelling is located above part of another dwelling) + alterations and additions.	Multi dwelling housing (terraces) + alterations and additions.	Detached development Development such as decks, verandahs, sheds, garages and detached studio. + alterations and additions.
Minimum lot size	460sqm	Manor house 600sqm Dual occupancies 460sqm	700sqm	400sqm
Minimum width of lot at building line	12.0m	15.0m	18.0m	12.0m
Maximum building height	8.5m	8.5m	9m	Varies from 4.5 – 6m
Maximum gross floor area (based on lot size)	Varies from 415 - 800sqm	Varies from 265 - 400sqm	Varies from 420 - 560sqm	Varies from 36 - 100sqm
Minimum car parking spaces per dwelling	1	1	1	N/A
Building design	The design of a low rise medium density development must be consistent with the relevant design criteria in the Medium Density Design Guide.			
<i>Note: The maximum gross floor area varies subject to lot size but has an upper limit.</i>				

3.3 Component 2: Subdivisions Code amendment

The “Subdivisions” Code (Part 6) of the Codes SEPP will be amended with additional subdivision standards for dual occupancies (side by side) and multi-dwelling housing (terraces).

- Strata subdivision lots:
 - minimum 6m width at building line for each resulting lot, and
 - in the case of dual occupancies there must be a minimum of 180sqm strata area measured at ground floor.

Note: the strata area is the whole of the strata lot less common areas.

- Torrens subdivision lots:
 - maximum of 1 dwelling on each resulting lot,
 - minimum of 6m width at building line for each resulting lot,
 - minimum resulting lot size for dual occupancies is 60% of the minimum LEP lot size
- Note:* the minimum lot size under WLEP 2014 is 230sqm. This means that it will be possible to subdivide dual occupancies and create lots as small as 138sqm.
- minimum resulting lot size for multi-dwelling housing (terraces) is 200sqm.

3.4 Component 3: Low Rise Medium Density Design Guide

The Guide is intended to ensure that complying development addresses design principles and criteria to complement the standards of the Code. The Guide has the same relationship to the Code as that between the DPE’s “Apartment Design Guide” and SEPP 65. The Guide provides detailed design consideration requirements that are not specified in the Code such as:

- local character and context
- public domain interface
- solar and daylight access
- storage
- architectural form and roof design
- visual appearance and articulation
- energy efficiency
- water management and conservation
- waste management
- communal areas and open spaces

The Regulation and Guide require an application for a CDC for low rise medium density housing, to be accompanied by a “design verification statement” by a qualified designer (being a person registered as an architect in accordance with the *Architects Act 2003*) or a person accredited as a building designer that:

- (i) verifies that he or she designed, or directed the design of, the development, and
- (ii) addresses how the design is consistent with the relevant design criteria in the Guide.

3.5 Component 4: Associated planning regulation and instruments and complementary information

The Code and Guide comprise a package of documents and relevant information listed below. As the main documents are lengthy, their content has been summarised in this report.

1. *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2017*
<https://www.legislation.nsw.gov.au/EPIs/2018-132.pdf>
2. *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2018*
<https://www.legislation.nsw.gov.au/EPIs/2018-210.pdf>
3. Low Rise Medium Density Design Guide
<http://www.planning.nsw.gov.au/~media/Files/DPE/Guidelines/Low-rise-medium-density-design-guide-2018-04-05.ashx>
4. *Environmental Planning and Assessment Amendment (Low Rise Medium Density Housing) Regulation 2017*
<https://www.legislation.nsw.gov.au/regulations/2018-130.pdf>
5. Amendment of Standard Instrument prescribed by *Standard Instrument (Local Environmental Plans) Order 2006*
<https://www.legislation.nsw.gov.au/EPIs/2018-131.pdf>

Additional information is available from the following references:

6. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
<https://www.legislation.nsw.gov.au/#/view/EPI/2008/572>

7. Frequently Asked Questions
<http://www.planning.nsw.gov.au/~media/Files/DPE/Factsheets-and-faqs/faqs-medium-density-design-guide-2016-04-06.ashx>
8. The Low Rise Medium Density Housing Code (DPE website)
<http://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Medium-Density-Housing>
9. Hawley, M 2018, *State Government Expands Complying Development*, Lindsay Taylor Lawyers, posted 6 April, 2018
http://www.lindsaytaylorlawyers.com.au/in_focus/index.php/2018/04/state-government-expands-complying-development/#more-9301

4 Impact on development approvals

Based on our research and analysis, it is anticipated that the impact of the Code and Guide is likely to be minor in terms of overall development. This is due to the following:

- Complying development will only be permitted by the Code on land under which the housing type is currently permitted by the WLEP 2014.
- Complying development cannot take place on “excluded land”. Furthermore, complying development will be subject to a number of development standards. Once the exclusions and minimum lot size requirements are taken into account, complying development will only be permitted in the LGA on the following portion of R2 and R3 zoned land:
 - 33% for dual occupancies in the R2 zone,
 - 31% for dual occupancies in the R3 zone,
 - 23% for manor houses in the R3 zone, and
 - 15% for multi-dwelling housing (terraces) in the R3 zone.
- The average annual number of development applications (DAs) for low rise medium density housing types over the 3 years from 2015-2017 is low.
- The number of CDCs for alterations and additions to multi-dwelling housing (terraces) is likely to be very low, because the majority of terrace houses in the LGA are located within HCAs (which are excluded).
- DAs are likely to remain the most desirable option over CDCs for developers for the following reasons:
 - the development potential, in terms of maximum gross floor area (GFA), is similar for DAs and CDCs, however, under some circumstances additional GFA may be possible through the DA process.
 - for the past 3 years from 2015-2017, DAs outnumbered CDCs for dwelling houses by 352 to 98, a factor of 3.6 to 1. This trend may translate to the proportion of DAs to CDCs for low rise medium density housing types once the Code commences.

These points are described in greater detail below.

4.1 Permissibility

As discussed previously in this report, the Code will only permit complying development on land on which it is already permitted by the land zoning of WLEP 2014. The WLEP 2014 currently permits development of dual occupancies in the R2 and R3 zones, and residential flat buildings and multi-dwelling housing in the R3 zone. Accordingly, the Code will permit complying development of dual occupancies in the R2 and R3 zones, and manor houses and multi-dwelling housing (terraces) in the R3 zone.

4.2 Land on which complying development is permitted

The Code restricts land on which complying development will be permitted through zoning (restricted to R2 and R3 zones), exclusion criteria for certain land (such as heritage items and heritage conservation areas), and minimum lot size. When the exclusion and minimum lot restrictions are applied, complying development will only be permitted on a portion of R2 and R3 zoned land in the LGA, once exclusions on certain land and minimum lot size requirements are taken into consideration. The right hand column of **Table 3** below illustrates the land, as a number of residential zoned lots, on which low rise medium housing development will be permitted as complying development by the Code.

Table 3: Land on which complying development is permitted

Zone and minimum size of lot	Type of low rise medium density housing permitted	All lots	Lots not excluded by Code	% of lots on which complying development will be permitted
R2 lots		9,256		
R2 lots >= 460sqm	Dual occupancy		3,095	33%
R3 lots		3,935		
R3 lots >= 460sqm	Dual occupancy		1,237	31%
R3 lots >= 600sqm	Manor house		893	23%
R3 lots >= 700sqm	Multi dwelling housing (terraces)		606	15%

In summary, the percentage of lots on which complying development will be permitted is low. It should be noted that these numbers will be further reduced once other site specific standards and restrictions are considered (such as battle-axe lots and minimum lot widths).

4.3 Average annual number of DAs for low rise medium density housing

The average annual number of DAs for low rise medium density housing types is low. The tables below show a comparison of all residential DAs for dwelling houses, dual occupancies, 1 or 2 storey residential flat buildings (RFBs) and multi-dwelling housing, for the 3 years, from 2015 to 2017. The existing equivalent for low rise medium density housing types of the Code are “1 or 2 storey RFB” for manor house, and “multi dwelling housing” for multi dwelling housing (terraces). The table also separates new dwelling applications from alterations and additions, and “other” applications, which are mostly for subdivision.

Table 4: Average annual number of residential DAs (2015-2017)

2015-2017 Average annual DAs				
All residential DAs	400			
Average annual DAs	Dwelling house	Dual occupancy	1 or 2 storey RFB	Townhouse / multi dwelling housing
All DAs	352	25	8	1
Complete redevelopment	10	13	0	<1
Alterations and additions	342	7	8	<1
Other	0	5	0	0

Table 4 reveals the following:

- *Dual occupancies*
The average annual number of all DAs for dual occupancies was low at 25, of which 13 were for new development.
- *1 or 2 storey RFBs*
The average annual number of DAs for 1 or 2 storey RFBs was low at 8, none of which were for new dwellings.
- *Multi-dwelling housing*
The average annual number of DAs for multi-dwelling housing was very low at 1. There were only 2 DAs found for the 3 year period, 1 for a new development in 2015 and 1 for alterations and additions in 2017.

In summary, **Table 4** illustrates that the majority of recent residential DAs in the Woollahra LGA are for single dwelling houses. The three new equivalent development types are only a minor proportion of overall residential DAs.

4.4 Development potential for low rise medium density housing

The development potential achievable on a site can be expressed as a maximum gross floor area (GFA). There are different methods for calculating GFA for low rise medium density housing types in the WLEP 2014, WDCP 2015 and the Code.

The GFA for DAs in the Woollahra LGA is determined by controls set out in the WLEP 2014 and the WDCP 2015. The WLEP 2014 provides controls as floor space ratios (FSR) for residential flat buildings and multi-dwelling housing. The WDCP 2015 provides controls as a floorplate for dwelling houses, semi-detached dwellings and dual occupancies. The Code provides different standards for the GFA for different low rise medium density housing types.

The table below shows a comparison of the development potential between development consent under the WLEP 2014 and complying development under the Code. This comparison is calculated as GFA for all categories of low rise dwelling housing. To allow a direct comparison, the GFA was calculated for the largest minimum lot size permitted for each housing type being:

- Dual occupancy (detached, side by side) - 930sqm
- Dual occupancy (attached, side by side) - 460sqm
- Dual occupancy (attached, above and below) - 460sqm
- Manor house - 700sqm
- Multi dwelling housing (terraces) - 700sqm

Table 5: Comparison of development potential for low rise medium density housing types under the new Code and WLEP 2014/ WDCP 2015

	R2 zone		R3 zone	
	Code	WLEP 2014 / WDCP 2015	Code	WLEP 2014 / WDCP 2015
Dual occupancy (detached) (side by side)				
Minimum lot size	930sqm*	930sqm	930sqm*	930sqm
Maximum gross floor area comparison of 930sqm lot	532.5sqm	511.5sqm (approx.) (excl. outbuildings)	532.5sqm	511.5sqm (approx.) (excl. outbuildings)
Dual occupancy (attached) (side by side)				
Minimum lot size	460sqm*	460sqm	460sqm*	460sqm
Maximum gross floor area comparison of 460sqm lot	415sqm	253sqm (approx.) (excl. outbuildings)	415sqm	253sqm (approx.) (excl. outbuildings)
Dual occupancy (attached) (above and below)				
Minimum lot size	460sqm*	460sqm	460sqm*	460sqm
Maximum gross floor area comparison of 460sqm lot	265sqm	253sqm (approx.) (excl. outbuildings)	265sqm	253sqm (approx.) (excl. outbuildings)
Manor house				
Minimum lot size	N/A	N/A	600sqm	700sqm
Maximum gross floor area comparison of 700sqm lot	N/A	N/A	325sqm	455 - 1,085sqm (approx.)
Multi dwelling housing (terraces)				
Minimum lot size	N/A	N/A	700sqm*	700sqm
Maximum gross floor area comparison of 700sqm lot	N/A	N/A	560sqm	455 - 1,085sqm (approx.)
<i>Notes:</i>				
<ul style="list-style-type: none"> The GFA calculations for dual occupancies in the WLEP 2014 / WDCP 2015 columns are based on WDCP 2015 floor plate standards. The GFA approximations for manor houses and multi-dwelling housing (terraces) in the WLEP 2014 / WDCP 2015 columns show a range calculated by applying the FSRs of 0.65:1 and 1.55:1, which are the most common low and high FSRs which apply to R3 zoned land under the WLEP 2014. The minimum lot sizes shown with an * are based on the minimum size permitted under the WLEP 2014, because the Code prescribes the permissible minimum lot size for complying development as the greater of either a set size described in the Code, or the corresponding minimum size in the relevant LEP (in this case the WLEP 2014). 				

The GFA permitted under the WLEP 2014 and WDCP 2015 is shown as an approximation because it relates to specific-site conditions, such as buildable area and setbacks for dual occupancy development, and site-specific FSRs from manor houses and multi dwelling housing (terraces). The GFA approximations for manor houses and multi dwelling housing (terraces) show a range of development potential calculated by applying the FSRs of 0.65:1 and 1.55:1 to the comparison minimum lot size. Conversely, the GFA permitted under the Code is set by specific standards and can be calculated precisely based on lot size.

The GFA permitted under the WLEP 2014 and WDCP 2015 for dual occupancy development does not include “outbuildings” such as decks, verandahs, sheds, garages and detached studios. The number and size of outbuildings permitted on a site under the WLEP 2014 and WDCP 2015 varies,

however, they add to the development potential of the site. Conversely, the GFA permitted under the Code includes all buildings on the site.

Table 5 above suggests that the development potential of a site has similarities for low rise medium density development under the new Code and the WLEP 2014/ WDCP 2015. However, a greater yield could be achieved under the new Code for dual occupancies (attached) (side by side) and multi-dwelling housing (terraces). A greater yield could be achieved under the WLEP 2014 for manor house development.

This assessment indicates that submitting a DA is likely to be a more desirable option for some development types.

4.5 Proportion of DAs to CDCs

A comparison of the number of dwelling house DAs and CDCs submitted to Council over the 3 years from 2015-2017, revealed that DAs outnumbered CDCs by 352 to 98, a factor of 3.6 to 1. Although the reasons for this disparity were not investigated, the following explanations are suggested:

- the greater flexibility in design permitted through the DA process compared to the rigidity of the CDC process,
- the comparative development potential permitted by DAs.

This trend may translate to the proportion of DAs to CDCs for low rise medium density housing once the Code commences. However, this will only be evident following the introduction of the Code and Guide.

5 Council resolution related to the Code

On 21 May 2018, Council resolved the following in relation to the Code:

A. *THAT Council:*

- i. *recognises that it is responsible for enacting the Woollahra Local Environment Plan (LEP) 2014; and*
- ii. *notes the recently announced Low Rise Medium Density Housing Code (Code), which is due to take effect on 6 July 2018.*

B. *THAT Council, through the Mayor and General Manager, write to the New South Wales Planning Minister, Anthony Roberts MP, the member for Vaucluse, Gabrielle Upton MP and the member for Sydney, Alex Greenwich MP and request:*

- i. *a freeze on the approval of any further medium density development under the Code in the municipality until a proper independent assessment has been undertaken to assess community impact;*
- ii. *that the State Government halts the application of the Code until Council has an opportunity to consult with the community and review its LEP to ensure development is in line with community expectations; and*
- iii. *that approval of such sensitive development proposed under the Code, if implemented, be determined by Council certifiers and to affirm Council's position that it is opposed to private certification of the type of development contemplated by the Code.*

C. *THAT Council urgently commences a review of the Woollahra LEP to consider where medium density dwelling provisions in the Code could adversely affect the community, and in circumstances where those impacts are adverse, remove medium types of dwellings from R2*

zones; and R3 zones, it being understood that the reference to medium density dwellings includes dual occupancies, semi-detached dwellings, multi-dwelling housing, manor houses and terrace.

Part B of the resolution has been undertaken.

Staff note that over the past two weeks, a number of Councils including Ryde, Canterbury Bankstown, Lane Cove and Northern Beaches, have been granted a deferral of the code until July 2019. Notably, the LEPs applying to all or part of these council's LGAs permit multi-dwelling housing in both their R2 and R3 zones. In contrast to the Woollahra LGA, the new Code will apply to the R2 as well as the R3 zones in those Council areas. It was never intended by Woollahra that multi-dwelling housing, apart from dual occupancies would be permissible in the R2 zone.

The deferral allows these councils time to investigate the impact of the Code and Guide on their LGAs. Staff contacted the DPE for advice on how Woollahra could be granted the same deferral. The DPE advised that a letter would be circulated to all Councils, possibly by 1 June 2018, regarding the conditions for applying for a deferral.

In response to Part C of the resolution, staff recommend that the review be extended to include an associated review of the WDCP 2015. The amendments to the complying development framework will make manor houses and multi-dwelling housing (terraces) permissible in the R3 zone under the WLEP 2014. The WDCP 2015 review will need to include new provisions for manor houses and multi-dwelling housing (terraces).

With regard to the potential removal of medium types of dwellings from the R2 and R3 zones, the Standard Instrument mandates the land uses within each zone. That is, Council cannot seek an alteration to the mandated permitted or prohibited uses. For the R3 zone, these mandated uses include multi-dwelling housing.

As the amendment to the Standard Instrument will result in manor houses and multi-dwelling housing (terraces) being permissible in zones where multi-dwelling housing is allowed, it is highly unlikely that the State Government will allow Woollahra to remove these development types from the R3 zone. A request of this nature would be contrary to the overarching intention of both the Standard Instrument and the new Code.

