

Planning Services

Gateway Determination Report

LGA	Northern Beaches
PPA	Northern Beaches Council
NAME	Response to Low Rise Medium Density Housing Code
NUMBER	PP 2018 NBEAC 003 00
LEP TO BE AMENDED	Manly Local Environmental Plan 2013 Pittwater Local Environmental Plan 2014
ADDRESS	All land zoned R2 Low Density Residential under the Manly LEP 2013 and Pittwater LEP 2014, and land zoned R3 Medium Density Residential within the Warriewood Valley Release Area under the Pittwater LEP 2014
RECEIVED	27 June 2018
FILE NO.	IRF18/4063
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal has been prepared in response to commencement of the Low Rise Medium Density Housing Code (the Code) under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

The Code permits development of various forms of medium-density housing under a Complying Development Certificate and enables subdivision of this development, but only where this development fully complies with the provisions of the Code and where these uses are permitted under a local environmental plan.

The Department's letter dated 22 May 2018 (**Attachment D**) outlined that to seek deferral in the commencement of the Code for the Northern Beaches LGA until 1 July 2019 the planning proposal needed to address the following:

- the area of land zoned R2 Low Density Residential, R1 General Residential and R3 Medium Density Residential;
- the number of lots eligible for manor house or multi-dwelling housing development as complying development under the code in the R2, R1 and R3 zone;

- the number of multi-dwelling housing developments approved by the council in the R2, R1 and R3 zone in the past 5 years; and
- whether the proposal is supported by a housing strategy that has been developed in consultation with the community.

Since the submission of this planning proposal to the Department of Planning and Environment for Gateway determination and on 6 July 2018, Northern Beaches Council was granted deferral of the Code until 1 July 2019.

The subject planning proposal seeks to prohibit:

- prohibit multi-dwelling housing (including terraces) and manor houses in the R2 Low Density Residential zone under Manly Local Environmental Plan 2013;
- prohibit dual occupancies in the R2 Low Density Residential zone under Manly Local Environmental Plan 2013;
- prohibit dual occupancies in the R2 Low Density Residential zone under Pittwater Local Environmental Plan 2014; and
- prohibit dual occupancies, multi-dwelling housing and manor houses on land zoned R3 Medium Density Residential in the Warriewood Valley Release Area as identified on the Urban Release Area Map under Pittwater LEP 2014.

The proposal responds to Council's concerns that the scale and bulk of medium-density and dual occupancy development that is permitted under the Code in areas characterised as low-density residential is larger than Council permits under its corresponding LEPs – the Manly LEP 2013 and Pittwater LEP 2014.

Therefore, the intent of this planning proposal is to ensure that development afforded in these areas continues to be low scale and density as intended by the corresponding zones and objectives under the respective LEPs.

Site description

The planning proposal relates to:

- all land zoned R2 Low Density Residential under the Manly LEP 2013;
- all land zoned R2 Low Density Residential under the Pittwater LEP 2014; and
- land zoned R3 Medium Density Residential in the Warriewood Valley Release Area as identified on the Urban Release Area Map under the Pittwater LEP 2014.

Summary of recommendation

It is recommended the planning proposal proceed to Gateway determination subject to the following conditions:

- The planning proposal should be updated to:
 - exclude the proposed amendment to prohibit multi-dwelling housing in any R3 Medium Density Residential zone under the Pittwater LEP 2014;
 - clearly set out the existing and proposed provisions with respect to the relevant LEPs proposed for amendment;
 - to explore alternative LEP amendments in relation to dual occupancies to address Council's concerns with application of the Code;

- provide a quantitative analysis to assess the impacts of the proposal on housing diversity and supply as follows:
 - the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential in the LGA;
 - the number of lots eligible for dual occupancies and manor houses/multi-dwelling housing under the Code in the R2 Low Density Residential and R3 Medium Density Residential zones for the Manly LEP 2013 and the Pittwater LEP 2014, taking into account the Codes SEPP exclusions; and
 - the number of dual occupancy and multi-dwelling housing developments approved in the R2 Low Density Residential and R3 Medium Density Residential zones in the LGA in the past five years; and
 - assess the proposal's consistency with the objectives and actions in the Greater Sydney Region Plan;
 - assess the proposal's consistency with the North District Plan's planning priorities;
 - provide further detail on how the planning proposal is consistent with Council's relevant local strategies;
 - explain whether the proposal is supported by a housing strategy that has been developed in consultation with the community; and
 - include a new savings transition clause to ensure that proposed amendments do not affect any development applications or appeal processes.
- The revised planning proposal should be forwarded to the Department for review and approval prior to exhibition.
 - Council should write to all affected landowners about the exhibition of the proposal.
 - The time frame for completion of the LEP is by 1 July 2019.

