

31 January 2019

Carolyn McNally  
Secretary  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Our Ref: 2019/034709

Dear Ms McNally

**Planning Proposal in response to the Low Rise Medium Density Housing Code  
PP\_2018\_NBEAC\_003\_00**

I refer to the above mentioned Planning Proposal and subsequent Gateway determination dated 31 July 2018. I also refer to a meeting between staff from the Department of Planning and Environment (DP&E) (Sydney Region East) and Council on 13 November 2018, and Council's request of 5 December 2018 for an amendment to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Council seeks the Department's approval to exhibit the amended Planning Proposal (attached) and for an extension of time to undertake same.

***The Planning Proposal and Council's response***

The Planning Proposal sought the following outcomes:

- to prohibit manor houses and multi-dwelling housing (including terraces) in zone R2 Low Density Residential zone under the Manly LEP 2011;
- to prohibit dual occupancy in zone R2 Low Density Residential zone under the Manly LEP 2011 and Pittwater LEP 2014; and
- to prohibit multi-dwelling housing and dual occupancies in the R3 Zone in the Warriewood Valley under Pittwater LEP 2014.

The Gateway determination noted the Proposal required amendment prior to the Department's further review and prior to exhibition taking into consideration a number of matters. Those matters and Council's response are outlined in Table 1 below.

	Gateway Determination	Planning Proposal Response
1	Excluding the prohibition of multi-dwelling housing from the R3 medium Density zone under Pittwater LEP 2014;	<p>Council sought an alternate approach to the issue, and requested an amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) on 5 December 2018. This alternate approach sought to exclude the Warriewood Valley from the operation of the SEPP via its inclusion within <i>Schedule 5 – Land excluded from the Housing Code and Greenfield Housing Code</i>.</p> <p>Council is yet to receive advice from DPE regarding the SEPP amendment. However, given the Gateway</p>

		Determination requests the Planning Proposal exclude the proposed amendment to prohibit multi-dwelling housing in the R3 Medium Density Residential zone under the Pittwater LEP 2014, the Planning Proposal has been amended to reflect this request.
2	Set out the existing and proposed provisions with respect to the relevant LEPs proposed to be amended	Detailed in Part 2 of the Planning Proposal.
3	Explore alternative approaches in relation to the prohibition of dual occupancy to address Council's concerns with the application of the Code	Council maintains that to retain the zones' strategic intent, the Planning Proposal should continue to omit dual occupancies, multi dwelling housing and manor houses as a permissible use with consent in the R2 Low Density Residential zone under the Manly and Pittwater LEPs.
4	Undertaking a quantitative analysis to assess the impacts of the proposal on housing diversity and supply	Detailed in Part 3, Section A of the Planning Proposal.
5	Assessment of the proposal's consistency with the objectives and actions of the Greater Sydney Regional Plan Council's relevant local strategies (including housing strategy)	Detailed in Part 3, Section B of the Planning Proposal.

*Table 1 : Gateway Determination and Planning Proposal Response*

### **Housing Strategy Progress**

Council has also commenced its Local Housing Strategy which seeks to respond to the principles for housing strategies and housing targets published in The North District Plan. The Strategy will outline how housing growth is to be managed, identify the right locations for additional housing supply, and provide guidance on housing types, including the application of the 'missing middle' Low Rise Medium Density Housing Code in the Northern Beaches LGA.

Given the ongoing discussions between DPE and Council, Council requests a further 6 to 12-month deferral from commencement of the Code to finalise this Planning Proposal.

We look forward to your favourable response to our request.

Should you require any further information or assistance in this matter, please contact myself or Neil Cocks, Manager Strategic & Place Planning on (02) 9942 2746.

Regards



Andrew Pigott  
Executive Manager Strategic & Place Planning

# **AMENDED PLANNING PROPOSAL**

Amendments to Manly Local  
Environmental Plan 2013 and  
Pittwater Local Environmental  
Plan 2014

January 2019  
(Post Gateway)

TRIM 2019/034637

# Contents

<b>Part 1 – Intended Outcomes .....</b>	<b>3</b>
<b>Part 2 – Explanation of Provisions .....</b>	<b>5</b>
<b>Part 3 – Justification .....</b>	<b>8</b>
<b>Part 4 – Maps.....</b>	<b>20</b>
<b>Part 5 – Community Consultation.....</b>	<b>21</b>
<b>Part 6 – Project Timeline.....</b>	<b>22</b>
<b>Attachment 1 – Ministerial directions.....</b>	<b>23</b>
<b>Attachment 2 – Council’s submission to the Department of Planning and Environment dated December 2016 .....</b>	<b>25</b>



## Part 1 – Intended Outcomes

The intended outcome of the Planning Proposal is that the Low Rise Medium Density Code would not apply for multi-dwelling housing (including terraces), manor houses and dual occupancy in the R2 Low Density Residential zone under the Manly LEP 2013 or dual occupancy in the R2 Low Density Residential zone under Pittwater LEP 2014.

These amendments are to retain the zones' strategic intent in response to the Low Rise Medium Density Code, which will otherwise permit manor houses, multi-dwelling units and dual occupancy as Complying Development.