6 Conclusion

On 6 April 2018 the State Government amended the complying development framework in NSW by introducing new housing categories. The amendment permits new development, and alterations and additions of one and two storey dual occupancies, manor houses and multi-dwelling development (terraces). The amendment will come into effect on 6 July 2018.

The potential impact of the amendments in the Woollahra LGA is likely to be minor, for the following reasons:

- Complying development will not be possible on all R2 and R3 zoned land, due to the restrictions on permissibility and other exclusions.
- Where complying development is possible, it will be restricted by various development standards.

- The average annual number of development applications (DAs) and complying development certificates (CDCs) over the 3 years from 2015-2017, for the equivalent development types, was low.
- DAs are likely to remain the more desirable option over CDCs for developers due to their ability to permit similar or greater development potential in terms of maximum gross floor area (GFA).

Annexures

1. Submission to Public Exhibition - Expanding complying development to include two storey medium density housing types - 01-03-2016 [↓](#)
2. Submission to Public Exhibition - Draft Medium Density Design Guide and Explanation of Intended Effects for the new Medium Density Housing Code - 19-12-2016 [↓](#)
3. Low Rise Medium Density Housing Framework Amendment 2018 - Summary [↓](#)

Annexure 1

Council Ref: 16/29560

1 March 2016

Codes and Approval Pathways
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir / Madam

Submission to Public Exhibition: Expanding complying development to include two storey medium density housing types

Thank you for the opportunity to comment on the exhibition for expanding complying development to include two storey medium density housing types, by amending the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The proposed amendments will impact approximately 39% of the R2 Low Density and R3 Medium Density zoned land within the Woollahra local government area. Council staff from the compliance, development assessment, engineering, health, tree management and strategic planning units have reviewed the documentation and have raised the following issues.

1. Woollahra Council does not support expanding complying development to include two storey medium density housing types. The main reasons the proposal is not supported are listed below.

- *Community consultation*

The proposed complying codes will override and disregard the desires of the local community to determine the urban setting in which they choose to live, by imposing a “one size fits all” approach to development control.

- *Built form and local character*

The proposed complying codes fail to address the existing or desired future character of any area to which they apply, creating a generic built form that does not respond to local character or conditions.

- *Density, bulk and scale of development*

The proposed complying codes have the potential to result in development in LEP identified low and medium density zones that is substantially more dense, and larger in bulk and scale than is currently permissible in these zones.



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- *Other planning and amenity considerations*

The proposed complying codes will undermine other planning controls and amenity considerations such as the impact of development on flood control lots, adjoining heritage items, view sharing, amenity of residents, and the loss of a significant number of trees.

- *Complying development framework compliance*

The proposed complying codes fail to recognise that the existing complying development framework has a significant number of shortfalls in terms of diligence in development approval, adherence to approvals and conditions, and ongoing monitoring of completed development and development controls, which would be significantly amplified by expanding the type and number of additional complying development approvals.

- *Testing of standards*

Council is concerned that the testing of the proposed standards was not sufficiently robust to determine an appropriate set of controls to ensure good quality built form outcomes, particularly on irregular sites. A more appropriate test of the proposed standards would be to apply the standards to their extreme limits and to apply them on sites with differing topography. The testing should also extend to the potential amenity impacts of the proposed standards on adjoining land, rather than just whether the standards permit various dwelling types onto particular sized lots. Council considers that significantly more testing is required for the proposed complying codes.

2. Detailed response to discussion paper

In addition to the summary of issues raised above, Council staff carefully examined the “Options for Low Rise Medium Density Housing as Complying Development” discussion paper. The attached tables provide the following information:

- Table 1: A detailed discussion of the main issues identified by Council with the proposed complying codes
- Table 2: Responses to the questions posed in the green boxes of the discussion paper
- Table 3: Additional issues identified by Council in discussion paper

Yours sincerely



Allan Coker
Director - Planning & Development

Table 1: Main issues identified by Council staff

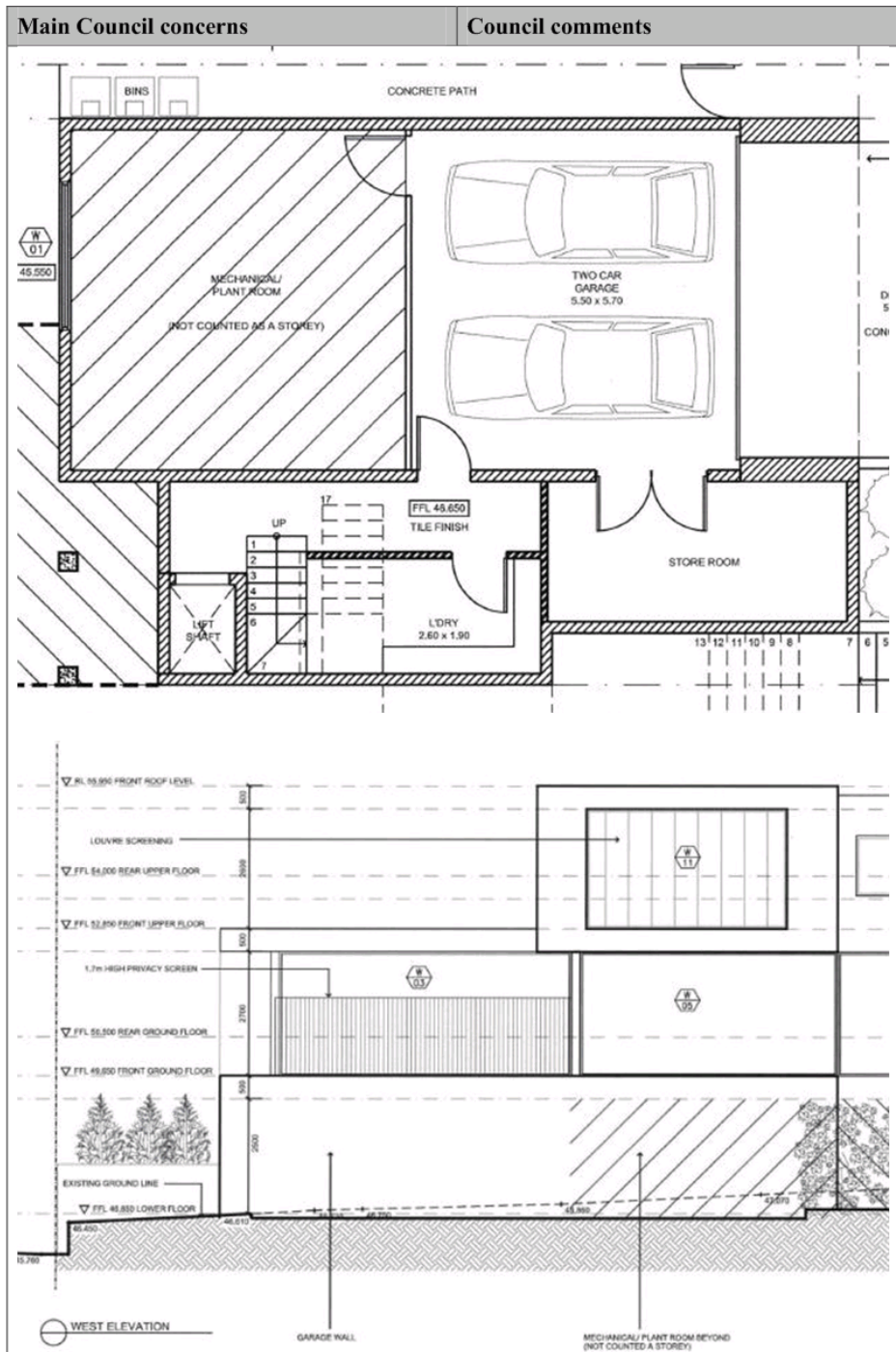
Main Council concerns	Council comments
<p>1. Community consultation The proposed complying codes will in many cases override and disregard Woollahra Council’s recently implemented LEP and DCP that were subject to extensive local community consultation.</p>	<p>Council does not agree with the proposed expansion of complying development codes as it will undermine the community consultation element of LEP / DCP creation.</p>
<p>2. Built form and local character The proposed complying codes fail to address the existing or desired future character of any area to which they apply. They have the potential to significantly alter the built form character of residential areas without providing the local community any say in the outcome of the codes. The proposal will result in a generic built form that does not respond to local character or conditions.</p>	<p>Council does not support the proposed expansion of complying development codes as it will undermine the local character of built areas.</p>
<p>3. Density, bulk and scale of development The proposed complying codes have the potential to result in development in LEP identified low and medium density zones that is substantially more dense, and larger in bulk and scale than is currently permissible in these zones, as identified in the following issues:</p> <ul style="list-style-type: none"> • The proposed complying codes do not consider the potential density created by the new standards, or the potential amenity impacts which may result. • No consideration is provided for the containment of development density, such as site coverage or FSR controls. • Council staff estimates that a dual occupancy codes will permit an equivalent FSR of 1:1, which is significantly greater than the permissible equivalent development density permitted in the R2 Low Density Residential zones within the Woollahra LGA, as well as the FSR controls of many other Councils. • The front setback articulation controls are overly generous at 25% and could significantly impact on the bulk, scale 	<p>Council does not support the proposed expansion of complying development codes as they will result in considerably denser development in low and medium density residential areas that does not adequately consider or control the bulk and scale of development.</p>

Main Council concerns	Council comments
<p>and appearance of development within the front setback.</p> <ul style="list-style-type: none"> • How will internal site amenity between detached dual occupancy dwellings and multiple rows of townhouse be addressed? 	
<p>4. Permissible uses Clarification is required for Clause 1.18 (1) (b) of the Codes SEPP. Currently Clause 1.18 (1) (b) provides an ambiguous definition of consent permissibility as a general requirement for complying development in the Codes SEPP. The clause states that:</p> <p style="padding-left: 40px;"><i>“(1) To be complying development for the purposes of this Policy, the development must: ...</i></p> <p style="padding-left: 40px;"><i>(b) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out”</i></p> <p>This wording is ambiguous as it may be interpreted to mean that any use permissible in any clause (or zone) within any SEPP or LEP applying to any land within a particular LGA, is permissible as complying development on any land within the LGA. For example, a food and drink premises not permitted with development consent in a residential zone, may be permissible as complying development because it is permissible with consent within a business zone within the same LEP.</p>	<p>Council requests that Clause 1.18 (1) (b) of the Codes SEPP be amended to provide greater clarification of permissibility of complying uses.</p>
<p>5. Flood control lots P31 of the discussion paper. The primary standards for 3-10 dwellings, townhouse / terraces, excludes flood control lots from the complying codes. The exclusion is “hidden” in the text.</p>	<p>The exclusion for flood control should be applied to all forms of medium density development to ensure adequate assessment of the design, development and monitoring of flood control measures on flood control lots. The exclusion restricting development on flood control lots needs to be made more prevalent. It should be included in the controls summary tables.</p>

Main Council concerns	Council comments
<p>6. Building height and excavation</p> <p>The “List of Terms” for the proposed codes defines building height as being:</p> <p><i>“The height of a building measured from the highest point, including the roof pitch, to the existing ground level below that point.”</i></p> <p>The general maximum building height for the proposed codes is 8.5m.</p> <p>Excavation depth is not defined, but is regularly referred to in the Codes SEPP as being the depth “<i>below ground level (existing)</i>”.</p> <p>The maximum excavation depth proposed is 4.0m (for townhouses and terraces). Additionally, any excavation proposed for a car park basement must comply with all boundary setback requirements, which encourages basement car parking to be built directly below dwellings.</p> <p>Therefore, on a sloping site, the actual height of a building could reach a maximum of 12.5m (8.5m above the existing ground level plus 4.0m below the existing ground level), or the equivalent of approximately 4 storeys.</p> <p>Even with the implementation of the proposed building envelope control, the potential wall height of 9.5m (5.5m building envelope wall height plus 4.0m excavation) could be achieved.</p>	<p>Council is extremely concerned that the true potential building height permissible by the proposed controls has not been considered in the discussion paper.</p> <p>The proposed codes could result in a wall with a height of 12.5m (without a building envelope) or 9.5m (with a building envelope). The development of a group of dwellings to a maximum building and wall height of 12.5m, or even 9.5m in low and medium density residential areas, has the considerable potential to create significant amenity impacts to adjoining land, such as overshadowing, privacy / overlooking, view disruption and creating excessive bulk and scale of development.</p> <p>This potential excessive height must be contained by way of an additional control restricting wall height when combined with basement car parking.</p>
<p>7. Building Height definition</p> <p>The discussion paper proposes a new definition which is not supported by Council. The definition of building height should include additional wording for consistency with the Standard Instrument definition. This would add to the clarity and ease of use, and establish that the height of the building measurement applies to any point of the building in relation to the existing ground level directly below that point.</p>	<p>Council recommends that the definition include a height measure for any point of the building in relation to the existing ground level directly below that point, to avoid misinterpretation, such as:</p> <p><i>“The height of a building is the vertical distance measured from any point at the top of the building, including the roof pitch, to the existing ground level directly below that point.”</i></p>

Main Council concerns	Council comments
<ul style="list-style-type: none"> Existing definition The Codes SEPP does not provide a definition for “building height”, therefore the Standard Instrument definition applies. The standard instrument definition is: <i>“building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like”.</i> Proposed definition for the Codes SEPP <i>“The height of a building measured from the highest point, including the roof pitch, to the existing ground level below that point.”</i> 	
<p>8. Definition of storey and “meter room” The Codes SEPP (and the Standard Instrument) use the following definition of storey: <i>“storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:</i> (a) a space that contains only a lift shaft, stairway or meter room, or (b) a mezzanine, or (c) an attic.”</p> <p>This definition excludes a ‘meter room’ from a storey, however there is no definition of a “meter room” and there is no case law on this specific issue. The lack of a definition of meter room has created a loophole in the definition of storey, which has generated a significant problem for Woollahra Council in the case of a recent privately issued CDC under the ‘General Housing’ Code (GHC) of the Codes SEPP. The CDC relates to a new single dwelling with a large (greater than</p>	<p>Council requests additions to the Codes SEPP and the Standard Instrument to clarify the definition of a meter room.</p> <p>Council also requests that the Department seek to close more loopholes in definitions controls which are being inappropriately used by private certifiers, rather than allowing a significantly wider range and number of complying residential developments.</p>

Main Council concerns	Council comments
<p>30sqm) “<i>MECHANICAL/PLANT ROOM</i>”.</p> <p>The mechanical/plant room was identified with a note that stated “<i>NOT COUNTED AS A STOREY</i>”. An extract of the plans approved by a private certifying authority are provided below.</p> <p>While the above approval appears to clearly be in breach of the maximum 2 storeys permissible by the current (and proposed) Codes SEPP controls, it is currently a valid and operable CDC that Council has commenced Class 4 proceedings against. This example demonstrates how development controls and definitions can, and are, being manipulated, especially where they lack certainty.</p>	



Main Council concerns	Council comments
<p>9. Manor Home definition</p> <p>The definition of “Manor home” differs between the “List of Terms” and the main document.</p> <p>“List of Terms” definition: <i>“Manor Home A form of housing where a single building contain 4 dwellings, 2 on the ground floor and 2 on the first floor level”</i></p> <p>Main document definition: <i>“Manor home means a 2 storey building containing 3-4 dwellings, where:</i> <i>(a) each storey contains 1 or 2 dwellings, and</i> <i>(b) each dwelling is on its own lot (being a lot within a strata scheme or community title scheme), and</i> <i>(c) access to each dwelling is provided through a common or individual entry at ground level, but does not include an apartment building or multi-dwelling housing.”</i></p>	<p>Council recommends that the definition of “manor home” be made consistent to avoid confusion.</p>
<p>10. Heritage impacts</p> <p><i>Development adjoining heritage items</i></p> <p>The maximum height of development (8.5m) and side setbacks (min. 900mm) proposed for complying development may not be appropriate for development adjoining a heritage item.</p>	<p>Council considers that development adjoining heritage items should not be permitted as complying development.</p>
<p>11. View sharing</p> <p>The discussion paper does not consider the impact on views or the concept of view sharing. This is particularly relevant in the Woollahra LGA which is located on Sydney Harbour and the Pacific Ocean and characterised by sloping land which provides significant public and private views to residents.</p> <p>The diagrammatic examples in the paper are overly simplistic, in that they invariably show flat, rectangular sites. There is no acknowledgement of the potential impact of development on public and private views, or</p>	<p>Council considers that development which may result in the significant obstruction of views from private and public land should not be permitted as complying as there is no way of codifying this assessment. Additionally, there is no right of third party appeal to complying development, potentially resulting in significant amenity and financial impacts to property owners and the public from view loss.</p>