The planning proposal is supported to proceed to public exhibition because:

- the recently released Low Rise Medium Density Housing Code permits additional uses, such as manor houses and multi-dwelling housing (terraces), which have not been anticipated in the R2 Low Density Residential zones under Manly LEP 2013 and Pittwater LEP 2014;
- it responds to the Department's letter to Council dated 22 May 2018 and the recent deferral of the Code until 1 July 2019; and
- in conjunction with the deferral of the Code, Council can review its LEPs and the community's housing needs in all residential areas, including its low and medium density residential zones.

PROPOSAL

Objectives or intended outcomes

The planning proposal seeks to prohibit dual occupancies in the R2 Low Density Residential zones under the Manly LEP 2013 and Pittwater LEP 2014, prohibit multi dwelling housing in the R2 Low Density Residential zone under Manly LEP 2013, and prohibit dual occupancies and multi-dwelling housing in the R3 Medium Density Residential zone in the Warriewood Valley Release Area under the Pittwater LEP 2014.

The intent of the proposal is to ensure that permitted development in these areas is characterised as low scale and density and is compatible with the visual amenity of these areas.

The effect of the amendments will mean that manor houses and multi-dwelling houses (terraces) as further forms of medium-density development will also not be permitted in the R2 Low Density Residential zones and R3 Medium Density Residential zoned areas of the Warriewood Valley Release Area. This is because the Codes SEPP permits these additional types of development in zones and areas where multi-dwelling housing is a permissible use.

While the planning proposal seeks to prohibit approval for medium-density and dual occupancy development as Complying Development, it also means that development approval from a consent authority (such as Council) cannot be obtained for these same forms of development in these nominated areas.

Explanation of provisions

To prevent certain residential development types from being permitted as Complying Development under the Code, the proposal seeks to:

- omit dual occupancies and multi-dwelling housing from the permitted with consent section of the land-use table for the R2 Low Density Residential zone under the Manly LEP 2013;
- omit dual occupancies from the permitted with consent section of the land-use table for the R2 Low Density Residential zone under the Pittwater LEP 2014; and
- omit dual occupancies and multi-dwelling housing from the permitted with consent section of the land-use table for the R3 Medium Density Residential zone under the Pittwater LEP 2014.

The effect of this last specified amendment does not align with the proposal's intent to prohibit these land uses only in the Warriewood Valley Release Area where land is zoned R3 Medium Density Residential under Pittwater LEP 2014. In particular, it is noted that there is other land zoned R3 Medium Density Residential under Pittwater LEP 2014, in the suburbs of Mona Vale, Avalon, Newport and other parts of Warriewood.

Therefore, the planning proposal should be revised to remove any reference to prohibiting certain land uses in the R3 Medium Density Residential zone in the land use table under the Pittwater LEP 2014, as this would affect all R3 zoned land that applies to this LEP.

Despite this, the proposal to prohibit multi-dwelling housing in a R3 Medium Density Residential zone under Pittwater LEP 2014 is not possible as it is inconsistent with the Standard Instrument (Local Environmental Plans) Order 2016 (SI Order) and the

Standard Instrument – Principal Local Environmental Plan (the Standard Instrument). Relevant to the planning proposal, the Order and Standard Instrument mandate that multi dwelling housing is a required land use in the R3 Medium Density Zone, and therefore the planning proposal cannot give effect to the proposed amendment to prohibit this use on any land in this zone. Therefore, the proposal's request to prohibit multi-dwelling housing in the R3 zone in the Warriewood Valley Release Area under the Pittwater LEP 2014 cannot be achieved as it requires the SI Instrument to be amended.

To better demonstrate supported LEP amendments, Council may wish to consider using a marked-up version of edits that depicts deletions as strikethrough text and use LEP mapping to confine amendments relating to the R3 zone in the Warriewood Valley Release Area. In addition, Council may wish to consider inserting a table in the planning proposal to demonstrate land uses that are permitted under the existing relevant LEPs and what land uses will become prohibited as a result of the planning proposal.