The proposed amendments will:

- prohibit multi-dwelling housing (including terraces) and manor houses (inserted under Code SEPP Amendment - Low Rise Medium Density 2017) in the R2 Low Density Residential zone under the Manly LEP 2013;
- prohibit dual occupancy in the R2 Low Density Residential zone under the Manly LEP 2013 and Pittwater LEP 2014;
- include a new savings clause to ensure that proposed amendments do not affect any current development applications or appeal processes.

This Planning Proposal addresses the matters raised in the Department of Planning and Environment's (DPE) Gateway Determination of 31 July 2018 and further discussions between Council and DPE.

The Determination noted the Northern Beaches area would be deferred from commencement of the Code until 1 July 2019.

The Determination also noted the proposal would be required to be amended prior to DPE's further review and exhibition taking into consideration a number of matters such as:

- excluding the prohibition of multi-dwelling housing from the R3 Medium Density zone in the Warriewood Valley Release Area under Pittwater LEP 2014;
- setting out the existing and proposed provisions with respect to the relevant LEPs proposed to amend;
- exploring alternative approaches in relation to the prohibition of dual occupancy;
- undertaking a quantitative analysis to assess the impacts of the proposal on housing diversity and supply including area of land subject to the SEPP, number of lots eligible for dual occupancy and manor houses/multi-dwelling housing including consideration of the Codes SEPP exclusions and number of developments approved;
- assessment of the proposal's consistency with the objectives and actions of the Greater Sydney Regional Plan and North District Plans Planning Priorities and how the planning proposal is consistent with Council's relevant local strategies including whether the proposal is supported by a housing strategy; and
- Including a new savings transition clause to ensure that proposed amendments do not affect any development applications or appeal processes.

These matters are addressed in Parts 2 & 3 of this Proposal.

Council's (initial) Planning Proposal submitted on 27 June 2018 included an amendment to prohibit dual occupancy and multi-dwelling housing in relation to certain land within the R3 Medium Density Residential zone of the Pittwater LEP 2014, located in Warriewood Valley as contained within the LEP's Urban Release Area Map.

The DPE Determination noted that multi-dwelling housing is a mandated use in the R3 Medium Density Residential zone under the Standard Instrument Local Environmental Plan and as such, Council's Planning Proposal cannot amend the Standard Instrument.

Council therefore sought an alternate approach to the issue, and requested an amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) on 5 December 2018 to exclude the Warriewood Valley from the operation of the SEPP via its inclusion within *Schedule 5 – Land excluded from the Housing Code and Greenfield Housing Code*.

Council is yet to receive advice from DPE regarding the SEPP amendment. However, given the Gateway Determination requests the Planning Proposal exclude the proposed amendment to prohibit multi-dwelling housing in the R3 Medium Density Residential zone under the Pittwater LEP 2014, the Planning Proposal has been amended to reflect this request.

Council also notes that it has commenced its Local Housing Strategy, which seeks to respond to the principles for housing strategies and housing targets published in The North District Plan. The Strategy will outline how housing growth is to be managed, identify the right locations for additional housing supply, and provide guidance on housing types, including the application of the 'missing middle' Low Rise Medium Density Housing Code in the Northern Beaches LGA.

Given the ongoing discussions between DPE and Council, Council requests a further 6 to 12-month deferral from commencement of the Code to finalise this Planning Proposal.



## Part 2 – Explanation of Provisions

The Proposal seeks to amend the Land Use Tables for the R2 Low Density Residential Zone of the Manly and Pittwater LEPs in response to the impacts of the Low Rise Medium Density Code.

### Manly LEP 2013 Amendments

#### 1. R2 Low Density Residential Zone

The table below (Table 1), depicts the current versus proposed land uses for the R2 Low Density Residential Zone in the Manly LEP.

MANLY LEP 2013	CURRENT	PROPOSED
Permitted with consent	<i>Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; Manor Houses*; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Shop top housing; Signage; Water recreation structures; Water recycling facilities; Water supply systems</i>	Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Centre-based child care facilities; Community facilities; <b>Dual occupancies;</b> Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; <b>Manor Houses*; Multi dwelling housing;</b> Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Shop top housing; Signage; Water recreation structures; Water recycling facilities; Water supply systems
Prohibited	Advertising structures; Water treatment facilities; Any other development not specified	Advertising structures; Water treatment facilities; Any other development not specified

Table 1 : Manly LEP 2013 - R2 Low Density Residential Zone

\*inserted under Code SEPP Amendment - Low Rise Medium Density 2017

In accordance with the above, it is proposed that the terms '*Dual occupancies*', '*Manor Houses*' and '*Multi dwelling housing*' are omitted from section 3 'Permitted with consent' in the R2 Low Density Residential zone of the Manly LEP. The consequence of the removal of these land uses is that these uses would be prohibited and would not be able to be carried out as Complying Development under the Low Rise Medium Density Code. In this regard clause 1.18(1)(b) State



Environmental Planning Policy (Exempt and Complying Development Codes) 2017 relevantly states:

**1.18 General requirements for complying development under this Policy**

(1) *To be complying development for the purposes of this Policy, the development must:...*

(b) *be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out...*

2. It is also proposed to insert a new savings transition clause to ensure the proposed amendments do not affect any development applications or appeal processes:

“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

Pittwater LEP 2014 Amendments

1. R2 Low Density Residential Zone

The table below (Table 2) depicts the current versus proposed land uses for the R2 Low Density Residential Zone in the Pittwater LEP.