Main Council concerns	Council comments
<p>on sloping and irregular shaped sites. The loss of significant views in the LGA has the potential to lead to significant financial impacts on land owners, and undermine the visual amenity of residents and visitors to the area from public land.</p>	
<p>12. Primary frontage The discussion paper offers little information regarding which frontage would be the primary frontage on a site with more than one frontage, such as a corner site.</p>	<p>Council recommends that the proposed codes include a definition of primary frontage for consistency in application.</p>
<p>13. Corner sites How do the proposed controls work on corner sites? For example, who determines which street frontage is the “primary” frontage? The discussion paper offers very little information regarding corner sites.</p>	<p>Council considers that additional information is required with regard to corner sites for each type of development in the discussion paper.</p>
<p>14. Landscaping Landscaped area has two different definitions as shown below:</p> <ol style="list-style-type: none"> 1. List of terms <i>“Landscaped area The part of a site wider than 1.5m that is not occupied by buildings and which is planted with lawns or shrubs and trees.”</i> 2. Main document <i>“Landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.”</i> <p>Neither of these definitions specifically mentions basement / subterranean levels as “buildings” or “structures”, which could result in a planted area above a basement being considered as landscaped area. This would reduce a development’s ability to meet the stated objective of permitting water penetration. There is no proposed standard for the provision of a deep soil landscape area. Deep soil landscape areas are critical to maintaining and enhancing conditions for larger planting, such as trees with tall and</p>	<p>The definitions of landscaped area should remain consistent throughout the proposed codes to avoid contradiction / confusion. To ensure the stated objective of permitting water penetration within the landscaped area, the definition should be clarified to exclude basement / subterranean structures from the landscaped area. Alternatively or additionally, a deep soil landscape area standard should be included in the proposed codes.</p>

Main Council concerns	Council comments
<p>wide canopies. Large trees provide considerable amenity benefits such as natural cooling and UV protection through shade, preventing the creation of heat sinks by creating cooler microclimates, providing wildlife corridors and providing an aesthetically pleasing reprieve to dense, continuous built environments.</p>	
<p>15. Private open space The minimum private open space design standards do not specify whether they apply per lot or per dwelling. The design standards specify the following:</p> <ul style="list-style-type: none"> • 24sqm and minimum dimension of 4.0m for ground level • 12sqm and a minimum depth of 2.4m if provided as a balcony 	<p>The minimum private open space design standards do not specify if these rates apply per dwelling or the entire site. The proposed codes must apply per dwelling and this needs to be specified to avoid confusion.</p>
<p>16. Removal or pruning of trees The standard permits the removal or pruning of trees unless:</p> <ul style="list-style-type: none"> • The tree is not listed on a significant tree register or register of significant trees kept by the council; • The tree or vegetation will be within 3.0m of any development that is a building that has an area of more than 25.0sqm; and • The tree or vegetation has a height that is less than 8.0m and is not required to be retained as a condition of consent to the subdivision of the lot. 	<p>Although these controls mirror those in the existing complying codes, the <i>Woollahra DCP 2015</i> requires individual assessment for the removal of any trees taller than 5.0m in height, and provides no exceptions for the proximity of a tree to a building. Therefore, Council considers that trees up to 8.0m are too significant to be permitted to be removed as part of a CDC. The proposed standard should be modified to only permit removal of trees with heights of less than 5m, and the exemption for trees within 3.0m of a building should be removed.</p> <p>The proposed standard should also include a requirement to replace any trees removed as part of a CDC, to maintain the existing number of trees on sites with complying development.</p>
<p>17. CDC Compliance Page 8 of the discussion paper states: <i>“The complying development pathway is for straightforward developments which can only be undertaken if a set of prescribed numerical controls and requirements are fully satisfied. These controls must be fully complied with if a development is to proceed.”</i> This comment is not an accurate reflection of</p>	<p>Council considers there is a need for a more stringent mechanisms to control, suspend or override an issued CDC, where it does not comply with all the development standards nominated in the Codes SEPP, other than relying on the CDC being surrendered or set aside by the Land & Environment Court. Similarly, there is a need for more stringent mechanisms to control, suspend or override a CDC issued in compliance with the development standards prescribed by the</p>

Main Council concerns	Council comments
<p>the reality of the current complying development legislative framework. Once a complying development certificate (CDC) has been issued, even where it does not comply with all the development standards nominated in the Codes SEPP, it is legal and operational until it is either surrendered or set aside by the Land & Environment Court. Achieving either outcome can be an expensive exercise for the community and does not provide any of the certainty promoted by the discussion paper.</p> <p>Council’s observations are based on first-hand experience. Over the past 12 months Council has received complaints from the community on the following flawed complying developments:</p> <ol style="list-style-type: none"> 1. The internal alterations of a hotel/pub that was operating in a residential R2 Low Density Residential zone under existing use rights. A CDC was issued pursuant to ‘Part 5 Commercial and Industrial Alterations Code’ of the Codes SEPP, even though the development standards required “<i>the current use of the premises must not be an existing use within the meaning of section 106 of the Act</i>”. When Council’s concerns were drawn to the attention of the owner, works proceeded and Council was required to commence Class 4 proceedings in the Land & Environment Court. A building certificate application was subsequently lodged and approved for the works covered by the flawed CDC, resulting in the owner surrendering the CDC and permitting Council to discontinue the Class 4 proceedings. 2. The construction of a new dwelling approved pursuant to ‘Part 3 General Housing Code’ of the Codes SEPP. Following the site being excavated in excess of 3.0 metres it became evident to Council that the approved CDC plans did not comply with Clauses 3.2 (‘New 	<p>Codes SEPP, if any of those standards are breached during the construction of the development, rather than considering these to be mere breaches in the condition of consent.</p> <p>The examples cited represent only a tiny portion of similar breaches in the issuing and use of CDCs. Expanding complying development to the more intense residential uses proposed in the discussion paper will only worsen the number and intensity of the potential amenity impacts created by breaches to the CDC framework.</p>

Main Council concerns	Council comments
<p>single and two storey dwelling houses'), 3.13 ('Maximum height of dwelling houses and outbuildings') and 3.16 ('Setbacks of dwelling houses and outbuildings from side boundaries and built to boundary walls'). While Council raised its concerns with the owners before the initial floor slab was poured, works continued and Council has had to initiate Class 4 proceedings in the Land & Environment Court. This matter is ongoing at the time of lodging Council's submission.</p> <p>It should also be noted that if a CDC is issued in compliance with the development standards prescribed by the Codes SEPP, if any of those standards are breached during the construction of the development this does not automatically invalidate the CDC. In most cases it would simply constitute a breach of consent.</p> <p>This was the case with regard to the matter described in item 2 above. While there was a significant breach of the excavation development standard, it did not invalidate the CDC or form part of Council's Class 4 proceedings. The certifying authority simply issued a modified CDC with external walls in excess of 10.5 metres in height above finished ground level.</p>	
<p>18. Testing of standards</p> <p>Chapter 6 Testing of Standards of Volume 2 Background Paper provides some tests of the proposed development standards for the proposed complying codes. The modelling used to test the draft standards does not compare developments with the same floor area or floor space ratios, therefore it is not considered an accurate comparison.</p> <p>Also the 'approved' buildings would have been designed to achieve a particular design objective and outcome which may not be achievable using the development controls of the discussion paper.</p> <p>A more appropriate test of the proposed</p>	<p>Council is concerned that the testing of the proposed standards was not sufficiently robust to determine an appropriate set of controls to ensure good quality built form outcomes, particularly on irregular sites.</p> <p>A more appropriate test of the proposed standards would be to apply the standards to their extreme limits and to apply them on sites with differing topography. It is critical to know what would be the worst case scenario, because some applicants will take each development standard to its limit.</p> <p>For this reason, Council considers that additional testing is required for the proposed complying codes.</p>

Main Council concerns	Council comments
standards would be to apply them to their limits and to apply them on sites with differing topography. It is critical to know what would be the worst case scenario, because some applicants will take each development standard to its limit.	

Table 2: Responses to questions posed in discussion paper

Discussion paper	Council response
2.0 Options for Consideration	
Dual Occupancy	
2.1 Development resulting in 2 dwellings (dual occupancies) on a single lot	
<p>2.1 Development resulting in 2 dwellings (dual occupancies) on a single lot P12. Should the development of dual occupancies on a single lot as complying development be permitted in R1, R2 and R3 zones?</p>	<p>The discussion paper makes contradictory statements in section 2.1 (P12), that detached dual occupancies are both recommended and not recommended as complying development. Confirmed with Lynne Sheridan at DP&E (16/12/2015) that detached dual occupancies are recommended as complying development.</p>
<p>2.1.1 Proposed Primary Standards P13. Should the minimum frontage be reduced to 14m so that the construction of 2 dwellings on a single lot can be carried out as complying development on more existing lots?</p>	<p>What is the justification for this control? The discussion paper does not provide a rationale for a reduction of minimum frontage from 15m to 14m, apart from allowing the controls to apply to more existing lots. Therefore, it is difficult for Council to comment on the rationale for this proposed control.</p>
<p>2.1.2 Proposed Design Standards P14. Should the height be limited to 8.5m?</p>	<p>Council does not support a height limit greater than 8.5m. An 8.5m height limit will assist to ensure that complying development is kept to a 2 storey level, and is a consistent height with the existing General Housing complying code. Despite this, Council is concerned with the potential wall heights which the combined building height and excavation controls will permit. Please refer to the discussion in "Building height and excavation" in Table 1 above.</p>
<p>P14. Should attic rooms be permitted?</p>	<p>Council does not support attic rooms being permitted. Attic rooms have the potential to create considerable amenity impact to adjoining properties, such as overlooking / privacy and noise. Council anticipates a number of additional CDCs or DAs related to the proposed complying codes seeking alterations and additions to the approved development, such as attic conversions. How will this be addressed, particularly in terms of controlling privacy, noise and overshadowing amenity?</p>

Discussion paper	Council response
P14. Should 2.7m floor to ceiling heights be imposed?	This is acceptable as a minimum for habitable rooms, although it is more onerous than the minimum standard permissible by the Building Code of Australia.
P16. Should eaves and roof overhangs be required to comply with the envelope control?	The <i>Woollahra DCP 2015</i> permits eaves to protrude a maximum of 450mm into the setback, if they are below the inclined plane (which begins at a height of 7.2m above ground level). If eaves and overhangs are permitted to extend beyond the building envelope they should be restricted to a maximum distance, such as 450mm.
P16. Would the application of a 1.2m setback and no building envelope be easier to implement?	Small side setback areas in residential subdivision are generally unusable areas, which provide only a small amenity benefit of allowing airflow between buildings. Increasing the side setback from 900mm to 1200mm is unlikely to substantially increase this benefit, but may reduce the useable internal floorspace of the dwelling on narrow sites. The inclined plane associated with a building envelope control provides an amenity benefit of increased solar access, without a reduction in useable floorspace. The <i>Woollahra DCP 2015</i> contains a building envelope and inclined plane which aims to achieve greater solar access amenity within residential environments. Therefore, Council considers a greater amenity benefit will be achieved through the use of building envelope, rather than a larger side setback. The building envelope controls should be made clear, unambiguous and easy to apply, so that certifiers can easily interpret and consistently apply them.
<p>2.1.4 Subdivision of 2 dwellings</p> <p>P19. Should Torrens title subdivision of 2 dwellings on a single lot be permitted as complying development?</p>	Council considers a Torrens title subdivision of 200sqm to be too small, as it is smaller than the minimum lot size of 230sqm permitted for subdivision under the <i>Woollahra LEP 2014</i> . Controls are required for the creation of battle axe lots by subdivision, particularly regarding the handle section of the lot.

Discussion paper	Council response
P19. Should subdivision be permitted only after the buildings are completed?	Council agrees that subdivision (particularly Torrens title subdivision) should not be permitted until the building has been constructed, to avoid the creation of subdivision lots that do not relate to actual physical structure.
Manor Homes	
2.2 Development resulting in 3-4 dwellings – manor homes	
2.2.1 Primary Standards	
P22. Which zones would be appropriate for manor homes?	Council does not support manor home land use in the R2 Low Density Residential zone.
P22. Should manor homes only be permitted on corner lots or lots with dual street access?	How do the proposed controls work on corner sites? The discussion paper offers very little information regarding corner sites.
P22. Should manor homes on lots that do not have rear lane access be required to have a basement car park?	Council is strongly opposed to a reliance on basement car parking, particularly as complying development. Many precincts in the Woollahra LGA have complex geological / geotechnical, hydrological / groundwater, topography and acid sulfate soil issues. The propensity for developers to seek to excavate large volumes of soil and rock for use as large basement car parking, has had significant impact on the geotechnical and hydrological nature of the parts of the LGA, including ground level movements and local flooding. Additionally, large scale excavation has considerable amenity impacts created by excavation noise, dust and the movement of heavy vehicles on local roads. Council considers that the provision of basement parking requires site specific detailed assessment and conditions of development consent, and not standardised codification as complying development.
P22. Instead of council certification of On-Site Stormwater Detention (OSD) and waste, could certification by appropriately qualified specialists be provided?	On-site Stormwater Detention Council strongly opposes the concept of blanket approvals of On-site Storm Water Detention Systems for low rise medium density residential housing as complying development given the potential adverse impacts on Council's stormwater and

Discussion paper	Council response
	<p>drainage systems.</p> <p>Council does not certify On-site Stormwater Detention systems, but it does assess proposed development Stormwater Concept Plans to ensure that they comply with Council's Stormwater Development Control Plan. With complying development, the OSD systems are generally certified by the private certifier. Ideally a hydraulic engineer should examine the OSD system design to confirm it will function to the correct standard.</p> <p>Many areas in the Woollahra Municipality are flood prone and require site specific detailed assessment and conditions of development consent.</p> <p>Stormwater drainage</p> <p>For consistency with the existing controls of the Codes SEPP, Council requests that all stormwater must be collected and disposed of to a public or inter-allotment drainage system "by a gravity fed or charged system". On-Site disposal of stormwater or the need for a pump system should not be permitted as complying development, as Council has experience of many such systems being incorrectly installed and poorly maintained.</p> <p>Waste</p> <p>Council does not support the council certification of waste management facilities as part of the CDC process. This certification is not part of the existing CDC process, and requiring it would defeat the purpose of codification for the CDC process.</p> <p>Waste management facilities could be easily codified by requiring compliance with a council's waste management provisions in their DCP, or with design controls for elements such as size, location and method of construction for waste storage areas.</p>
<p>2.2.2 Design Standards</p> <p>P27. How should the proposed car parking controls be designed to ensure that adverse impacts on the transport network (including on-street parking) are minimised and active</p>	<p>The <i>Woollahra DCP 2015</i> aims to minimise the amount and impact of vehicular traffic generated by residential development by specifying maximum off-street car parking rates, with any non-compliance requiring a</p>

Discussion paper	Council response
transport options are encouraged?	<p>justification as part of a development application.</p> <p>On-street car parking restrictions apply to high demand areas and resident car parking permits are restricted in accordance with Roads and Maritime Services' "Permit parking" guideline.</p> <p>These measures generally cap vehicle ownership and consequently minimise the impact on local road network and encourage active transport.</p> <p>Council suggests that a similar maximum rate be applied to any complying development code to restrict the amount of vehicle ownership and vehicular traffic. However, this measure may not be appropriate to low density residential areas with poor public transport access.</p>
<p>2.2.3 Amenity Standards P28. Should subdivision only be permitted after the buildings have been completed?</p>	<p>Council agrees that subdivision should not be permitted until the building has been constructed, to avoid the creation of strata lots that do not relate to actual physical structure.</p>
<p>Townhouse or Terrace</p>	
<p>2.3 Development resulting in 3-10 dwellings (townhouses/terraces)</p>	
<p>P30. In which zones should the development of 3-10 dwellings be permitted?</p>	<p>Council does not support townhouse / terrace land use (multi dwelling housing) in the R2 Low Density Residential zone.</p>
<p>2.3.1 Primary standards for 3-10 dwellings P31. Instead of council certification of on-site stormwater detention (OSD) and waste storage, could certification by appropriately qualified specialists be provided?</p>	<p>On-site Stormwater Detention</p> <p>Council strongly opposes the concept of certification of On-site Storm Water Detention Systems for low rise medium density residential housing as complying development given the potential adverse impacts on Council's stormwater and drainage systems.</p> <p>Council does not certify On-site Stormwater Detention systems, but it does assess proposed development Stormwater Concept Plans to ensure that they comply with Council's Stormwater Development Control Plan. With complying development, the OSD systems are generally certified by the private certifier. Ideally a hydraulic engineer should</p>