The planning proposal should be revised to remove references to manor houses and terraces as these land uses will only apply on and after 1 July 2019 under the Code where multi-dwelling housing is also permitted in an LEP. The intent of the planning proposal is to preclude multi-dwelling housing, so manor houses will then not apply if the amendments sought are made by this time. Given that multi dwelling housing cannot be prohibited in an R3 Medium Density Residential zone, other forms of medium density housing, being manor homes and multi dwelling housing will also be permitted in this zone when the Code deferral expires. This includes the R3 zoned land in the Warriewood Valley Release Area.

Consequently, Council may wish to consider revising the planning proposal to explain the impact of the changes proposed to the Standard Instrument (Local Environmental Plans) Order 2006 in connection with the Low Rise Medium Density Housing Code as notified on 6 April 2018; specifically, the introduction of new land use terms and the effect of new Directions 6 and 7.

Although dual occupancies are not a mandated land use under the R2 or R3 zones, the request to prohibit dual occupancies under these zones under the respective LEPs may have impacts on future housing diversity and choice. Council's planning proposal mentions that altering the minimum lot size for dual occupancies could be amended to 800m² under the Manly LEP 2013. On this basis, the Gateway determination has been conditioned to consider alternatives to prohibiting dual occupancies under both the Manly and Pittwater LEPs.

Further explanation of these amendments may help the community understand what new development types (i.e. multi-dwelling housing (terraces) and manor houses) were to be introduced if the Code were to apply and where these will be made permissible. Council should also clarify what these types of development are compared to current and other forms of medium density under its LEPs.

For the benefit of the community, it is recommended that the planning proposal clearly outline that the effect of the proposed changes as sought by the planning proposal will prevent these land uses from being carried out as merit-based development assessment, i.e. these land uses will become prohibited and a development approval cannot be obtained for these types of development.

It is recommended the planning proposal be revised accordingly in relation to the above before public exhibition.

Mapping

There are no maps associated with the planning proposal.

NEED FOR THE PLANNING PROPOSAL

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

Council initiated the planning proposal in response to the commencement of the Low Rise Medium Density Housing Code on 6 July 2018.

Council is concerned the Code will introduce new development standards for dual occupancies and medium density development that are less stringent than existing controls under the Manly LEP 2013 and Pittwater LEP 2014. Council's concern is that the Code will result in the increase of certain residential development types with built form outcomes that are inconsistent with the strategic intent of low-density residential zones in the Manly LEP 2013 and Pittwater LEP 2014, and will negatively impact water quality and quantity in the medium-density residential areas in the Warriewood Valley Release Area under the Pittwater LEP 2014.

Council's meeting report on 26 June 2018 acknowledges that given the time constraints placed on the submission of the planning proposal, further strategic analysis by Council is anticipated (**Attachment E**). Council considers the planning proposal as submitted is a starting point for discussion with the Department about how best to implement the changes during the temporary deferral of the Code until 1 July 2019.

Council's meeting report of 26 June 2018 also explains that the planning proposal seeks to limit Complying Development under the Code to maintain the strategic intent of the R2 zone in the Manly LEP 2013 and Pittwater LEP 2014, and in the R3 zoned land in the Warriewood Valley Release Area under the Pittwater LEP 2014. The report states the only way to limit the application of the Code is to prohibit certain housing types in these LEPs.

It is considered that further analysis of the Code and its impact on the Manly LEP 2013 and Pittwater LEP 2014 is required to explore alternative LEP amendments to address Council's concerns with the Code, without necessarily having to prohibit certain land uses. For instance, Council may wish to consider the introduction of a minimum lot size for dual occupancies, which would result in the LEP's specified lot size for dual occupancies prevailing over the Code if greater than 400m².

Council submits that the best means of achieving the desired objectives would be a permanent exemption from the Code. In the absence of this, Council's meeting report states that a planning proposal is the only option available for it to address its concerns. Council also acknowledges that the planning proposal will not resolve all of its issues with the Code and that further amendments to the Code are required.

The Department considers a planning proposal is the best means for achieving the intended outcomes.

STRATEGIC ASSESSMENT

Greater Sydney Region Plan

The Greater Sydney Region Plan was released by the Greater Sydney Commission in March 2018. It sets a 40-year vision (to 2056) and establishes a 20-year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters.