Pittwater LEP 2014	EXISTING	PROPOSED
<b><i>Permitted with consent</i></b>	<i>Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Places of public worship; Respite day care centres; Roads; Secondary dwellings; Veterinary hospitals; Water recreation structures</i>	<i>Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; <b>Dual occupancies</b>; Dwelling houses; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Places of public worship; Respite day care centres; Roads; Secondary dwellings; Veterinary hospitals; Water recreation structures</i>
<b><i>Prohibited</i></b>	<i>Any development not specified</i>	<i>Any development not specified</i>

Table 2 : Pittwater LEP 2014 - R2 Low Density Residential Zone

In accordance with the above, it is proposed that the term ‘Dual occupancies’ is omitted from section 3 ‘Permitted with consent’ in the R2 Low Density Residential zone of the Pittwater LEP. The consequence of the removal of this land use is that this use would be prohibited and would not be able to be carried out as Complying Development under the Low Rise Medium Density Code. In this regard clause 1.18(1)(b) State Environmental Planning Policy (Exempt and Complying Development Codes) 2017 relevantly states:



**1.18 General requirements for complying development under this Policy**

**(1) To be complying development for the purposes of this Policy, the development must:...**

**(b) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out...**

2. It is also proposed to insert a new savings transition clause to ensure the proposed amendments do not affect any development applications or appeal processes:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced."

## Part 3 – Justification

### Section A – Need for the Planning Proposal

#### 1. Is the Planning Proposal a result of any strategic study or report?

##### Background

In late 2015, the Department exhibited a discussion paper '*Options for Low Rise Medium Density Housing as Complying Development*'. The former Councils of Manly, Warringah and Pittwater provided submissions on the discussion paper to the Department, specifically objecting to proposals allowing dual occupancies, multi-dwelling houses, manor homes and subdivision within all low-density residential neighbourhoods.

The amalgamated Northern Beaches Council then resolved at its meeting of 13 December 2016 to make a submission to the Department highlighting major concerns with the exhibited draft Low Rise Medium Density Code (see Attachment 2). These concerns included potential for excessive densities and the potential for speculative development in low-density areas, particularly in areas under the Manly and Pittwater LEPs. Key aspects of the submission are summarised in Table 3.

Proposed Development Controls	The principal controls in the draft Code are significantly less stringent than the local planning provisions of Council's LEPs and DCPs with respect to parking, landscape areas, setbacks, and private open space. Greater floor space ratios would be permitted compared with the Pittwater and Manly LEPs, and increased building heights compared with the Manly LEP. Thus, implementation of the draft Code would result in increased pressure on street parking, stormwater infrastructure, and an increase in building bulk and scale when compared with two storey developments requiring a development application under the local planning provisions. Council is therefore not satisfied the draft Code establishes a sufficiently strict set of controls to offset significant additional development scale/potential and likely resulting adverse impacts. It is therefore recommended that Council be allowed to set its own principal standards for complying development to cater to local conditions. This would ensure future medium density developments are in keeping with the character of established neighbourhoods.
Residential Densities	The implementation of the draft Code will result in ad-hoc, unplanned development that may affect Council's ability to meet current and future housing targets and its ability to deliver the required level of infrastructure. Of particular concern is the likely increase in density that would result in residential areas under the Manly and Pittwater LEPs, which permit dual occupancies within low-density residential zones, subject to strict local density requirements. This increased density will result in significant adverse outcomes for our communities, particularly in terms of residential amenity and streetscape/ neighbourhood character. An increase in dwelling yields may also result in some medium density areas (e.g. under the Warringah LEP 2011 and in Warriewood Valley). It is therefore vital that Section 94 plans are reviewed prior to the implementation of the Code, and that Warriewood Valley Release is excluded. Further clarification is also sought from the Department as to how local density provisions will be taken into account.
Private Certification	The proposed expansion of complying development is not supported until issues with the transparency and accountability of the existing private building certification system are addressed. It is also not clear whether issues such as traffic impacts and stormwater design are proposed for private certification. An



	appropriate system of monitoring is essential to support the certification system, especially if the proposed design verification process is to proceed.
Other Issues	Council's abovementioned submission raised a number of other issues including potential impacts on European and Aboriginal Heritage, absence of requirements for accessible housing, and technical matters such as stormwater and water management, subdivision, excavation, bushland and waste management.

Table 3 : Council submission on Draft Low Rise Medium Density Code

### Planning Proposal

This Planning Proposal was initiated in response to correspondence received from the Department dated 22 May 2018 requiring that a Proposal be submitted by 27 June 2018 to be eligible for a deferral from the Low Rise Medium Density Code. Council submitted a Planning Proposal on 27 June 2018, with a Gateway determination issued by the Department on 31 July 2018.