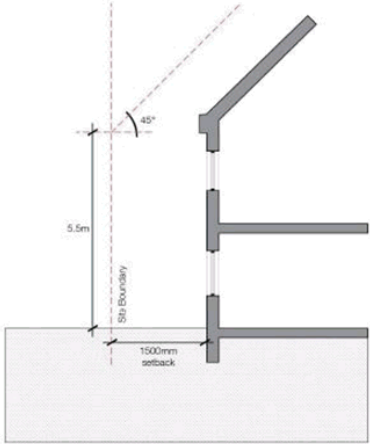
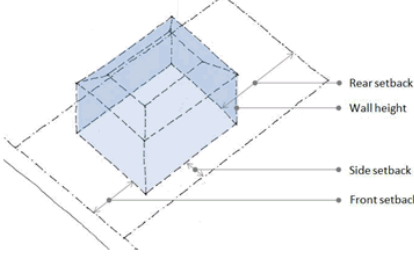
Discussion paper	Council response
	<p>examine the OSD system design to confirm it will function to the correct standard.</p> <p>Many areas in the Woollahra Municipality are flood prone and require site specific detailed assessment and conditions of development consent.</p> <p>Stormwater drainage</p> <p>For consistency with the existing controls of the Codes SEPP, Council request that all stormwater must be collected and disposed of to a public or inter-allotment drainage system “<i>by a gravity fed or charged system</i>”. On-Site disposal of stormwater or the need for a pump system should not be permitted as complying development, as Council has experience of many such systems being incorrectly installed and poorly maintained.</p> <p>Waste</p> <p>Council does not support the council certification of waste management facilities as part of the CDC process. This certification is not part of the existing CDC process, and introducing it would defeat the purpose of codification for the CDC process.</p> <p>Waste management facilities could be easily codified by requiring compliance with a council’s waste management provisions in their DCP, or with design controls for elements such as size, location and method of construction for waste storage areas.</p>
<p>2.3.2 Design Standards</p> <p>P32. The proposed controls do not permit the use of attic rooms. Should attic rooms in the roof be permitted to be carried out as complying development?</p>	<p>Council does not support attic rooms being permitted. Attic rooms have the potential to create considerable amenity impact to adjoining properties, such as overlooking / privacy and noise.</p> <p>Council anticipates a number of additional CDCs or DAs related to the proposed complying codes seeking alterations and additions to the approved development, such as attic conversions. How will this be addressed, particularly in terms of controlling privacy, noise and overshadowing amenity?</p>

Discussion paper	Council response
<p>P34. Is the building envelope necessary in this instance? A minimum 2.0m setback already dictates a maximum height of 7.5m above ground level before the building envelope would be breached.</p>	<p>This statement requires explanation. Why would the envelope in this circumstance be restricted to 7.5m? In this scenario, the peak height of a 45 degree inclined plane with a 14m base is 7m. This plane placed on top of a 5.5m wall height would result in a peak height of 12.5m (7m + 5.5m), not 7.5m. This height however, would be restricted to the overall building height of 8.5m, not 7.5m.</p>
<p>P34. As development is limited to 8.5m (2 storeys), is it necessary to also have an envelope control?</p>	<p>The inclined plane associated with a building envelope control provides an amenity benefit of increased solar access. Therefore, Council considers a building envelope with an inclined plane should form part of the control set for this type of development. This question fails to consider adjoining development downslope of complying development, or on regularly shaped site, where a standardised height control will not necessarily achieve the objective of containing adverse residential amenity impacts such as overshadowing and excessive building bulk.</p>
<p>P34. Is the building envelope control as proposed easy to apply?</p>	<p>Council considers the building envelope control could be difficult to determine in certain situations, such as sloping sites and for terrace / townhouse development. The difficulty with the control is the inability of certifiers to consistently apply them. Codified controls must be clear, unambiguous and easy to apply, with the same outcome being achieved each time. The proposed building envelope controls are not clear or simple and need refinement.</p>
<p>P38. Should the proposed car parking controls be consistent with the requirements of the Guide to Traffic Generating Developments or should the relevant council controls for parking apply?</p>	<p>Council considers the car parking controls of the Woollahra DCP 2015 should apply to the Woollahra LGA. The DCP requires maximum car parking rates for residential development. Where this rate cannot be achieved on a site, Council requires an applicant to provide a justification for non-compliance. Council is unsure as to how this justification could be assessed by a private certifier under the proposed complying codes.</p>

Discussion paper	Council response
	<p>Parking permits</p> <p>P38 states that “Where less car parking is provided in a development Councils should not provide on street resident parking schemes”. This concept does not work for DCPs with maximum car parking rates, such as the <i>Woollahra DCP 2015</i>. In the case of a maximum car parking requirement, the technical minimum requirement is zero, where it can be justified. Therefore, a development providing zero car spaces would be compliant, requiring Council to issue on-street resident parking permits. This control needs to be reconsidered.</p> <p>In the case that this control was implemented, Council considers imposing a restricted car parking system to be impractical to preclude new development from existing resident parking schemes and therefore is not a viable policy position. In particular, the following issues require clarification:</p> <ul style="list-style-type: none"> • How would Councils become aware of such a restriction? Would certifiers notify Council as part of the CDC or OC processes? • How do future owners of the units become aware of such a restriction? Would the restriction appear on an individual title as an 88B instrument (<i>Conveyancing Act 1919</i>), or would they need to contact Council for a listing on a register. In the latter case, the owner may not become aware of the restriction until after purchase of the property.
3.0 Implementation Issues and Discussion	
<p>Excavation</p> <p>P43. Is it appropriate to permit excavation for basement car parking as complying development?</p>	<p>Council does not support excavation for basement car parking as complying development. Excavation requires site specific detailed assessment and conditions to ensure it is carried out safely and effectively.</p> <p>The assessment of excavation work is generally paired with a Geotechnical Report</p>

Discussion paper	Council response
	<p>and excavation design and methodology prepared by a geotechnical engineer that is a member of Engineers Australia. Additionally, certification that the excavation works have been carried out in accordance with the Geotechnical Report being provided by a geotechnical engineer that is a member of Engineers Australia, to ensure the safety of the excavation works.</p> <p>Council does not believe that the majority of private certifiers possess the necessary experience or training to fully assess Geotechnical Reports or the impact of excavation works, or whether excavation works have been carried out to the correct standard.</p>
<p>P43. What provisions or controls should be in place and information required to accompany an application?</p>	<p>Refer to the above response.</p>
<p>On-Site Stormwater Detention Systems P44. Is up-front certification by council for On-Site Stormwater Detention (OSD) appropriate?</p>	<p>Council strongly opposes the concept of blanket approvals of On-site Storm Water Detention Systems for low rise medium density residential housing as complying development given the potential adverse impacts on Council's stormwater and drainage systems.</p> <p>Many areas in the Woollahra Municipality are flood prone and require site specific detailed assessment and conditions of development consent.</p> <p>Council does not certify On-site Stormwater Detention systems, but it does assess proposed development Stormwater Concept Plans to ensure that they comply with Council's Stormwater Development Control Plan. With complying development, the OSD systems are generally certified by the private certifier. Ideally a hydraulic engineer should examine the OSD system design to confirm it will function to the correct standard.</p> <p>Stormwater drainage</p> <p>For consistency with the existing controls of the Codes SEPP, Council request that all stormwater must be collected and disposed of to a public or inter-allotment drainage system</p>

Discussion paper	Council response
	<p>“by a gravity fed or charged system”. On-Site disposal of stormwater or the need for a pump system should not be permitted as complying development, as Council has experience of many such systems being incorrectly installed and poorly maintained.</p>
<p>P44. Is it acceptable to have independent certification of OSD against council’s policies?</p>	<p>Refer to the above response.</p>
<p>Waste management P44. Should proposed waste management facilities be certified by councils as part of the process?</p>	<p>Council does not support the council certification of waste management facilities as part of the CDC process. This certification is not part of the existing CDC process, and requiring it would defeat the purpose of codification for the CDC process.</p>
<p>P44. Could independent certification of compliance with a council’s waste management provisions in their DCP be the appropriate mechanism?</p>	<p>Waste management facilities could be easily codified by requiring compliance with a council’s waste management provisions in their DCP, or with design controls for elements such as size, location and method of construction for waste storage areas.</p>
<p>Adaptable housing P45. What proportion of new housing should be adaptable housing?</p>	<p>Council considers that the maximum possible number of new housing should be adaptable. Consideration of the proportion of adaptable housing required in new development should be determined by research undertaken by the Department.</p>
<p>Building envelope control P45. How easy is the envelope control to understand?</p>	<p>Building envelopes are a common tool used to control building bulk and scale. The envelope controls are generally easy to understand for building / design industry practitioners. However, the building envelope controls presented in the discussion paper require better explanation and more consistent diagrams.</p> <p>For example the “building envelope” diagrams (such as Figure 14 shown to the left), do not show an actual “building envelope”. The diagrams are included in the “Design Standard – Minimum side boundary setback” section of each type of housing and labelled “Side boundary setback requirement”. A 3-dimensional representation such as that below would be more useful to explain the concept of a</p>

Discussion paper	Council response
 <p>Figure 14: Side boundary setback requirement</p>	<p>building envelope.</p>  <p>Additionally, no description is provided in the discussion paper about how the front and rear walls are treated in terms of the “building envelope” or inclined plane. There is no mention of requiring an incline, therefore it has to be assumed that the building envelope / inclined plane applies only to side walls and not the front and rear walls.</p>
<p>P45. Is an envelope control necessary given the combination of controls proposed?</p>	<p>The inclined plane associated with a building envelope control provides an amenity benefit of increased solar access. The <i>Woollahra DCP 2015</i> contains building envelope and an inclined plane which aims to achieve greater solar access amenity within residential environments. Therefore, Council considers an amenity benefit will be achieved through the use of a building envelope.</p>
<p>P45. For development involving 2 dwellings, should the side setback control simply be mandated at 1.2m for ease of implementation and assessment?</p>	<p>Council does not support mandated wider side setbacks as a substitute for a building envelope control. The inclined plane associated with a building envelope control provides an amenity benefit of increased solar access, without a reduction in useable floorspace. Refer to the previous discussion above, in response to 2.1.2 Proposed Design Standards, P16.</p>
<p>P45. Should the setback be 1.5m for easier BCA compliance?</p>	<p>Council does not support mandated wider side setbacks as a substitute for a building envelope control. The inclined plane associated with a building envelope control provides an amenity benefit of increased solar access, without a reduction in useable floorspace. Refer to the previous discussion above, in response to 2.1.2</p>

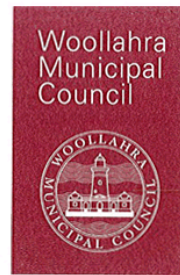
Discussion paper	Council response
	Proposed Design Standards, P16.
<p>Built form certainty P45. Does the suite of suggested controls provide sufficient certainty of the built form outcome and management of potential impacts?</p>	<p>Council does not believe the proposed controls presented in the discussion paper provide any certainty for built form outcomes and management of potential impacts. A number of issues with the controls are raised in Table 1 and 2 of this document.</p>
<p>P45. Are there further controls that may assist in delivering positive outcomes?</p>	<p>Council has presented a number of desirable amended or new controls in Table 1 and 2 of this document.</p>
<p>Dwelling size P45. Should guidance on dwelling size be provided?</p>	<p>Council considers the proposed codes should include a minimum internal dwelling size control consistent with the NSW Apartment Design Guide, to provide reasonable levels of amenity.</p>
<p>Supporting information P46. Are there other forms of supporting information that may be required?</p>	<p>The proposed supporting documents list excludes the basic information required for consent such as:</p> <ul style="list-style-type: none"> • Owner’s consent • Plans, elevations and sections • Site plan / survey plan
<p>Conditions P46. Are there other matters that should be addressed as conditions of consent?</p>	<p>The proposed conditions should contain a trigger point for adherence, such as requiring the certification of surveys, plans, designs, “prior to the issue of an occupation certificate”, in an attempt to ensure compliance with the conditions.</p> <p>The conditions also need to include a condition ensuring payment of section 94 contributions and section 94a levies to Council.</p> <p>Councils should also be provided with the opportunity to provide further consideration of conditions when the scope of the proposed complying codes is determined.</p>

Table 3: Additional issues identified by Council in discussion paper

Additional issues	Council comments
Dual Occupancy	
<p>2.1.3 Amenity Standards The building articulation section states that :</p> <ul style="list-style-type: none"> • “Buildings must have a front door and a window facing the street; • Buildings must have a door and a window facing onto a street” 	<p>How does this apply to a detached dual occupancy placed behind the dwelling facing the street (as shown in Figure 2)?</p>
Townhouse or Terrace	
<p>2.3 Development resulting in 310 dwellings (townhouses/terraces) P30. The discussion paper states that development of 2 dwellings on a single lot will not be allowed in certain zones. Is this meant to state 3-10 dwellings, which is the subject of this section?</p>	<p>Correct probable typo.</p>
<p>2.3.2 Design Standards Design Standard – Minimal side boundary P34. Figure 23 shows a 900mm side setback, contrary to the text requiring a 2.0m side setback.</p>	<p>Correct probable typo on Figure 23.</p>
<p>Design Standard – Minimal driveway setback P36. Figure 25 does not necessarily relate to the text. The 2.0m setback on the left side should extent from the side boundary to the proposed building. The proposed distance “A” should be $\geq 1.0m$ and not ≥ 1.5 as stated in the Figure.</p>	<p>Correct diagram.</p>
<p>Design Standard - Minimal internal separation P37. Figure 27 is confusing. The figure shows two rows of attached dwellings within the same lot. In the example shown, the following issues are unclear:</p> <ul style="list-style-type: none"> • If an internal separation of 6.0m is required between dwellings, does a rear setback of 6.0m still apply to the second row of dwellings? 	<p>The points raised in the “additional issues” column to the left need to be clarified to avoid confusion.</p>

Additional issues	Council comments
<ul style="list-style-type: none">The Figure contradicts Amenity Standard - Building Articulation, which states that “Buildings must have a front door and a window facing the street”. The second row of dwellings could not meet this standard.	
<p>Design Standard – Car parking P38. The design standards relate to townhouses / terraces, but the fifth paragraph discusses visitor parking for manor homes.</p>	Correct probable typo.

Annexure 2



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Council Ref: SC2593

19 December 2016

Codes and Approval Pathways
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir / Madam

**Submission to exhibition: Draft Medium Density Design Guide and
Explanation of Intended Effects for the new Medium Density Housing
Code**

Thank you for the opportunity to comment on the exhibition of the Draft Medium Density Design Guide (the draft guide) and Explanation of Intended Effects (the explanation paper) for the new Medium Density Housing Code (the draft code). Our submission to this exhibition follows on from our submission on 1 March 2016 to the discussion paper on expanding complying development to include two storey medium density housing types (the discussion paper).

The exhibited documents propose two main initiatives:

1. Introduce a new "Medium Density Housing Code" into State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).
2. Publish a "Medium Density Design Guide", similar to the Department's "Apartment Design Guide", to guide development, and the creation of development principles, standards and controls for medium density development.

We acknowledge that the Department has amended the current documentation to address a number of concerns we raised in our submission to the discussion paper. This submission involves contributions from Council staff in strategic planning, compliance, development assessment, engineering, health and tree management. A summary of our concerns about the draft code, draft guide and explanation paper are included below, and greater detail is provided in the following tables:

- Table 1: Detailed discussion of the main issues identified by Council staff
- Table 2: Minor documentation issues identified by Council staff

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1. We are concerned that the draft code was not provided as part of the exhibition documentation. While the explanation paper may describe the intention of the draft code, it does not allow the public an opportunity to review the actual wording of the draft code which, in some cases, will include proposed development standards. For example the standards relating to flood control lots, bush fire prone land, and tree removal are not detailed in the explanation paper or the guide, and are either separately contained in sections of the Codes SEPP, or will need to be included within the draft code.

2. We do not support expanding complying development to include two storey medium density housing types. The main reasons the proposal is not supported are listed below.

- *Community consultation*

The draft code will override and disregard the desires of the local community to determine the urban setting in which they choose to live, by imposing a “one size fits all” approach to development control.

- *Built form and local character*

The draft code and design guide will not address the existing or desired future character of any area to which they apply, creating a generic built form that does not respond to local character or conditions.

- *Design verification statements*

The draft guide proposes that design verification statements be prepared by the designer of a proposed development, to assess the merits of a development against design criteria. As the designer will assess the merits of their own design, the statements will not provide an independent assessment. Additionally, there is no proposed mechanism to ensure that designers are held accountable for the accuracy of their statements. We recommend the establishment of an independent third party certification or registration system for practitioners who would be permitted to either prepare independently assessed design verification statements, or confirm the accuracy of design verification statements prepared by designers.

- *Articulation zone*

We do not support the proposed articulation zone standard as it is overly generous and is a significant increase on the standard proposed in the discussion paper, from 25% to the equivalent of more than 40% in some cases. The standard has the potential to significantly impact on the bulk, scale and appearance of development by eroding the front setback. It is recommended that a standard limiting the maximum percentage of development in the articulation zone be included in the design guide.

- *Building height and excavation depth*

The draft code has the potential to permit development substantially higher than 9m. This is because height is measured from the existing ground level. Since 3m of excavation is

permitted, on sloping sites, it is conceivable that development could be constructed to 12m above finished ground level.

- *Other planning and amenity considerations*

The draft code may be inconsistent with other planning controls and amenity considerations such as the impact of development on flood control lots, adjoining heritage items, view sharing, amenity of residents, and the loss of a significant number of trees.

- *Testing of standards and controls, and the "Recommended Principal Controls for Different Types"*

We are concerned that the testing process for the standards and controls of the draft code, and that the "Recommended Principal Controls for Different Types" included in Appendix 5 of the draft guide, are not sufficiently robust to determine an appropriate control set to ensure good quality built form outcomes, particularly on irregular sites. All of the examples provided in test sites in the discussion paper, and in Appendix 5, illustrate development on flat, rectangular (or almost rectangular) lots. A more appropriate testing methodology and illustration of the proposed control set would demonstrate development on more realistic lots with differing topography and shapes. The testing and appendix examples should also have extended to the potential amenity impacts of the proposed control set on adjoining land, rather than just whether the standards permit various dwelling types onto particular sized lots. We consider that significantly more testing is still required for the draft code and that additional examples be included for irregular sites and adjoining land.

- *Complying development framework compliance*

The explanation paper fails to recognise that the existing complying development framework has a significant number of shortfalls in terms of diligence in assessing approvals, adherence to approvals and conditions, and ongoing monitoring of completed development, which would be significantly amplified by expanding the type and number of additional complying development approvals.

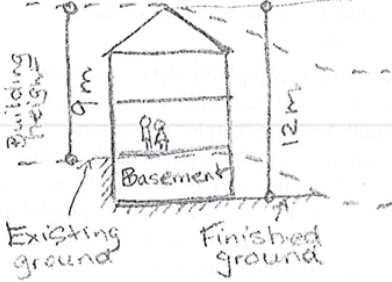
Yours sincerely



Allan Coker
Director - Planning & Development

Table 1: Main issues identified by Council staff

Main Council staff concerns	Council staff comments
<p>1. Community consultation The draft code will in many cases override and disregard Woollahra Council’s recently implemented LEP and DCP that were subject to extensive local community consultation.</p>	<p>We do not agree with the proposed expansion of complying development codes as it will undermine the community consultation element of LEP / DCP creation.</p>
<p>2. Built form and local character The draft code will override our precinct relevant desired future character statements and precinct controls with a generic “one size fits all” approach. This approach will effectively remove from consideration our clear statements of desired future character as well as our detailed precinct controls which are contained in our DCP for categories of development to which the code applies.</p>	<p>We do not support the proposed expansion of complying development codes as it will undermine the existing and desired future local character of built areas.</p>
<p>3. Design verification statements The proposed design verification statements are intended to articulate how a proposed development responds to numerous design principles and meets numerous design criteria. The statement will be prepared by the person who designed the development. Therefore, the assessment of the merits of the design against the design criteria will not be independent. Additionally, there is no indication of how a designer will be held accountable for the accuracy of these statements. In the case of complying development the statement will be the only assessment of the relevant design principles and criteria. The certifier will only be required to check that the statement has been provided, and not test its accuracy. Furthermore, once a complying development certificate has been issued, it becomes valid and operable. Therefore, the proposed code will establish a mechanism for the consideration of design principles and criteria which is not independent and does not require accuracy or accountability, effectively nullifying any assessment process it aims to achieve.</p>	<p>We request that the Department ensure that designers of medium density development are held accountable for the accuracy of their design verification statements. This requires independent assessment of design against the design criteria of the code and design guide. We recommend the establishment of an independent third party certification or registration system for practitioners who would be permitted to either prepare independently assessed design verification statements, or confirm the accuracy of design verification statements prepared by designers. In line with our recommendation for CDC compliance below, the design verification statements require a stringent mechanism to control, suspend or override an issued CDC, where it can be demonstrated that the development does not comply with all the design principles and criteria of the guide. This mechanism should not rely on the CDC being surrendered or set aside by the Land & Environment Court.</p>

Main Council staff concerns	Council staff comments
<p>4. Articulation zone</p> <p>The draft guide defines the articulation zone as “an area in front of the building line that may contain porticos, balconies, bay windows, decks, patios, pergolas, terraces, verandahs, window box treatments, window bays, awnings and sun shading features”.</p> <p>The draft design guide standard for the articulation zone is it can protrude 1.5m in front of the building line, compared to the discussion paper standard allowing building articulation of up to 25% of the entire front setback. The front setback standards proposed in the draft guide range between 3.5m – 10m depending on lot area. Therefore, applying a 1.5m articulation zone into a 3.5m front setback permits up to 40% of the front setback to be occupied by the building elements referred to above.</p>	<p>We do not support the proposed articulation zone standard as it is overly generous and is a significant increase on the standard proposed in the discussion paper. The standard has the potential to significantly impact on the bulk, scale and appearance of development within the front setback.</p> <p>It is recommended that a standard limiting the maximum percentage of development in the articulation zone be included in the design guide.</p>
<p>5. Building height and excavation depth</p> <p>Building height</p> <p>Building height has been amended from the discussion paper in the following way:</p> <ul style="list-style-type: none"> • The definition of “Building height” is now the same as that in the Standard Instrument. • The height of buildings is generally 8.5m, except terraces house which are 9.0m above existing ground level. This is higher than the building heights proposed in the discussion paper. 	<p>We are extremely concerned that the true potential building height permissible by the proposed controls has not been considered. On sloping sites, the draft code could result in a building with a height above finished ground level of 12.0m. As illustrated in the image below.</p> 
<p>Excavation depth</p> <p>Excavation has been amended from the discussion paper in the following way:</p> <ul style="list-style-type: none"> • The maximum excavation depth is 3m below existing ground level, as described in the Orientation and Siting “Design Criteria” controls for 4 types of development. • On sloping sites buildings are to respond to the topography with changes in floor level to minimise cut and fill. Unless a 	<p>The development of a group of dwellings to a maximum building height of 12.0m in low and medium density residential areas has the</p>

Main Council staff concerns	Council staff comments
<p>dwelling is over a basement, the ground floor is not to be more than 1.3m above ground level, and no more than 1m below ground level.</p> <p>Combined effect of building height and excavation depth</p> <p>Any excavation proposed for a car park basement must comply with all boundary setback requirements, which encourages basement car parking to be built directly below dwellings.</p> <p>Therefore, on a sloping site, the actual maximum permissible height of a building above finished ground level is 12.0m (9.0m above the existing ground level for terrace houses plus 3.0m below the existing ground level).</p>	<p>potential to create significant amenity impacts to adjoining land, such as overshadowing, privacy / overlooking, view disruption and creating excessive bulk and scale of development.</p> <p>This potential excessive height must be contained by way of an additional control restricting wall height when combined with basement car parking.</p>
<p>6. Flood control lots</p> <p>We are unsure what standards will apply to flood control lots in the draft code. This is due to the exclusion of the draft code wording from the exhibition material, as discussed previously in this submission.</p>	<p>We consider that flood control lots should be excluded from all forms of medium density complying development to ensure adequate assessment of the design, development and monitoring of flood control measures on flood control lots.</p>
<p>7. Development adjoining heritage items</p> <p>The maximum height of development (9.0m) and side setbacks (min. 0m) proposed for complying development may not be appropriate for development adjoining a heritage item. Although the guide makes a minor reference that a “DCP can provide finer control of building heights on unique sites such as the interface with heritage or other land use zones” (2A Building Envelopes - Heights and Setbacks, page 17), this does not apply to complying development.</p>	<p>We consider that development adjoining heritage items should not be permitted as complying development.</p>

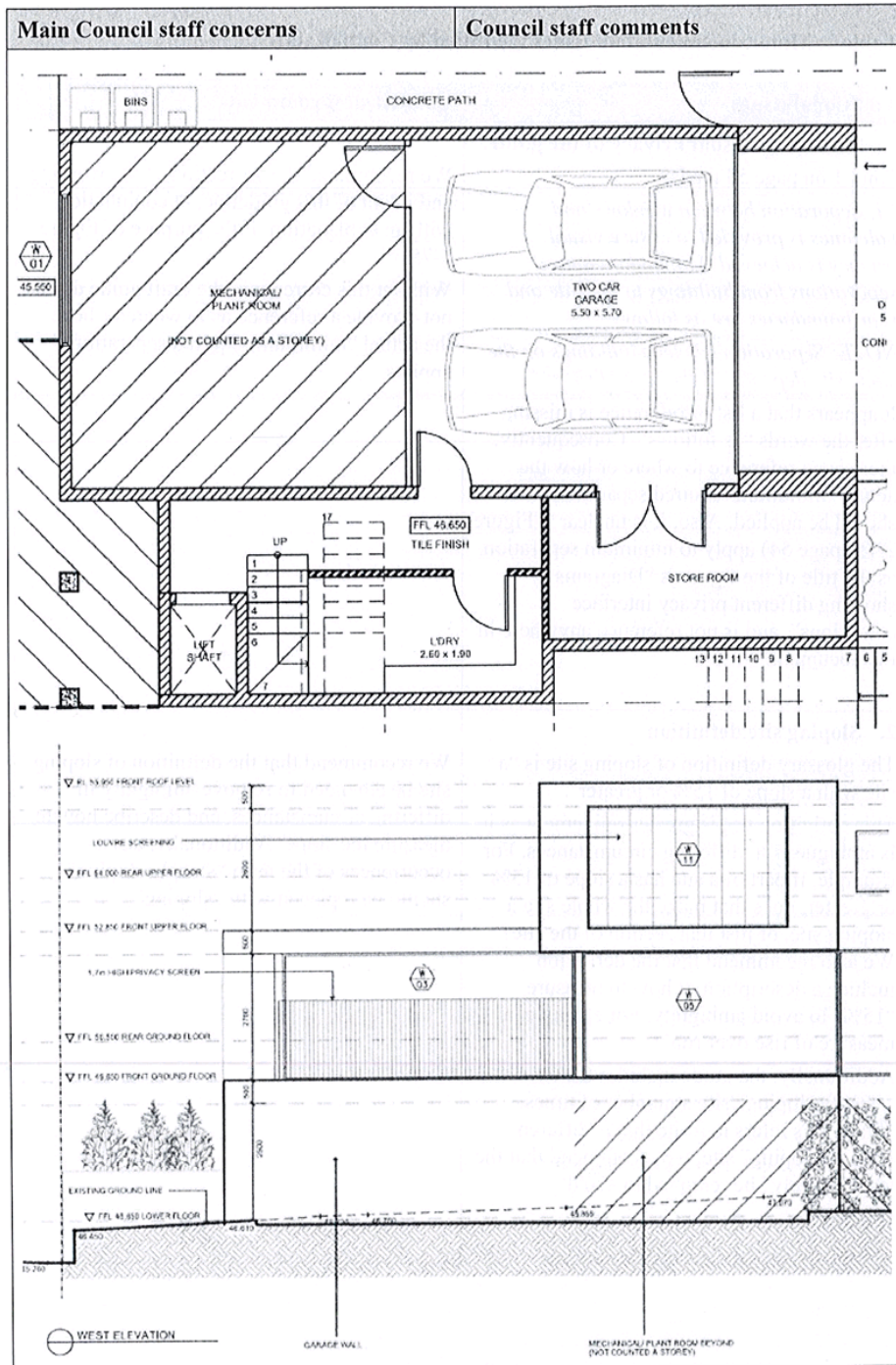
Main Council staff concerns	Council staff comments
<p>8. View sharing</p> <p>The code will exclude from consideration the impact medium density development has on views. This is because there is no mechanism available for a merit assessment based on view sharing principles which have been established by the Land and Environment Court in <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140. As previously discussed a design verification statement prepared by the person who designs the proposal gives us no confidence that view sharing will be properly considered and assessed.</p> <p>The issue of views and view sharing is particularly relevant in the Woollahra LGA which is located on Sydney Harbour and characterised by sloping land which provides significant public and private views to residents.</p>	<p>We recommend that development which may result in the significant obstruction of views from private and public not be permitted as complying development. This type of development requires merit assessment and cannot be codified.</p> <p>Additionally, diagrams could be added to the draft guide to illustrate how to assess the view impact on development sites and adjoining land. This would guide appropriate design for developments subject to a DA.</p>
<p>9. Removal or pruning of trees</p> <p>We are unsure what standards will apply for the removal or pruning of trees in the draft code. This is due to the exclusion of the draft code wording from the exhibition material, as discussed previously in this submission. However, the general housing code permits removal or pruning of trees as complying development if:</p> <ol style="list-style-type: none"> a) the tree is not listed on a significant tree register or register of significant trees kept by the council, and b) the tree or vegetation will be within 3m of any development that is a building that has an area of more than 25m², and c) the tree or vegetation has a height that is less than: <ol style="list-style-type: none"> i. for development that is the erection of a new dwelling house—8m and is not required to be retained as a condition of consent to the subdivision of the lot, or ii. for any other development—6m. 	<p>The Woollahra LEP and DCP:</p> <ul style="list-style-type: none"> • requires Council approval for the removal or pruning of any tree: <ul style="list-style-type: none"> - listed as a heritage item, - listed on Council’s significant tree register, or - with a height greater than 5 metres or - with a spread greater than 3 metres. • does not provide approval exceptions for the proximity of a tree to a building, and • encourages the replacement of any trees removed as part of a development to maintain the existing number of trees. <p>We recommend that the draft code align with these provisions.</p>

Main Council staff concerns	Council staff comments
<p>10. Testing of standards and “Recommended Principal Controls for Different Types”</p> <p>As stated in our previous submission to the discussion paper, the modelling used to test the draft standards were generally applied to relatively flat, regularly shaped sites.</p> <p>This testing methodology appears to have been repeated in Appendix 5 “Recommended Principal Controls for Different Types” of the guide. All the examples provided in the appendix illustrate development on flat, rectangular (or almost rectangular) lots.</p> <p>A more appropriate test of the proposed standards would be to apply them to realistic and irregular sites with differing topography. It is critical to know what would be the worst case scenario, because some applicants will take each development standard to its limit.</p>	<p>We are concerned that the testing of the proposed code standards and controls, and that the “Recommended Principal Controls for Different Types” included in Appendix 5 of the guide were not sufficiently robust to determine appropriate controls to ensure good quality built form outcomes.</p> <p>We recommend that additional testing and examples be provided of the proposed control set on realistic lots with differing topography and shapes. The testing and examples should also extend to illustrating the potential amenity impacts of the proposed control set on adjoining land.</p>
<p>11. Permissible uses</p> <p>Clarification is required for Clause 1.18 (1) (b) of the Codes SEPP. Currently Clause 1.18 (1) (b) provides an ambiguous definition of consent permissibility as a general requirement for complying development in the Codes SEPP.</p> <p>The clause states that:</p> <p><i>“(1) To be complying development for the purposes of this Policy, the development must: ...</i></p> <p><i>(b) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out”</i></p>	<p>We request that Clause 1.18 (1) (b) of the Codes SEPP be amended to provide greater clarification of permissibility of complying uses.</p> <p>This amendment could be a rewording of sub-clause (1)(b) along the lines of:</p> <p><i>“(b) be permissible, with consent, on the land on which the development is carried out on that land, under an environmental planning instrument applying to that land”</i></p>
<p>This wording is ambiguous as it may be interpreted to mean that any use permissible in any clause (or zone) within any SEPP or LEP applying to any land within a particular LGA, is permissible as complying development on any land within the LGA. For example, a food and drink premises not permitted with development consent in a residential zone, may be permissible as complying development because it is</p>	

Main Council staff concerns	Council staff comments
<p>permissible with consent within a business zone within the same LEP, and the LEP applies to that land because it is an LGA wide LEP and applies to all land in the LGA.</p> <p>Additionally, permissibility of uses within a particular zone may be reliant on various clauses of an environmental planning instrument. For example, the Clause 6.6 of the Woollahra LEP only permits the use of non-residential uses in residential zones if there is a lawful pre-existing history of that use. This understanding of permissibility requires a level of investigation of the LEP that a certifier may not be willing or able to undertake.</p> <p>The current review process for the draft code is a good opportunity for the amendment of Clause 1.18 to provide greater clarification of permissibility of complying uses.</p>	
<p>12. CDC Compliance</p> <p>The current complying development legislative framework does not provide more stringent mechanisms to control, suspend or override an issued CDC, where it does not comply with all the development standards nominated in the Codes SEPP.</p> <p>Once a complying development certificate (CDC) has been issued, even where it does not comply with all the development standards nominated in the Codes SEPP, it is legal and operational until it is either surrendered or set aside by the Land & Environment Court. Achieving either outcome can be an expensive and time consuming exercise for the community.</p> <p>To reiterate our submission to the discussion paper, our observations are based on first-hand experience. Over the past 12 months we have received complaints from the community on the following flawed complying developments:</p> <ol style="list-style-type: none"> 1. The internal alterations of a hotel/pub that was operating in a residential R2 Low Density Residential zone under existing use rights. A CDC was issued pursuant to 	<p>We reiterate our previous submission statement that there is a need for a more stringent mechanisms to control, suspend or override an issued CDC, where it does not comply with all the development standards nominated in the Codes SEPP, other than relying on the CDC being surrendered or set aside by the Land & Environment Court.</p> <p>The examples cited represent only a tiny portion of similar breaches in the issuing and use of CDCs. Expanding complying development to the more intense residential uses proposed in the discussion paper will only worsen the number and intensity of the potential amenity impacts created by breaches to the CDC framework.</p> <p>CDC conditions</p> <p>We consider the current review process for the draft code as a good opportunity for the Department to amend the conditions for complying development to include a trigger point for adherence, such as requiring the certification of surveys, plans, designs, “prior to the issue of an occupation certificate”, in</p>