### Gateway Determination

The Gateway determination noted the Northern Beaches area would be deferred from commencement of the Code until 1 July 2019.

The Determination also noted the proposal would be required to be amended prior to the Department's further review and exhibition taking into consideration a number of matters such as:

1. *Excluding the prohibition of multi-dwelling housing from the R3 Medium Density zone under Pittwater LEP 2014.*

Council sought an alternate approach to the issue, and requested an amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) to exclude the Warriewood Valley from the operation of the SEPP via its inclusion within *Schedule 5 – Land excluded from the Housing Code and Greenfield Housing Code*.

Council is yet to receive advice from DPE regarding the SEPP amendment. However, given the Gateway determination requests the Planning Proposal exclude the proposed amendment to prohibit multi-dwelling housing in the R3 Medium Density Residential Zone under the Pittwater LEP 2014, the Planning Proposal has been amended to reflect this request.

2. *Set out the existing and proposed provisions with respect to the relevant LEPs proposed to be amended.*

Detailed in Part 2 of this Proposal.

3. *Exploring alternative approaches in relation to the prohibition of dual occupancy to address Council's concerns with the application of the Code.*

Council maintains that to retain the zones' strategic intent, the Planning Proposal should continue to support omitting dual occupancies, multi dwelling housing and manor houses as a permissible use with consent in the R2 Low Density Residential zone under the Manly and Pittwater LEPs.

4. *Undertaking a quantitative analysis to assess the impacts of the proposal on housing diversity and supply including area of land subject to the SEPP, number of lots eligible for dual occupancy and manor houses/multi-dwelling housing (within the R2 Low Density Residential and R3 Medium Density zones) including consideration of the Codes SEPP exclusions and number of developments approved.*

The quantitative analysis required by the Department's Determination is provided in Table 4 to Table 8. However, given the Planning Proposal is restricted to the Manly and Pittwater LEPs, to enable a direct comparison between the data sets, the analysis has concentrated on both the Manly and Pittwater LEP areas.

	<b>Manly LEP</b>	<b>Pittwater LEP</b>	<b>TOTAL</b>
<b>R2 Low Density Residential</b>	2,745,805.93m <sup>2</sup>	5,307,026.15m <sup>2</sup>	8,052,832.08 m <sup>2</sup>
<b>R3 Medium Density Residential</b>	142,496.32 m <sup>2</sup>	1,556,407.75m <sup>2</sup>	1,698,904.07m <sup>2</sup>

Table 4 : Areas of land zoned residential (GIS Mapping based)

	<b>Manly LEP</b>	<b>Pittwater LEP</b>	<b>TOTAL</b>
<b>R2 Low Density Residential</b>	3672 lots	1797 lots	5469 lots
<b>R3 Medium Density Residential</b>	74 lots	226 lots	300 lots

Note: The Codes SEPP exclusions have been taken into account

Table 5 : Eligible number of lots for dual occupancy

	<b>Manly LEP Dual Occupancy Approvals</b>	<b>Pittwater LEP Dual Occupancy Approvals</b>	<b>TOTAL</b>
<b>R2 Low Density Residential</b>	1 approval	15 approvals	16 approvals
<b>R3 Medium Density Residential</b>	0 approvals	0 approvals	0 approvals

Table 6 : Number of approvals for dual occupancy in the past 5 years

	<b>Manly LEP Eligible Lots For Low-rise Medium Density Housing</b>	<b>Pittwater LEP Eligible Lots For Low-rise Medium Density Housing</b>	<b>TOTAL</b>
<b>R2 Low Density Residential</b>	2245 lots	N/A	2245 lots
<b>R3 Medium Density Residential</b>	46 lots	374 lots	420 lots

Note: Codes SEPP exclusions have been taken into account

Table 7 : Number of lots eligible for low-rise medium density housing

	<b>Manly LEP Multi Dwelling Approvals</b>	<b>Pittwater LEP Multi Dwelling Approvals</b>	<b>TOTAL</b>
<b>R2 Low Density Residential</b>	0 approvals	N/A	0 approvals



<b>R3 Medium Density Residential</b>	4 approvals	3 approvals	7 approvals
--------------------------------------	-------------	-------------	-------------

Table 8 : Number of approvals for multi dwelling housing and manor homes in the past 5 years

5. *assessment of the proposal's consistency with the objectives and actions of the Greater Sydney Regional Plan and North District Plans Planning Priorities and how the planning proposal is consistent with Council's relevant local strategies including whether the proposal is supported by a housing strategy and developed in consultation with the community.*

See Part 3 Section B of this Planning Proposal.

6. *Include a new savings transition clause to ensure that proposed amendments do not affect any development applications or appeal processes.*

Detailed in Part 2 of this Proposal.

**2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Council's submission to the Department dated December 2016 identified major concerns that the release of the Low Rise Medium Density Code would not satisfy the objectives and strategic intent of current planning controls by allowing complying development with objectionable impacts on the Northern Beaches community.