Main Council staff concerns	Council staff comments
<p>'Part 5 Commercial and Industrial Alterations Code' of the Codes SEPP, even though the development standards required "the current use of the premises must not be an existing use within the meaning of section 106 of the Act".</p> <p>When our concerns were drawn to the attention of the owner, works proceeded and we were required to commence Class 4 proceedings in the Land & Environment Court. A building certificate application was subsequently lodged and approved for the works covered by the flawed CDC, resulting in the owner surrendering the CDC and permitting us to discontinue the Class 4 proceedings.</p> <p>2. The construction of a new dwelling approved pursuant to 'Part 3 General Housing Code' of the Codes SEPP. Following the site being excavated in excess of 3.0 metres it became evident to us that the approved CDC plans did not comply with Clauses 3.2 ('New single and two storey dwelling houses'), 3.13 ('Maximum height of dwelling houses and outbuildings') and 3.16 ('Setbacks of dwelling houses and outbuildings from side boundaries and built to boundary walls'). While we raised our concerns with the owners before the initial floor slab was poured, works continued and we initiated Class 4 proceedings in the Land & Environment Court. This matter is ongoing at the time of lodging our submission.</p>	<p>an attempt to ensure compliance with the conditions.</p> <p>The conditions also need to include a condition ensuring payment of section 94 contributions and section 94A levies to Council.</p>
<p>13. CDC definitions loopholes</p> <p>The definitions in the Codes SEPP and the Standard Instrument currently permit loopholes which are being inappropriately used by private certifiers. One example is provided below.</p> <p>Definition of storey and "meter room"</p> <p>The Codes SEPP (and the Standard Instrument) use the following definition of</p>	<p>We request that the Department seek to close loopholes in definitions controls which are being inappropriately used by private certifiers, rather than allowing a significantly wider range and number of complying residential developments. For example, the clarification of the definition of a meter room.</p> <p>The Department should continuously and systematically liaise with Councils regarding</p>

Main Council staff concerns	Council staff comments
<p>storey: <i>“storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:</i> <i>(a) a space that contains only a lift shaft, stairway or meter room, or</i> <i>(b) a mezzanine, or</i> <i>(c) an attic.”</i></p> <p>This definition excludes a ‘meter room’ from a storey, however there is no definition of a “meter room” and there is no case law on this specific issue. The lack of a definition of meter room has created a loophole in the definition of storey, which has generated a significant problem for us in the case of a recent privately issued CDC under the ‘General Housing’ Code (GHC) of the Codes SEPP. The CDC relates to a new single dwelling with a large (greater than 30sqm) “<i>MECHANICAL/PLANT ROOM</i>”. The mechanical/plant room was identified with a note that stated “<i>NOT COUNTED AS A STOREY</i>”. An extract of the plans approved by a private certifying authority are provided below.</p> <p>While the above approval appears to clearly be in breach of the maximum 2 storeys permissible by the current (and proposed) Codes SEPP controls, it is currently a valid and operable CDC that we have commenced Class 4 proceedings against. This example demonstrates how development controls and definitions can, and are, being manipulated, especially where they lack certainty.</p>	<p>any loopholes within the CDC framework, with a view to eradicating them at the earliest opportunity to avoid inappropriate complying development.</p>



Woollahra Council submission to exhibition:
 Draft Medium Density Design Guide and Explanation of Intended Effects for the new Medium Density Housing Code

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Table 2: Minor documentation issues identified by Council staff

Additional issues	Council staff comments
<p>1. Section 2P Visual Privacy of the guide. Point 1 on page 53 reads: <i>“1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separations from buildings to the side and rear boundaries are as follows:</i> <i>NOTE: Separation between buildings on the same site depends on the type of room.”</i> It appears that a list or reference is missing after the words “as follows”. Consequently, there is no reference to where or how the actual “minimum required separations” should be applied. Also, it is unclear if Figure 2-75 (page 54) apply to minimum separation, as the title of the figure is “Diagrams showing different privacy interface conditions”, and is not reference anywhere in the document.</p>	<p>We recommend the correction of the wording and intent of this guideline, in conjunction with an explanation of the purpose of Figure 2-75. Without this correction, the draft guide does not provide a reference as to where or how the actual “minimum required separations” applies.</p>
<p>2. Sloping site definition The glossary definition of sloping site is “a site with a slope of 15% or greater”. This definition needs greater refinement as it is ambiguous in differing circumstances. For example, if part of a site has a slope of 15% or greater, does that make the whole site a sloping site, or just that section of the site? We also recommend that the definition include a description of how to measure “15%” to avoid ambiguity. For example, a measure of rise over run.</p>	<p>We recommend that the definition of sloping site be amended to remove ambiguity in differing circumstances, and describe how to measure the slope. Additionally, any occurrences of the term “steeply sloping” should be replaced with “sloping”.</p>
<p>Additionally, the guide includes the term “steeply sloping” site a number of times. Unless this refers to a site that is different from a “sloping” site, we recommend that the term “steeply” be removed to avoid confusion.</p>	

Additional issues	Council staff comments
<p>3. Consistency of terms</p> <p>The following terms are used inconsistently throughout the documents and should be corrected for consistency:</p> <ul style="list-style-type: none"> • “Principal Controls” and “Principle [sic] Development Controls” • “Design Principles” and “Design Quality Principles” • “Design Guidance” and “Design Guidelines” • “Bicycle and Car Parking” and “Car and Bicycle Parking” • “Communal and Open Spaces” and “Communal Spaces” • “Aesthetics and Articulation” and “Visual Appearance and Articulation” • “Townhouses and Master Planned Communities” and “Multi-dwelling Housing and Master Planned Communities” • “Sloping site” and “steeply sloping site”. 	<p>Correct inconsistent terms.</p>
<p>4. Minor wording error in the design guide: page 51, item 17 reads “<i>Excavation should be minimised while through efficient car park layouts and ramp design</i>”. Strikeout added.</p>	<p>Correct minor wording error. Delete the word “while”.</p>

Annexure 3

Low Rise Medium Density Housing Framework Amendment 2018 Woollahra Council Strategic Planning Team Summary

Note: Bolded references in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP) section of the table refer to the specific part, division or clause in which each standard can be found in the SEPP.

Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
Standard Instrument (Local Environmental Plans) Amendment (Low Rise Medium Density Housing) Order 2017			
Permissibility Amendments will only be made to the R3 Medium Density Residential zone of the <i>Woollahra LEP 2014</i> (WLEP).	Dual occupancies are currently permissible in both the R2 and R3 zones of the WLEP	<ul style="list-style-type: none"> Manor houses will be permissible wherever multi dwelling housing is permitted (WLEP R3 zone) Manor houses will be added as a use that must be permitted in the R3 zone All LEPs including WLEP 	<ul style="list-style-type: none"> Multi dwelling housing (terraces) cannot be prohibited where multi dwelling housing is permitted Multi dwelling housing is currently a use that must be permitted in the R3 zone, consequently multi dwelling (terraces) will also be permitted (ie. they cannot be prohibited). All LEPs including WLEP
Definition	<p><i>dual occupancy (attached)</i> means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.</p> <p><i>dual occupancy (detached)</i> means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.</p> <p>Note. Dual occupancies are a type of <i>residential accommodation</i>.</p>	<p><i>manor house</i> means a building containing 3 or 4 dwellings, where:</p> <p>(a) each dwelling is attached to another dwelling by a common wall or floor, and</p> <p>(b) at least 1 dwelling is partially or wholly located above another dwelling, and</p> <p>(c) the building contains no more than 2 storeys (excluding any basement).</p> <p>Note. Manor houses are a type of <i>residential flat</i></p>	<p><i>multi dwelling housing (terraces)</i> means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.</p> <p>Note. Multi dwelling housing (terraces) are a type of <i>multi dwelling housing</i>.</p> <p>[New definition] <i>multi dwelling housing</i> means 3 or more dwellings (whether attached or detached) on one lot of land where:</p> <p>(a) each dwelling has access at ground level, and</p>

Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
		building.	(b) no part of a dwelling is above any part of any other dwelling, and includes multi dwelling housing (terraces). Note. Multi dwelling housing is a type of residential accommodation.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008			
Land on which complying development may not be carried out Clause 1.19	<p>Existing exclusions Land identified, within or subject to:</p> <ul style="list-style-type: none"> (a) heritage conservation area or a draft heritage conservation area (b) reserved for a public purpose (c) Acid Sulfate Soils Map as being Class 1 or Class 2, (d) a biobanking agreement under Part 7A of the Threatened Species Conservation Act 1995 or a property vegetation plan approved under the Native Vegetation Act 2003, or (d1) a private land conservation agreement under the Biodiversity Conservation Act 2016 or that is a set aside area under section 60ZC of the Local Land Services Act 2013, or (e) an environmental planning instrument as being: <ul style="list-style-type: none"> (i) within a buffer area, or (ii) within a river front area, or (iii) within an ecologically sensitive area, or (iv) environmentally sensitive land, or (v) within a protected area, or (f) an environmental planning instrument, a development control plan or a policy adopted by the council as being or affected by: <ul style="list-style-type: none"> (i) a coastline hazard, or (ii) a coastal hazard, or (iii) a coastal erosion hazard, or (g) land in a foreshore area <p>Additional exclusions (3A) Low Rise Medium Density Housing Code is not complying development if it is carried out on land on which there is a heritage item or a draft heritage item.</p>		
State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2017			
Part 3B Low Rise Medium Density Housing Code			
Division 1	Requirements for complying development under this code		
Inclusions	(1)(a) 1 or 2 storey development, dual occupancy, manor house and multi dwelling housing (terraces)		
Clause 3B.1	(1)(b) related development		
	(2) only habitable parts of a basement included as a storey)		

Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
	(3)(a) R2 and R3 zones (WLEP) (3)(b) lawful access to a public road required at completion		
Exclusions Clause 3B.2	(a) erection, alterations and additions to a roof terrace on the top most roof of a building (c) development on a battle-axe lot (d) development that is attached to a secondary dwelling or group home (f) alterations and additions to a garage or carport that is located forward of the building line		
Flood control lots Clause 3B.5	Development permitted on any part of a flood control lot, other than a part of the lot that is: (a) a flood storage area, (b) a floodway area, (c) a flow path, (d) a high hazard area, (e) a high risk area.		
	Division 2 Development standards for certain dual occupancies and attached development	Division 3 Development standards for manor houses, certain dual occupancies and attached development	Division 4 Development standards for multi dwelling housing (terraces) and attached development
Application	Dual occupancies (where no part of a dwelling is located above any part of another dwelling) • Alterations and additions to same Clause 3B.7	Manor houses and Dual occupancies (where part of a dwelling is located above part of another dwelling) • Alterations and additions to same Clause 3B.20	Multi dwelling housing (terraces) • Alterations and additions to same Clause 3B.32
Lot requirements (Minimum lot size)	460 sqm (WLEP) 400 sqm (SEPP) Whichever is greater Clause 3B.8 (1)	Manor house 600 sqm Dual occupancies 460 sqm (WLEP) 400 sqm (SEPP) Whichever is greater Clause 3B.21	700 sqm (WLEP) 600 sqm (SEPP) Whichever is greater Clause 3B.33 (1)
Minimum width of lot at building line	12.0m Clause 3B.8 (2)	15.0m Clause 3B.21	18.0m Clause 3B.33 (2)

Low Rise Medium Density Housing as Complying Development
Woollahra Council Strategic Planning Team Summary

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Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
Maximum building height	8.5 metres Clause 3B.9	8.5 metres Clause 3B.22	9 metres Clause 3B.34
Maximum Gross Floor Area	Lot area: 400 –2,000sqm GFA: 25% of lot area + 300sqm Lot area: >2,000sqm GFA: 800sqm Clause 3B.10	25% of the lot area + 150sqm, to a maximum of 400sqm Clause 3B.23	R2 zone: 60% of lot area R3 zone: 80% of lot area Clause 3B.35
Minimum setbacks and maximum height and length of boundary walls	(1) Primary road: not less than average setback from the primary road of the 2 nearest dwelling houses or dual occupancies within 40m on same side of primary road, <i>or</i> (3) Primary road: 4.5 – 10m where conditions above do not exist (4) Side: 0.9 – 2.5m (5) Rear: 3 – 15m (6) Secondary road for corner lots: 2 – 5m (8) Parallel road: 3m (9) Classified road: 9m (10) Public reserve: 3m Based on lot area, lot width and building height. Clause 3B.11	(1) Primary road: not less than average setback from the primary road of the 2 nearest dwelling houses or dual occupancies within 40m on same side of primary road, <i>or</i> (3) Primary road: 4.5 – 10m where conditions above do not exist (4) & (5) Side: 1.5 m – setback determined by formula (6) Rear: 6 – 15m (7) Secondary road for corner lots: 3 – 5m (8) Parallel road: 3m (9) Classified road: 9m (10) Public reserve: 3m Based on lot area, lot width and building height. Clause 3B.24	(1) Primary road in R2 zone: not less than average setback from the primary road of the 2 nearest dwelling houses, dual occupancies or multi dwelling (terraces) within 40m on same side of primary road, <i>or</i> (3) Primary road: 3.5 – 10m in R3 zone or where conditions above do not exist (4) Side: 1.5m (5) Rear: 3 – 15m (6) Secondary road for corner lots: 3 – 5m (7) Parallel road: 3m (8) Classified road: 9m (9) Public reserve: 3m Based on lot area, lot width and building height. Clause 3B.36

Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
Exceptions to setbacks	Minor building elements are exempt from setbacks Clause 3B.12	Minor building elements are exempt from setbacks Clause 3B.25	Minor building elements are exempt from setbacks Clause 3B.37
Dwelling configuration on lot	(1) Each dwelling must face a public road. (2) No dwelling must be located behind another dwelling on the same lot (except on a corner lot). (3) dual occupancy (detached) must be located at least 3m from each other. (4) Each dwelling must have a minimum width (measured at the building line) of 5m. Clause 3B.13	N/A	(1) Each dwelling must face a public road. (2) No dwelling must be located behind another dwelling on the same lot. (3) Each terrace must have a minimum width (measured parallel to the building line) of 6m. Clause 3B.38
Other development standards for new balconies, decks, patios, terraces and verandahs attached to side or rear of development	(1) Maximum floor level: 4m (2) Side and rear setback for floor levels above 2m: 3m (3) Max. floor area of all decks above 2m: 12sqm Clause 3B.14	Clause 3B.26	Clause 3B.39
Minimum landscaped area	(1) 50% of lot area minus 100 sqm per dwelling (2) At least 25% of the lot area forward of the building line. (3) Each landscaped area to have a minimum width and length of 1.5m	(1) 50% of lot area minus 100 sqm per dwelling (2) At least 50% of the lot area forward of the building line. (3) Each landscaped area to have a minimum width and length of 1.5m	(1) R2 zone: 30% of lot area R3 zone: 20% of lot area (2) At least 25% of the lot area forward of the building line. (3) Each landscaped area to have a minimum width and length of 1.5m (4) Principal private open space per dwelling - 16sqm min. area - 3m min. width

Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
	Clause 3B.15	Clause 3B.27	Clause 3B.40
Primary and secondary road articulation zones (maximum permissible encroachment into minimum road setback for certain building elements)	1.5m and 25% Clause 3B.16	1.5m and 25% Clause 3B.28	1.5m and 25% Clause 3B.41
Privacy screens for windows and certain attached development	Privacy screens required for certain windows facing side boundaries Clause 3B.17	Privacy screens required for certain windows facing side boundaries Clause 3B.29	Privacy screens required for certain windows facing side boundaries Clause 3B.42
Car parking and vehicle access requirements	Min. 1 off-street car parking space per dwelling Clause 3B.18	1 parking space per dwelling Clause 3B.30	Min. 1 off-street car parking space per dwelling Clause 3B.43
Building design	(1) The design of a low rise medium density development must be consistent with the relevant design criteria in the Medium Density Design Guide. (2) However, the requirements of the code prevail when inconsistent with the Guide. Clause 3B.19		
	Clause 3B.19	Clause 3B.31	Clause 3B.44
Division 5	Development standards for detached development		
Lot requirements (Minimum lot size)	400 sqm (SEPP) Clause 3B.46 (a)		
Minimum width of lot at building line	12.0m Clause 3B.46 (b)		
Maximum height	4.5m Clause 3B. 47		
Maximum Gross Floor Area	45sqm Clause 3B.48 (1)	45 – 100 sqm Clause 3B.48 (2)	45sqm Clause 3B.48 (1)
Minimum setbacks and maximum height and length of boundary walls	(1) Primary and secondary road: behind building line of the residential accommodation (2) & (3) Side: 0 – 0.9m (7) & (8) Rear: 0.9 – 2.5m (9) Parallel road: 3m (10) Classified road: 9m (11) Public reserve: 3m		

Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
	Based on lot area, lot width and building height. Clause 3B.49		
Other development standards for detached garages and carports	(1) Car parking designed to Australian standards (2) Primary road: At least 1m behind building line of residential accommodation, min. 5.5m (3) Secondary and parallel road: 2 – 5m (4) & (5) Rear: 0 – 2.5m (6) Separation from residential accommodation: min. 3m (7) Maximum width of garage doors: 6m Based on specifics of residential accommodation. Clause 3B.50		
Other development standards for new balconies, decks, patios, terraces and verandahs attached to side or rear of development	(1) Maximum floor level: 600mm – 1m (2) Rear setback: 900mm – 2.5m Based on specifics of side setbacks and lot area. Clause 3B.51		
Other development standards for detached studios	No more than 1 detached studio per dwelling Clause 3B.52 (1)	No more than 1 detached studio per dual occupancy dwelling Clause 3B.52 (1)	No more than 1 detached studio per dwelling Clause 3B.51 (1)
Maximum height	6m if within 900mm of a lane and above a garage Clause 3B.52 (2)		
Maximum gross floor area	36 sqm Clause 3B.52 (3)		
Side boundary setbacks	0 – 1.5m Clause 3B.52 (2), (7) and (8)		
Rear boundary setbacks	0 – 3m Clause 3B.52 (5) and (6)		
Separation from residential accommodation	3m from any building on the same lot Clause 3B.52 (10)		
Part 6 Subdivisions Code			
Strata subdivision			
Specified complying development	Permitted Clause 6.1	Permitted Clause 6.1	Permitted Clause 6.1

Primary controls	Dual occupancies (side by side)	Manor houses and Dual occupancies (above and below)	Multi dwelling housing (terraces)
Development standards	<ul style="list-style-type: none"> Each dwelling must have a frontage to a public road (other than a lane) No dwelling must be located behind another dwelling (except corner and parallel road lots) min. 6m wide at building line for each resulting lot min. 180qm strata area on ground floor <p>Clause 6.2</p>	N/A	<ul style="list-style-type: none"> Each dwelling must have a frontage to a public road (other than a lane) No dwelling must be located behind another dwelling (except corner and parallel road lots) min. 6m wide at building line for each resulting lot min. 180qm strata area on ground floor <p>Clause 6.2</p>
Torrens subdivision			
Specified complying development	Permitted Clause 6.3	N/A	Permitted Clause 6.3
Lot requirements	Resulting lots standards: (a) Only 1 dwelling on each lot (c) min. 6m wide at building line (d) min. size 60% of WLEP or 200sqm (SEPP) Clause 6.4	N/A	Resulting lots standards: (a) Only 1 dwelling on each lot (c) min. 6m wide at building line (d) min. 200sqm Clause 6.4

Item No:	R2 Recommendation to Council
Subject:	PROPOSED AMENDMENTS TO WOOLLAHRA LEP 2014 AND WOOLLAHRA DCP 2015 - TO INCORPORATE CONTROLS FOR LOW RISE MEDIUM DENSITY HOUSING TYPES
Authors:	Jorge Alvarez, Senior Strategic Planner Anne White, Team Leader - Strategic Planning
Approvers:	Chris Bluett, Manager - Strategic Planning Allan Coker, Director - Planning & Development
File No:	19/26322
Reason for Report:	To obtain a Council decision to prepare a planning proposal to amend the Woollahra LEP 2014. To obtain a Council decision to prepare a draft development control plan to amend Woollahra Development Control Plan 2015. To obtain a Council decision to refer the planning proposal and draft development control plan to the Woollahra Local Planning Panel for advice.