Council submits that the best means of achieving desired the objectives would be a total exemption from the SEPP (Exempt and Complying) in respect of the Low Rise Medium Density Code. However, the Code is intended to commence 1 July 2019 with the only option available to Council to seek to address impacts through amendments to its own planning controls, which limit the impacts of the Code.

The Planning Proposal will not resolve all issues with the Code and it is anticipated that amendments to the Code itself will still be required.

Further, given the ongoing discussions between DPE and Council, Council requests a further 6 to 12-month deferral from commencement of the Code to finalise this Planning Proposal.

## Section B – Relationship to strategic planning framework

### 3. Is the Planning Proposal consistent with the objective and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

#### The Greater Sydney Regional Plan

The Planning Proposal has been reviewed against relevant outcomes of the Greater Sydney Regional Plan A Metropolis of Three Cities – connecting people published on 18 March 2018. The Plan identifies a number of strategic directions and specific policy settings with regards to transport, housing growth, employment and existing centres.

The Planning Proposal is consistent with a number of general goals of the Regional Plan, in that it would:

- continue to deliver new and more diverse housing in strategically determined localities and zones;
- respond to a recognised need (and market demand) for housing in the locality, and
- provide new homes in close proximity to existing infrastructure and services.

#### North District Plan

The Planning Proposal supports the North District Plan vision for housing that is ‘targeted in the right places, aligned to new and enhanced infrastructure’ (p7).

The Planning Proposal also supports the District Plan’s function ‘to assist councils to plan and deliver for growth and change, and align their local planning strategies to place-based outcomes’ (p16).

The Planning Proposal is also considered consistent with, and justified under a number of general directions/ priorities in the North District Plan published on 18 March 2018 as shown in Table 9.

Planning Priority N1	Planning for a city supported by infrastructure’ is recognised in this Planning Proposal in relation to potential impacts of Complying Development under the Low Rise Medium Density Code. Council submits that the implementation of the draft Code would result in increased pressure on street parking, storm-water infrastructure, and an increase in building bulk and scale when compared with two storey developments requiring a development application under the local planning provisions. The implementation of the draft Code as it stands will result in ad-hoc, unplanned development that may affect Council’s ability to deliver the required level of infrastructure.
Planning Priority N6	‘Creating and renewing great places...’ The District Plan recognises that creating capacity for new housing in the right locations requires clear criteria. This Planning Proposal seeks to ensure that capacity of Medium Density Complying Development is provided in the right locations, excluding locations such as low density zoned environments with limited access to jobs and transport.
Planning Priority N9	‘Growing and investing in health and education precincts’. Planning for housing in the French’s Forest Hospital Precinct, requires particular consideration regarding the application of the new Low Rise Medium Density Code.



Planning Priority N12	'Delivering integrated land use and transport planning and a 30-minute city'. This Planning Proposal seeks to ensure that Complying Development under the Low Rise Medium Density Code is delivered in locations where land use and transport are most integrated.
Planning Priority N17	'Protecting and enhancing scenic and cultural landscapes'. The Planning Proposal is consistent with this priority in seeking to address potential deficits in the draft Codes in protecting and enhancing landscapes.

Table 9 : Consistency with North District Plan

#### 4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

A review has been undertaken of the Planning Proposal against the Northern Beaches Community Strategic Plan (*Northern Beaches Community Strategic Plan 2017-2028 'SHAPE 2028'*).

The Northern Beaches Council adopted the Northern Beaches Community Strategic Plan on 17 April 2018 following 2 stages of engagement and drafting in September/October 2016 (developing community issues, priorities and visions) and in March/April 2017 (developing draft goals and strategies to achieve the vision).

The Plan is built around themes of community, place, environment and leadership. The objectives and intended outcomes of the Planning Proposal are supported by the Community Strategic Plan and have been reported and resolved by Council.

#### 5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with applicable State Environmental Planning Policies as shown in Table 10 .

SEPPs (as at September 2017)		Applicable	Consistent
1	Development Standards	YES	YES
14	Coastal Wetlands	NO	N/A
19	Bushland in Urban Areas	YES	YES
21	Caravan Parks	YES	YES
26	Littoral Rainforests	NO	N/A
30	Intensive Agriculture	NO	N/A
33	Hazardous and Offensive Development	YES	YES
36	Manufactured Home Estates	NO	N/A
44	Koala Habitat Protection	YES	YES
47	Moore Park Showground	NO	N/A
50	Canal Estate Development	YES	YES
52	Farm Dams and Other Works in Land and Water Management Plan Areas	NO	N/A
55	Remediation of Land	YES	YES
62	Sustainable Aquaculture	YES	YES
64	Advertising and Signage	YES	YES
65	Design Quality of Residential Apartment Development	YES	YES
70	Affordable Housing (Revised Schemes)	YES	YES
71	Coastal Protection	YES	YES
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	YES	YES
	(Affordable Rental Housing) 2009	YES	YES



(Building Sustainability Index: BASIX) 2004	YES	YES
(Exempt and Complying Development Codes) 2008	YES	YES
(Housing for Seniors or People with a Disability) 2004	YES	YES
(Infrastructure) 2007	YES	YES
(Integration and Repeals) 2016	NO	N/A
(Kosciuszko National Park – Alpine Resorts) 2007	NO	N/A
(Kurnell Peninsula) 1989	NO	N/A
(Mining, Petroleum Production and Extractive Industries) 2007	YES	YES
(Miscellaneous Consent Provisions) 2007	YES	YES
(Penrith Lakes Scheme) 1989	NO	N/A
(Rural Lands) 2008	NO	N/A
(State and Regional Development) 2011	YES	YES
(State Significant Precincts) 2005	YES	YES
(Sydney Drinking Water Catchment) 2011	NO	N/A
(Sydney Region Growth Centres) 2006	NO	N/A
(Three Ports) 2013	NO	N/A
(Urban Renewal) 2010	NO	N/A
(Western Sydney Employment Area) 2009	NO	N/A
(Western Sydney Parklands) 2009	NO	N/A

Table 10 : Compliance with State Environmental Planning Policies (SEPPs)

This Planning Proposal is also made with particular consideration of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, with the aims of this SEPP addressed as follows:

*This Policy aims to provide streamlined assessment processes for development that complies with specified development standards by:*

- (a) *providing exempt and complying development codes that have State-wide application, and*

This Planning Proposal supports the state-wide application of Low Rise Medium Density in strategically located lands in accordance with appropriate development standards that are determined based on local housing strategies and not imposed over existing approval systems. Council submits that the 'state-wide application' of the codes, with particular reference to the Low Rise Medium Density Code, should not extend to a blanket application across all residential zones in which the specified development types are permissible, including the R2 Low Density Residential zone.

- (b) *identifying, in the exempt development codes, types of development that are of minimal environmental impact that may be carried out without the need for development consent, and*

This Planning Proposal does not consider or respond to any exempt development codes.

- (c) *identifying, in the complying development codes, types of complying development that may be carried out in accordance with a complying development certificate as defined in the Act.*

This Planning Proposal seeks to support the appropriate identification of certain types of Complying Development under the Low Rise Medium Density Code including manor houses, multi dwelling housing and dual occupancy. It is recognised that these development types are new forms of Complying Development to be introduced in local neighbourhoods under approval pathways unlike current development assessment processes. In this regard the Planning Proposal provides initial research dealing with the impacts of certain development types as Complying Development under the new Code compared to existing LEP and DCP planning controls under the Development Consent pathway as follows:



## Manor Houses

Manor Houses are being introduced under the Standard Instrument (LEP) Order from 6 July 2018 and will amend Manly LEP 2013 by inserting 'Manor Houses' as a permitted use in Zone R2 Low Density Residential. While certain other low rise medium density housing is already permitted (see discussion on Multi dwelling housing and Dual Occupancies below), the introduction of Manor Houses as complying development under the Code is considered contrary to LEP Zone objectives to provide for the housing needs of the community within a low density residential environment.

The Code will permit Manor houses as Complying Development on sites over 600sqm in area i.e. 150sqm per dwelling. The Manly LEP and DCP require minimum site area of between 500sqm and 1150sqm per dwelling (MDCP2013, Schedule, Map A) for residential development in the R2 Low Density zone. The likely density yield under the Code will be near 6 times greater than permitted in the Manly LEP and DCP.

In relation to other aspects of built form such as height, floor area and setback there are also disparities between the development outcomes currently achievable in a DA under the LEP and those to be permitted under the Code. Accordingly, the Planning Proposal supports omitting Manor Houses as a permissible use with Consent in the R2 zone under the Manly LEP to retain the zones' strategic intent.

## Multi Dwelling Housing

While multi dwelling housing is currently permitted in the Manly LEP R2 Low Density Residential zone, Council's residential density provisions (MDCP2013, Schedule, Map A) limit the number of dwellings on any site in a similar manner as Manor Houses discussed above (requiring between 500sqm and 1150sqm of site area per dwelling) e.g. a development comprising 8 dwellings requires a site of 4000sqm (500sqm x 8) in the DCP. However, the Code provides examples of multi dwelling housing (terraces) on a standard lot comprising 8 dwellings on a minimum sized lot of 600sqm.

The Code does not recognise the existing minimum lot area requirements that are contained in the Manly DCP 2013. In the absence of a minimum lot area, the Code provides for multi dwelling housing (terraces) as Complying Development on sites of 600sqm in area and 18m site width at the building line.

In relation to other aspects of built form such as height, floor area and setback there are also disparities between the development outcomes currently achievable in a Development Application under the LEP and those to be permitted under the Code. Accordingly, the Planning Proposal supports omitting multi dwelling housing as a permissible use with Consent in the R2 zone under the Manly LEP so as to retain the zones' strategic intent.

## Dual Occupancies

Dual occupancies are a permitted land use in the R2 Low Density Residential zone in both the Manly and Pittwater LEPs. Dual Occupancies are a prohibited use in Warringah LEP's R2 Low Density Residential zone.