Recommendation:

- A. THAT Council prepare a planning proposal to amend clause 4.1A of Woollahra LEP 2014 by inserting minimum lot size standards for manor houses and multi dwelling housing (terraces).
- B. THAT a draft development control plan be prepared to amend various sections of the Woollahra Development Control Plan 2015, to insert references to manor houses and multi dwelling housing (terraces), as described in detail in **Annexure 4** of the report to the Environmental Planning Committee meeting on 18 March 2019.
- C. THAT the planning proposal and draft development control plan be referred to the Woollahra Local Planning Panel for advice.
- D. THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.

1. Background

On 6 April 2018 amendments were made to the NSW planning framework to facilitate the development of Low Rise Medium Density Housing. The amendments came into effect on 6 July 2018 and introduced a range of changes to the following:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP). The key change involves the introduction of the new *Low Rise Medium Density Housing Code* (the Code) which will form part of the Codes SEPP.
- Various local environmental plans – either directly or through the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument), which is the template for LEPs.
- *Environmental Planning and Assessment Regulation 2000* (the Regulation).

The potential implications of the amendments were reported to the Environmental Planning Committee on 4 June 2018, refer to **Annexure 1**. Following this meeting, on 18 June 2018 Council resolved the following:

- A. *THAT Council note that a formal submission has been made to the Minister for Planning requesting a deferred commencement of the Low Rise Medium Density Housing Code and Low Rise Medium Density Design Guide. The Council also notes the Minister for Planning's intention to provide notice to councils that commencement of the Code and Guide will be deferred to allow them to investigate options for providing additional housing envisaged in the Code. Staff are requested to follow up the submission to the Minister for Planning with a view to taking up the deferred commencement for Woollahra, noting that the deferral would allow Council time to investigate the impact of the Code and Guide on our LGA. Staff are requested to follow up the submission to the Minister for Planning.*
- B. *THAT the review of the Woollahra LEP 2014 in relation to the Code, as resolved by Council on 21 May 2018, be extended to include an associated review of the Woollahra DCP 2015. This review will examine amendments required to the DCP for manor houses and multi-dwelling housing (terraces), which will be permitted with development consent under Woollahra LEP 2014 as a result of the amendments to the complying development framework for NSW. The review shall also include reference to the housing target in the Eastern City District Plan and the impact on services and infrastructure within the R2 Low Density Residential Zone and the R3 Medium Density Residential Zone.*
- C. *THAT the reviews described above be reported to the Environmental Planning Committee for consideration.*

1.1 Deferral of Low Rise Medium Density Housing Code

In response to part A of Council's resolution of 18 June 2018, a submission was made to the Minister of Planning requesting the deferred commencement of the Code. On 6 July 2018, Council staff notified Councillors by email, that the Minister for Planning published the *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2017*. The Amendment deferred the application of the Code to land in the Woollahra LGA (and 40 other LGAs in NSW) until 1 July 2019. The deferral has allowed staff time to investigate the impact of the Code on the Woollahra LGA, consult with the Department of Planning about the policy implication of the changes to the planning framework and prepare appropriate amendments to our current suite of controls.

1.2 Review of Woollahra LEP 2014 and Woollahra DCP 2015

In response to part B of Council's resolution of 18 June 2018, it is noted that:

1. The review of the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) in relation to the Code was addressed in the report to the Environmental Planning Committee on 4 June 2018 (**Annexure 1**):

With regard to the potential removal of medium types of dwellings from the R2 and R3 zones, the Standard Instrument mandates the land uses within each zone. That is, Council cannot seek an alteration to the mandated permitted or prohibited uses. For the R3 zone, these mandated uses include multi-dwelling housing.

As the amendment to the Standard Instrument will result in manor houses and multi-dwelling housing (terraces) being permissible in zones where multi-dwelling housing is allowed, it is highly unlikely that the State Government will allow Woollahra to remove these development types from the R3 zone. A request of this nature would be contrary to the overarching intention of both the Standard Instrument and the new Code.

2. The review of the *Woollahra Development Control Plan 2015* (Woollahra DCP 2015) relating to manor houses and multi dwelling housing (terraces) is the subject of this report.
3. The requested reference to the housing target in the Eastern City District Plan (the District Plan) and the impact on services and infrastructure within the R2 Low Density Residential Zone (R2 zone) and the R3 Medium Density Residential Zone (R3 zone) will be considered in the upcoming housing strategy. Council is required to prepare a housing strategy in order to give effect to the Eastern City District Plan prepared by the Greater Sydney Commission. The housing strategy will be reported to a future meeting of the Environmental Planning Committee.

1.3 Low rise medium density housing

Low rise medium density housing is defined as three development types, limited to 1 or 2 storeys in height:

- Dual occupancy – being two dwellings either attached or detached on one lot of land.
- Manor house – being a type of residential flat building containing three or four attached dwellings.
- Multi dwelling housing (terraces) – being three or more attached dwellings on one lot of land, facing and generally aligned along one or more public roads.

Table 1: Low rise medium density housing types

Housing type	Definition
	<p>dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.</p> <p>dual occupancy (detached) means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.</p>
	<p>manor house means a residential flat building containing 3 or 4 dwellings, where:</p> <ul style="list-style-type: none"> (a) each dwelling is attached to another dwelling by a common wall or floor, and (b) at least 1 dwelling is partially or wholly located above another dwelling, and (c) the building contains no more than 2 storeys (excluding any basement).
	<p>multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.</p>

1.4 Development permissibility for development that requires consent

The *Environmental Planning and Assessment Act 1979* (the Act) specifies that where development needs consent, it may be obtained through a complying development certificate (CDC) or a development application (DA).

Complying development is a type of development which complies with specified development standards and which may be granted through a CDC rather than a development application.

Development with consent is a type of development which requires approval by Council (or other planning authority) through the DA process. If a proposal for a permissible land use cannot be obtained as a CDC because it does not fully comply with the specified development standards, an applicant may seek consent through the DA process.

The amendments introduced into the NSW planning framework on 6 July 2018, will affect the permissibility of low rise medium density housing. Within the Woollahra LGA, the amendments will enable:

1. The introduction and definition of the two new residential accommodation types:
 - Manor house.
 - Multi dwelling housing (terraces).

Note: Dual occupancies are already defined as a residential accommodation type under Woollahra LEP 2014.

2. The permissibility as complying development of the following development types:
 - Dual occupancy, limited to a height of 1 of 2 storeys in the R2 and R3 zones.
 - Manor houses in the R3 zone.
 - Multi dwelling housing (terraces) in the R3 zone.

Note: Due to the restrictions on permissibility, such as heritage items, and other exclusions, these development types will not be permissible as complying development on all land.

3. The permissibility with development consent, by way of development application (DA), of the following development types in the R3 zone:
 - Manor house.
 - Multi dwelling housing (terraces).

Note: Dual occupancies are already permissible with consent in the R2 and R3 zones in the Woollahra LGA.

1.5 Low rise medium density housing as complying development

The Codes SEPP currently sets the framework to permit 1 and 2 storey freestanding dwelling houses which fully comply with the relevant development standards, to be approved as complying development.

From 1 July 2019, the Code will permit 1 and 2 storey dual occupancies, manor houses and multi dwelling houses (terraces) to be carried out as complying development in the Woollahra LGA. Dual occupancy development, which is currently permissible with consent in the R2 and R3 zones under Woollahra LEP 2014, will be permissible as complying development under the Codes SEPP in those two zones. Manor houses and multi dwelling housing (terraces) will become permissible uses in the R3 zone under the Codes SEPP. These uses will not be permissible in the R2 zone, because the Codes SEPP only permits their development in zones where multi dwelling housing is permissible. Multi dwelling housing is not a permissible use in the R2 zone under Woollahra LEP 2014, therefore, manor houses and multi dwelling housing (terraces) will not be permissible in the R2 zone.

It is important to note that while the three development types will be established as complying development in certain zones under the Codes SEPP, they may not be carried out on certain excluded land. This excluded land includes:

- Land that comprises, or on which there is a heritage item (state or local), a draft heritage item or land subject to an interim heritage order.
- Land within a heritage conservation area or a draft heritage conservation area.
- Land that is reserved for a public purpose.
- Land identified on the Acid Sulfate Soils Map as being Class 1 or Class 2.
- Land in the foreshore area (which is land between a foreshore building line and the mean high water mark).

Additionally, certain development will not be complying development under the new Code. This includes:

- Development on a battle-axe lot.
- The erection of a building over a registered easement.
- The alteration of, or an addition to, a garage or carport that is located forward of the building line.

The *Low Rise Medium Density Design Guide* (the Guide) is the companion document to the Code, and commenced concurrently on 6 July 2018. The design of the three development types; dual occupancy, manor house and a multi dwelling house (terraces) as complying development, must be consistent with the relevant design criteria in the Guide.

The Code and the Guide establish a wide range of development controls and standards for the three development types. The controls and standards within the Code relate to matters including:

- built form, such as minimum lot area, maximum building height, gross floor area, boundary setbacks, length of boundary walls, dwelling configuration,
- landscaping,
- amenity, such as window configuration, privacy screens,
- car parking and vehicle access.

The design criteria in the Guide address matters such as solar access, natural ventilation, private open space, landscaping and privacy. Complying development must demonstrate compliance with the Guide by way of a “design verification statement” completed by a registered architect or a person accredited as a building designer.

1.6 Low rise medium density housing permitted with a development application

As noted above, from 1 July 2019, manor houses and multi dwelling housing (terraces) will be permissible with development consent (as a DA) in the Woollahra LGA. These development types will only be permissible in the R3 zone under the Codes SEPP, and not in the R2 zone. On 18 June 2018, Council resolved to review the controls and standards in the Woollahra LEP 2014 and Woollahra DCP 2015, to ensure manor houses and multi dwelling housing (terraces) meet the desired future character of the Woollahra LGA. The Woollahra LEP 2014 and Woollahra DCP 2015 already contains specific controls for dual occupancy development.

2. Low Rise Medium Density Design Guide for Development Applications

The *Low Rise Medium Density Design Guide for Development Applications* (DA Design Guide) commenced on 6 July 2018 to provide design guidance and best practice design controls and standards for low rise medium density development requiring development consent. The Regulation requires councils to consider the DA Design Guide when assessing DAs for this type of development, until development controls and standards for these new housing types are adopted. In developing appropriate controls for their LGA, councils have the option of adopting the DA Design Guide in full, or in part, as part of a new or existing development control plan (DCP). Once a council has planning controls in place for manor houses and terraces, the council will no longer be required to consider the DA Design Guide.

3. Planning proposal to amend Woollahra LEP 2014

Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat building of the Woollahra LEP 2014 currently provides development standards for the minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings within certain zones. A planning proposal is required to amend this clause, and apply minimum lot size standards to manor houses and multi dwelling housing (terraces).

The DA Design Guide control for minimum lot size of manor houses and multi dwelling housing (terraces) is 600 square metres. However, the Woollahra LEP 2014 minimum lot size standard for residential flat buildings and multi dwelling housing is 700 square metres. Therefore, it is recommended that the minimum lot size standard for manor houses and multi dwelling housing (terraces) be adopted as 700 square metres, to align the standards to those of residential flat buildings and multi dwelling housing.

4. Proposed amendment to the Woollahra DCP 2015

The Woollahra DCP 2015 currently provides development controls for the development of dual occupancies, multi dwelling housing and residential flat buildings within the Woollahra LGA. To provide appropriate controls for all types of low rise medium density housing, additional controls are required for manor houses and multi dwelling housing (terraces).

Annexure 2 shows a comparison of the existing controls and standards in Woollahra DCP 2015 for low rise medium density housing development and those in the DA Design Guide. In summary, the comparison reveals that the current controls of the Woollahra DCP 2015 either exceed or are equivalent in detail and stringency to the controls and standards in the DA Design Guide. Therefore, it is not necessary to adopt any of the controls and standards in the DA Guide into the Woollahra DCP 2015.

The existing controls for dual occupancies, multi dwelling housing and residential flat buildings are specifically tailored to the desired future character of the Woollahra LGA, and were prepared with extensive consultation with the local community. As manor houses are a type of residential flat building, and multi dwelling housing (terraces) are a type of multi dwelling housing, it is appropriate to extend the applicable existing controls in the Woollahra DCP 2015 to these new development types.

The proposed amendments to the Woollahra DCP are:

1. Amend Clause B3.8.1 to provide a minimum lot size control for manor houses and multi dwelling housing (terraces) of 700 square metres, pending the amendment of Clause 4.1A of the Woollahra LEP 2014 by the planning proposal described above.
2. Various minor administrative amendments to the Woollahra DCP 2015. The amendments generally include inserting references to manor house and multi dwelling housing (terraces) alongside references to residential flat buildings and multi dwelling housing. The amendments are distributed throughout the document, with the majority being in Chapter B3 General Development. A summary of the amendments is attached as **Annexure 3**.

Annexure 4 shows a draft version of the proposed amendments to the Woollahra DCP 2015. The amendments are shown as follows:

- inserted text is coloured in blue and underlined: inserted text
- deleted words are coloured in red with a strikethrough: ~~deleted text~~.

5. Next steps

If Council decides to support amending the Woollahra LEP 2014 and Woollahra DCP 2015, the next step is to prepare a planning proposal in accordance with NSW Government Guidelines. A draft DCP to amend Woollahra DCP 2015 as described above, will also be prepared.

The planning proposal and the draft DCP will be referred to the Woollahra LPP for its advice. The advice will then be provided to a meeting of the *Environmental Planning Committee* (EPC).

If Council resolves to proceed with the planning proposal it will be referred to the Department of Planning and Environment (DPE) for a gateway determination. This will allow the planning proposal to be placed on public exhibition. It is recommended that when requesting the gateway determination that Council seek the delegation of the plan-making steps under section 3.36 of the *Environmental Planning and Assessment Act 1979*. The planning proposal and draft DCP will be exhibited concurrently.

The outcome of the public exhibition will be reported to a future meeting of the EPC for consideration. If Council resolves to proceed with the LEP amendment it will be forwarded to the NSW Parliamentary Counsel Office and the DPE for legal drafting and finalisation. The new planning controls in the Woollahra LEP 2014 will come into effect after the LEP is notified on the NSW Legislation website.

Subject to Council's decisions, the DCP amendment will be scheduled to come into effect on the same date as the LEP amendment.

6. Conclusion

On 1 July 2019, manor houses and multi dwelling housing (terraces) will be permissible in the R3 zone in the Woollahra LGA. Consequently, controls and standards for these new dwelling types are required under Woollahra LEP 2014 and Woollahra DCP 2015.

Clause 4.1A of the Woollahra LEP 2014 relates to minimum lot sizes for housing types other than dwelling houses. This report recommends that this clause be amended, through a planning proposal, to include manor houses and multi dwelling housing (terraces).