Under the Pittwater LEP (clause 4.1B) dual occupancy requires a site area of at least 800sqm to construct a dual occupancy development. Whilst this provision would continue to apply, the Code would permit the subdivision of dual occupancies into lots of between 330-420 sqm (and possibly lower) in the R2 zone, depending on location. This is significantly smaller than the Pittwater LEP which permits subdivision into lots of between 550-700 sqm in the R2 zone, depending on location.

Under the Manly LEP there is no minimum allotment size specified for the construction of a dual occupancy. Residential density controls are instead specified in the Manly DCP. Between 1000 sqm and 2,300 sqm of land is required for dual occupancy development in the R2 zone,



depending on location. The Code will override the DCP requirements, permitting dual occupancies on lots of 400 sqm in all areas zoned R2. The Code will also permit the subdivision of dual occupancies into lots of 300-690 sqm (and possibly lower) in the R2 zone, depending on location. This is significantly smaller than the Manly LEP, which permits subdivision into lots of between 500-1150 sqm in the R2 zone, depending on area.

Accordingly, the Planning Proposal supports omitting dual occupancies as a permissible use with Consent in the R2 zone under the Manly and Pittwater LEPs to retain the zones' strategic intent.

*(d) enabling the progressive extension of the types of development in this Policy, and*

Council submits that this Objective is better served following the completion of more comprehensive Local Housing Strategy, which is required to be completed by the Greater Sydney Commission in the next 12-24 months.

As noted, Council has commenced its Local Housing Strategy, which seeks to respond to the principles for housing strategies and housing targets published in The North District Plan. The Strategy will outline how housing growth is to be managed, identify the right locations for additional housing supply and inform updates to the LEPs. The Strategy will also provide guidance on housing types, including on how the new 'missing middle' Low Rise Medium Density Housing Code could apply in the Northern Beaches LGA.

*(e) providing transitional arrangements for the introduction of the State-wide codes, including the amendment of other environmental planning instruments.*

Detailed in Part 2 of this Proposal.

## **6. Is the planning proposal consistent with applicable Ministerial Directions?**

Yes. The Planning Proposal is consistent with applicable Directions (as shown in Attachment 1). Comments on each of the applicable directions are provided in Table 11.

<b>Ministerial Direction</b>	<b>Comment</b>
<b>2 Environment and Heritage</b>	
<b>2.1 Environment Protection Zones</b>	
The objective of this direction is to protect and conserve environmentally sensitive areas.	The Planning Proposal applies to certain lands which are environment sensitive areas but it is noted that the Low Rise Medium Density Code does not apply to Environmental Protection Zones.
<b>2.2 Coastal Protection</b>	
The objective of this direction is to implement the principles in the NSW Coastal Policy	The Planning Proposal applies to certain lands which are in the Coastal Zone but it is noted that the Low Rise Medium Density Code is not a significant consideration in relation to the principles of the NSW Coastal Policy
<b>2.3 Heritage Conservation</b>	
The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	While the Planning Proposal applies to certain lands which are listed as heritage significant, the application of Complying Development is controlled by land based provisions under Part 1 of the Codes SEPP.
<b>3. Housing, Infrastructure and Urban Development</b>	
<b>3.1 Residential Zones</b>	

<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>a) encourage a variety of choice of housing types to provide for existing and future housing needs,</li> <li>b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</li> <li>c) to minimise the impact of residential development on the environment and resource lands.</li> </ul>	<p>This direction applies as the Planning Proposal affects land within existing residential zones. In this regard, the Planning Proposal seeks to encourage the provision of housing that deals with the following matters raised in the direction.</p> <p>In relation to 'broaden the choice of building types and locations available in the housing market' the Planning Proposal does not seek to limit broadened housing choice as Complying Development, but rather ensure the new types be tested and impacts evaluated to retain the strategic intent of zones and protect local character.</p> <p>In relation to the consideration of 'existing infrastructure and services' the need for efficiencies is recognised in the Planning Proposal.</p> <p>In relation to the 'consumption of land', the Planning Proposal does not reduce land for housing and associated urban development on the urban fringe.</p> <p>In relation to the need for 'good design', the Planning Proposal supports well designed low-rise medium density in appropriate locations and zones.</p> <p>The Planning Proposal does not permit residential development on land that is inadequately serviced.</p> <p>In relation to the residential density of land, the Planning Proposal seeks to limit the permissibility of low rise medium development as Complying Development that exceeds established density provisions in Council's LEPs and DCPs.</p>
<p><b>3.4 Integrating Land Use and Transport</b></p>	
<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <ul style="list-style-type: none"> <li>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</li> <li>(b) increasing the choice of available transport and reducing dependence on cars, and</li> </ul>	<p>This direction applies, as the planning proposal will alter zones or provisions relating to urban land, including land zoned for residential purposes. In this regard, the planning proposal is consistent with the aims, objectives and principles of Improving Transport Choice – Guidelines for planning and development (DUAP 2001).</p>



(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight.	
<b>4. Hazard and Risk</b>	
<b>4.1 Acid Sulfate Soils</b>	
The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	While the Planning Proposal applies to certain lands contained on LEP Acid Sulfate Soils Planning Maps, the existing provisions adequately regulate works and are consistent with the Acid Sulfate Soils Planning Guidelines.
<b>4.3 Flood Prone Land</b>	
The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.	While the Planning Proposal applies to certain lands identified as Flood Prone Land, the existing provisions adequately regulate works and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.
<b>4.4 Planning for Bushfire Protection</b>	
The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.	Appropriate considerations are made of land mapped as bushfire prone land.
<b>5. Regional Planning</b>	N/A
<b>6. Local Plan Making</b>	
<b>6.1 Approval and Referral Requirements</b>	
The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal is consistent with the terms of this direction as follows: a) provisions that require the concurrence, consultation or referral of DAs to a Minister or public authority are minimised (b) no provisions are contained in the Planning Proposal requiring concurrence, consultation or referral of a Minister or public authority. (c) no development is identified as designated development.
<b>6.2 Reserving Land for Public Purposes</b>	
The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.



purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	
<b>6.3 Site Specific Provisions</b>	
The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The Planning Proposal contains no site-specific planning controls
<b>7 Metropolitan Planning</b>	
<b>7.1 Implementation of A Plan for Growing Sydney</b>	
The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.	The Planning Proposal is consistent with the NSW Government's "A Plan for Growing Sydney" published in December 2014.

Table 11 : Ministerial (Local Planning) Directions

## Section C – 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 continues to provide appropriate protections for residential land comprising the habitat of endangered species (clause 36A) and of threatened species (clause 36B).

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

The Planning Proposal will ensure environmental impacts are addressed arising from the delivery of the Low Rise Density Code as addressed, or intended to be addresses as detailed in this Planning Proposal.

### 9. Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal will ensure social and economic effects are addressed arising from the delivery of the Low Rise Density Code as detailed in this Planning Proposal.

## Section D – State and Commonwealth interests

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

Yes

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

No consultation with public authorities is required under the Gateway Determination.

## **Part 4 – Maps**

There are no maps associated with the Planning Proposal



## **Part 5 – Community Consultation**

Council will place the planning proposal on public exhibition in accordance with the Gateway Determination and consistent with Council's Community Engagement Policy including:

- For a minimum of 28 days;
- A public notice in the Manly Daily notifying of the public exhibition;
- Letters to key stakeholders;
- Hard copies of the exhibition material at Council's offices; and
- Electronic copies of the exhibition material on Council's website.

## Part 6 – Project Timeline

Task	Anticipated timeframe
Referral to Department of Planning & Environment for Gateway determination	June 2018 (actioned)
Issue of Gateway determination	31 July 2018 (actioned)
Submission of Revised Planning Proposal under condition 2 of Gateway	January 2019
Government agency consultation (not required under terms of Gateway Determination)	N/A
Public exhibition period	March 2019
Consideration of submissions	April 2019
Report to Council to determine Planning Proposal	28 May 2019
Submit Planning Proposal to the Department of Planning & Environment for determination	Submission by June with request to draft and finalise the LEP. Published by 9 August 2019



## Attachment 1 – Ministerial directions

Directions		Applicable	Consistent
<b>1</b>	<b>Employment and Resources</b>		
1.1	Business and Industrial Zones	YES	YES
1.2	Rural Zones	NO	N/A
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	NO	N/A
<b>2</b>	<b>Environment and Heritage</b>		
2.1	Environment Protection Zones	YES	YES
2.2	Coastal Protection	YES	YES
2.3	Heritage Conservation	YES	YES
2.4	Recreation Vehicle Areas	NO	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	NO	N/A
<b>3</b>	<b>Housing, Infrastructure and Urban Development</b>		
3.1	Residential Zones	NO	N/A
3.2	Caravan Parks and Manufactured Home Estates	NO	N/A
3.3	Home Occupations	NO	N/A
3.4	Integrating Land Use and Transport	NO	N/A
3.5	Development Near Licensed Aerodromes	NO	N/A
3.6	Shooting Ranges	NO	N/A
<b>4</b>	<b>Hazard and Risk</b>		
4.1	Acid Sulfate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	YES
4.4	Planning for Bushfire Protection	YES	YES
<b>5</b>	<b>Regional Planning</b>		
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	NO	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	NO	N/A
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	NO	N/A
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A
5.9	North West Rail Link Corridor Strategy	NO	N/A
5.1	Implementation of Regional Plans	NO	N/A
<b>6</b>	<b>Local Plan Making</b>		
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	YES	YES
6.3	Site Specific Provisions	YES	YES
<b>7</b>	<b>Metropolitan Planning</b>		
7.1	Implementation of A Plan for Growing Sydney	YES	YES
7.2	Implementation of Greater Macarthur Land Release Investigation	NO	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	NO	NO
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	NO	NO
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	NO
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	NO

7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	NO	NO
-----	---	----	----



**Attachment 2 – Council’s submission to the Department of Planning  
and Environment dated December 2016**

Insert TRIM 2016/358757