Council must consider the controls and standards of the DA Design Guide in the assessment of manor house and multi dwelling housing (terraces) until it adopts its own development controls and standards in a DCP. A comparison of the controls and standards of the Woollahra DCP 2015 and the DA Design Guide with regard to residential flat buildings, multi dwelling housing and dual occupancies, reveals that the controls and standards of the Woollahra DCP 2015 either exceed or are equivalent in detail and stringency to those in the DA Design Guide. Therefore, it is not considered appropriate to adopt any of the controls and standards in the DA Guide into the Woollahra DCP 2015.

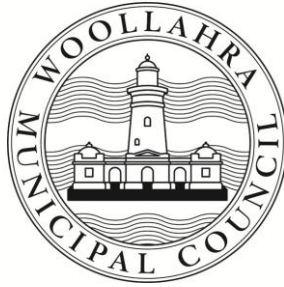
Additionally, it is considered desirable to extend the controls and standards for residential flat buildings and multi dwelling housing in the Woollahra DCP 2015 to manor houses and multi dwelling housing (terraces), as they are specifically tailored to the desired future character of the Woollahra LGA, and were prepared with extensive consultation with the local community.

This report recommends that Council amend the Woollahra DCP 2015, through a draft DCP, to provide controls and standards for the manor houses and multi dwelling housing (terraces), by generally extending the existing adopted controls and standards for:

- residential flat buildings to manor houses; and
- multi dwelling housing to multi dwelling housing (terraces).

Annexures - All removed

1. Environmental Planning Committee Agenda - 4 June 2018 [↓](#) 
2. Comparison table of controls between the DA Design Guide and Woollahra DCP 2015
[↓](#) 
3. Summary of proposed amendments to Woollahra DCP 2015 [↓](#) 
4. Proposed DRAFT amendments to Woollahra DCP 2015 [↓](#) 



DRAFT WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2013

DISCUSSION PAPER

Chapter 4

LOT SIZE

This chapter provides an overview of the minimum lot sizes that apply to development in residential zones in Draft Woollahra Local Environmental Plan (Draft WLEP 2013).

We have generally translated the current minimum lot sizes permitted by Woollahra Local Environmental Plan 1995 (WLEP 95). However, there are some changes in the R3 Medium Density Residential zone.

An explanation of how the current minimum lot sizes have been translated into Draft WLEP 2013 and the key changes that have occurred are contained in this chapter.

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PART 1. BACKGROUND

1.1 What is lot size?

Lot size is a term to describe the area of a single lot of land. Draft WLEP 2013 specifies the minimum lot size required to:

- Torrens title subdivide land zoned for residential use,
- Develop land for specific types of residential development.

1.2 Our approach to setting minimum lot sizes

As part of preparing Draft WLEP 2013 we reviewed minimum lot sizes for subdivision and land uses in the Woollahra Local Government Area (LGA).

WLEP 95 provides a minimum lot size for subdivision of land in the 2(a) Residential zone. It also sets minimum lot size for certain land uses in both the 2(a) Residential and 2(b) Residential zone. For example detached dual occupancies require a lot size of 930m².

The lot size controls in Draft WLEP 2013 are based on the WLEP 95 controls. They are set by the **Lot Size Map** and clauses which are further explained in Parts 2 and 3. More detailed controls to support these minimum lot size controls are included in the Comprehensive DCP¹.

1.3 Standard LEP definitions

To help understand this chapter and what the different residential land uses are, Part 4 contains an extract from the Draft WLEP 2013 dictionary.

Each land use definition establishes the minimum number of dwellings permissible on a lot.

For example, a residential flat building (RFB) has a minimum of three dwellings on one lot of land.

The minimum number of dwellings for each land use has informed the minimum lot sizes proposed in Draft WLEP 2013.

¹ A development control plan (DCP) is a planning document that supplements an LEP. DCPs guide future development within a local context, and provide more detailed planning and design guidelines. All of Council's DCPs are being reviewed and consolidated into a Comprehensive DCP. The Comprehensive DCP will be exhibited later in 2013.

PART 2. LOT SIZES FOR SUBDIVISION

Generally, minimum lot sizes for subdivision are shown on the **Lot Size Map**. A different colour indicates a different minimum lot size (see Figure 1). Different minimum lot sizes reflect the existing and desired future subdivision pattern of each suburb.

For example, in Draft WLEP 2013 the minimum lot size for subdivision in the R2 Low Density zone in Paddington is 230m², and in Vaucluse is 675m².

FIGURE 1: Extract from the Lot Size Map



2.1 Clause 4.1 Minimum subdivision lot size

Clause 4.1 of Draft WLEP 2013 sets the minimum lot size for a lot resulting from the Torrens title subdivision of land. Consent is required for the subdivision of an existing lot into two or more new lots. Each of these new lots must comply with the minimum lot size shown on the **Lot Size Map**.

When calculating lot size, the access handle or right of way is not included in the area of a lot that does not have a street frontage, such as a battle-axe lot. This ensures that the land included in the calculation is a practical size for development.

The lot sizes on the **Lot Size Map** generally reflect:

- In the R2 Low Density Residential zone: The minimum lot size for a dwelling house (ranging from 230m² – 1100m² depending on the location and the desired future character).
- In the R3 Medium Density Residential zone: The minimum lot size for medium density development (700m²).

2.1.1 R2 Low Density Residential zone

The R2 Low Density Residential zone allows with consent dwelling houses, dual occupancies, semi-detached dwellings, boarding houses and group homes. For the R2 zone we have retained the existing minimum subdivision lot sizes that apply to the 2(a) Residential zone on the WLEP 95 **Density Map**.

To ensure all R2 zoned land has a minimum lot size we have applied the predominant surrounding lot size to:

- Land that has been rezoned to R2 Low Density Residential,
- R2 zoned land that did not have a minimum lot size under WLEP 95.

2.1.2 R3 Medium Density Residential zone

The R3 Medium Density Residential zone allows all types of residential accommodation including dwelling houses, multi dwelling houses and RFBs. A wider variety of residential uses is included to encourage housing choice and diversity in this zone.

Under WLEP 95 there is no minimum subdivision lot size shown on the **Density Map**. However, using the Standard Instrument format we are required to establish a minimum lot size for all residential land use zones, including the R3 Medium Density Residential zone.

Clause 10A and 10B of WLEP 95 set minimum lot size and frontage standards for medium density development. Under clause 10B(2) the minimum lot size for a medium density development containing four or more dwellings is 930m². This equates to a minimum dwelling density of approximately 233m² per dwelling (930m² / 4 = 233m²).

We have sought to reflect the intent of clause 10B(2) in the minimum lot sizes for the R3 zone under Draft WLEP 2013. The WLEP 95 figure of 230m² per dwelling has been applied to the majority of permissible residential land uses in the R3 zone (see Table 1). For example, RFBs and multi dwelling housing both require three dwellings on one lot of land. Using the WLEP 95 dwelling density figure of 230m² and multiplying by three equates to 700m² (rounded up). The minimum subdivision lot size for the R3 zone is therefore 700m². This includes land which is rezoned to R3 Medium Density Residential under Draft WLEP 2013.

A similar approach of using 230m² per dwelling has been applied to:

- Establish the minimum lot size for other residential land uses in the R3 Medium Density Residential zone,
- Allow exceptions to the minimum lot size for certain land uses. These are further explained in Parts 3.2–3.4.

2.1.3 Clause 4.1AA Minimum subdivision lot size for community title schemes

Clause 4.1AA sets the minimum lot size requirements for community title schemes.

Clause 4.1AA works the same way as clause 4.1 to require that the lots created by a community title scheme comply with the minimum **Lot Size Map**. The objective being to ensure that subdivision is consistent with the desired future character of each neighbourhood.

A separate clause for community title schemes is required as they are specifically excluded from the lot size requirements contained in clause 4.1. See subclause 4.1(4).

PART 3. LOT SIZES FOR LAND USES

The minimum lot sizes for certain types of residential land uses are specified by clauses 4.1B–4.1D in the Draft WLEP 2013 document. The lot sizes seek to provide a minimum amount of land that will allow development that is consistent with the desired future character of the LGA and provide amenity to residents within the proposed development, and to the adjoining properties.

3.1 Clause 4.1B Minimum lot sizes for certain residential development

Clause 4.1B establishes the minimum lot size required to develop land for certain residential uses. It applies to the R2 Low Density Residential zone for dual occupancy development.

In the R3 Medium Density zone it applies to the following types of development²:

- Dual occupancies (attached and detached),
- Multi dwelling housing,
- RFBs.

The lot sizes set by clause 4.1B seek to reflect the general intent of existing controls in WLEP 95.

Tables 1 and 2 outline the rationale for the minimum lot sizes for each specific land use in clause 4.1B.

TABLE 1: Minimum lot sizes for certain residential development in the R3 Medium Density Residential zone

Land use	Minimum lot size	Rationale
<i>R3 Medium Density Residential zone</i>		
Dual occupancy (attached) (two dwellings on one lot)	460m ²	The minimum lot size for each of these land uses is based on 230m ² per dwelling. For example, the minimum lot size for multi dwelling housing or RFBs is 700m ² because the minimum number of dwellings in both these forms of development is three (230 x 3 = 700 rounded up).
Multi dwelling housing (three or more dwellings on one lot)	700m ²	The 230m ² per dwelling reflects the intent of clause 10B(2) of WLEP 95 which requires 930m ² for an RFB containing four or more dwellings (930m ² / 4 = 230m ²).
RFB (three or more dwellings on one lot)	700m ²	This approach does not encourage one land use over another, but leaves the applicant to select the preferred residential use based on the parent lot size and characteristics.

² In these forms of development there are two or more dwellings on the same lot. The lot sizes apply to the parent lot, or total area of land on which the development is proposed.

Land use	Minimum lot size	Rationale
Dual occupancy (detached) (two dwellings on one lot)	930m ²	<p>Clause 25C of WLEP 95 requires a 930m² minimum lot size for dual occupancy (detached) in the 2(a) Residential zone. The same minimum lot size has been retained in Draft WLEP 2013.</p> <p>The minimum lot size has not been based on 230m² per dwelling. We have retained the WLEP 95 control because it provides greater building separation for detached dual occupancies.</p> <p>However, WLEP 95 clause 25C(4) also requires a minimum lot width of 21m at the front alignment. The Standard LEP does not make provision for us to include these minimum lot widths in the Draft WLEP 2013; we will include similar controls in the Comprehensive DCP.</p>
Development other than a dwelling house on battle-axe lots	950m ²	<p>The 950m² minimum lot size was informed by urban design analysis of the permissible land uses on a battle-axe lot. It recognises that medium density development on a battle axe lot requires a larger site area than a lot that has a street frontage because:</p> <ul style="list-style-type: none"> • Battle-axe lots are often located adjacent to the primary private open space of the adjoining lots, so greater side setbacks are required to protect amenity to neighbours. • A vehicle turning area needs to be provided onsite to allow vehicles to enter and exit the site in a forward direction. <p>The 950m² minimum lot size is a new control for battle-axe lots. Under WLEP 95 dwelling houses, dual occupancies and RFBs are permitted on 2(b) zoned land, but additional development standards apply to some housing forms. For example, in WLEP 95 clause 10B(1), an RFB containing three dwellings or less must have a site width of 15m measured at the street front alignment, and under clause 25C a detached dual occupancy requires a width of 21m at the front alignment</p> <p>In applying the Standard LEP we have not been able to carry over these minimum lot widths into Draft WLEP 2013. This is a reasonable planning outcome. However, we have introduced a minimum lot size of 950m² to ensure that the amenity (including privacy and solar access) of adjoining properties is protected. A 9.5m height limit will also apply (see Chapter 5 – Maximum building heights, Part 3.2.7).</p>

TABLE 2: Minimum lot sizes for certain residential development in the R2 Density Residential zone

Land use	Minimum lot size	Rationale
<i>R2 Density Residential zone</i>		
Dual occupancy (attached) (two dwellings on one lot)	Either 460m ² or the minimum lot size shown on the Lot Size Map , whichever is greater	<p>The minimum lot size of 460m² is based on 230m² for each dwelling in the dual occupancy (attached).</p> <p>Notwithstanding the 460m² figure, the minimum lot size for a dual occupancy (attached) in the R2 zone must be equal to or greater than the area shown on the Lot Size Map where that area exceeds 460m².</p> <p>This control seeks to:</p> <ul style="list-style-type: none"> • Reflect the current subdivision pattern, • Reflect clause 25C of WLEP 95, which excludes dual occupancy development from heritage conservation areas because the dual occupancies are not the preferred land use in these locations.
Dual occupancy (detached) (two dwellings on one lot)	930m ²	<p>Clause 25C of WLEP 95 requires a 930m² minimum lot size for dual occupancy (detached) in the 2(b) Residential zone. The same minimum lot size has been retained in Draft WLEP 2013.</p> <p>The minimum lot size has not been based on 230m² per dwelling. We have retained the WLEP 95 control because it provides greater building separation for detached dual occupancies.</p> <p>However, WLEP 95 clause 25C(4) also requires a minimum lot width of 21m at the front alignment. The Standard LEP does not make provision for us to include these minimum lot widths in Draft WLEP 2013; we will include similar controls in the Comprehensive DCP.</p>
Multi dwelling housing (three dwellings on one lot)	–	No minimum lot size required as multi dwelling housing is not permissible in the R2 zone.
RFB (three dwellings on one lot)	–	No minimum lot size required as RFBs are not permissible in the R2 zone.

3.2 Clause 4.1BB Erection of dwelling houses on land in residential zones

This clause reflects the intent of WLEP 95 clause 10(2), making it clear that a dwelling house may be erected on a lot in a residential zone regardless of the size of the lot, provided that the lot existed when WLEP 95 was in force, and a dwelling house was permissible on that lot under WLEP 95.

3.3 Clause 4.1C Minimum lot sizes for semi-detached dwellings and attached dwellings in the R2 zone

This clause sets the minimum lot size for erecting a semi-detached dwelling or attached dwelling in the R2 Low Density Residential zone.

Draft clause 4.1C(3) states that the minimum lot size for development is the size shown on the **Lot Size Map**. That is, the minimum size for developing land is the same size as required for subdividing land.

This ensures that development has regard to the existing subdivision pattern, and development is not undertaken on a lot that is too small to reasonably accommodate the dwellings.

For example:

- In Paddington the minimum lot size on the **Lot Size Map** is 230m². If a person wants to build semi-detached dwellings, each of the dwellings require a minimum lot size of 230m² (i.e. total combined lot size of 460m²).
- In Vaucluse the minimum lot size on the **Lot Size Map** is 675m². If a person wants to build semi-detached dwellings, each of the dwellings require a minimum lot size of 675m² (i.e. total combined lot size of 1350m²).

This recognises that dwelling houses, not semi-detached dwellings, are the predominant built form in Vaucluse, but if a person wants to build a semi-detached dwelling they could do so, and the lot size required for each of the dwellings would be the same as required for a dwelling house.

This control ensures that the new development would be consistent with the existing subdivision pattern and streetscape rhythm.

Notwithstanding the minimum lot size control set by clause 4.1C(3), in some parts of the LGA there are existing lots that are less than the minimum lot size on the **Lot Size Map**. This is particularly the case in Paddington and Woollahra, where lots are generally less than 230m² and typically contain two attached terraces³ or a group of three or more terraces⁴.

Subclause 4.1C(4) allows additions and alterations to, or the replacement of, these existing housing forms on these undersized lots. This recognises the established built form, and ensures that the existing use can continue even if that lot is less than the minimum lot size stated on the **Lot Size Map**.

³ Defined as a “semi-detached dwelling” under the Standard Instrument.

⁴ Defined as an “attached dwelling” under the Standard Instrument

3.4 Clause 4.1D Exceptions to minimum lot sizes for certain residential development

Clause 4.1D encourages housing diversity without adversely impacting amenity in the R3 zone.

The clause allows land in the R3 zone to be subdivided to 230m² under certain circumstances, despite the 700m² minimum subdivision lot size on the **Lot Size Map**.

Clause 4.1C only applies where an applicant proposes to subdivide land in the R3 zone into three or more lots and construct a dwelling on each lot. Clause 4.1D only applies to:

- Dwelling houses,
- Semi-detached dwellings,
- Attached dwellings.

The 700m² minimum subdivision lot size is based on providing 230m² per dwelling for three dwellings.

Permitting a 230m² minimum subdivision lot size ensures that the density of dwellings achieved by these land uses is consistent with other forms of medium density development in the R3 zone.

PART 4. STANDARD LEP DEFINITIONS

The definitions listed below are taken from the Draft WLEP 2013 Dictionary. These land uses are identified in clauses 4.1A–4.1D.

Land use	Definition
attached dwelling	means a building containing 3 or more dwellings, where: <ul style="list-style-type: none"> (a) each dwelling is attached to another dwelling by a common wall, and (b) each of the dwellings is on its own lot of land, and (c) none of the dwellings is located above any part of another dwelling.
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.
dwelling house	means a building containing only one dwelling.
multi dwelling housing	means 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.
residential flat building	means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.
semi-detached dwelling	means a dwelling that is on its own lot of land and is attached to only one other dwelling.