The planning proposal states that it is consistent with several goals in the plan.

The Department considers the planning proposal requires further justification to determine consistency with *Objective 10 Greater housing supply* and *Objective 11 Housing is more diverse and affordable* given the proposal seeks to prohibit low-rise medium-density housing where it is currently permitted in the Manly LEP 2013 and Pittwater LEP 2014, and prevent any uptake of low-rise medium-density housing as Complying Development in these LEPs. The Code was introduced to encourage additional low-rise medium-density housing to be built in NSW to provide improved housing choice and affordability with improved quality design.

The planning proposal should be revised to adequately assess the proposal's consistency with the objectives and actions in the Greater Sydney Region Plan.

North District Plan

The North District Plan was released by the Greater Sydney Commission in March 2018. The plan is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. It is a guide for implementing the Greater Sydney Region Plan at a district level and is a bridge between regional and local planning.

The planning proposal states that it is consistent with the following planning priorities in the North District Plan:

- N1 – Planning for a city supported by infrastructure;
- N6 – Creating and renewing great places and local centres, and respecting the District's heritage;
- N9 – Growing and investing in health and education precincts;
- N12 – Delivering integrated land use and transport planning and a 30-minute city; and
- N17 – Protecting and enhancing scenic and cultural landscapes

While the Department, state agencies, the Greater Sydney Commission, NSW Health and Council are working together to deliver the Frenchs Forest Planned Precinct, the Department considers Planning Priority N9 is not relevant in the context of the planning proposal's intended outcome.

The Department considers further analysis of the impact of the Code with respect to the Manly LEP 2013 and Pittwater LEP 2014 is required before the planning proposal could be considered consistent with the above identified planning priorities.

The Council meeting report of 26 June 2018 includes preliminary data on the number of lots eligible for manor houses and multi-dwelling housing development as Complying Development, and the number of approvals for dual occupancies and multi-dwelling housing in the past five years.

The Department considers the planning proposal needs further analysis to determine consistency with planning priority *N5 Providing housing supply, choice and affordability with access to jobs, services and public transport* because the proposal seeks to prohibit low-rise medium-density housing where it is currently permitted in the Manly LEP 2013 and Pittwater LEP 2014, and prevent any uptake of low-rise medium-density housing as Complying Development in these LEPs.

The planning proposal should be revised to assess the proposal's consistency with the North District Plan's planning priorities.

Local

Shape 2028 Northern Beaches Community Strategic Plan 2018 – 2028

Shape 2028 is Council's community strategic plan (CSP) and was adopted by Council at its meeting of 17 April 2018. The CSP sets a roadmap for the future of the Northern Beaches. It defines the Northern Beaches' community's vision and sets a direction for what Council must do over the next decade to make the vision a reality.

The Department considers the planning proposal should assess how will support the CSP's objectives to expand housing choice, improve affordability, and create vibrant and inclusive communities.

Corrections to relevant dates referenced with the respect to the CSP's adoption and community engagement is also required in the planning proposal.

Section 9.1 Ministerial Directions

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

This Direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs. It also seeks to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services. The Direction ensures that the impacts of residential development on the environment and resource lands are minimised.

The planning proposal is inconsistent with this Direction as it seeks to reduce dwelling potential and choice. To understand the impact on dwelling potential, a Gateway condition is included requiring Council to provide further analysis in relation to the number of lots that would be eligible for dual occupancies under the Code in the R2 Low Density Residential and R3 Medium Density Residential zones for the Manly LEP 2013 and Pittwater LEP 2014, taking into account exclusions under the Codes SEPP.

The Department considers the planning proposal is yet to demonstrate its consistency or justify its inconsistency with Direction 3.1 Residential Zones. Council will be required to undertake further detailed quantitative analysis post-Gateway to ensure the proposal gives effect to the objective of this Direction or justify any inconsistency.

To understand the impact on dwelling potential, a Gateway condition is included requiring Council to provide further information in relation to:

- the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential in the LGA;
- the number of lots eligible for dual occupancies and manor houses/multi-dwelling housing under the Code in the R2 Low Density Residential and R3 Medium

Density Residential zones for the Manly LEP 2013 and the Pittwater LEP 2014, taking into account the Codes SEPP exclusions; and

- the number of multi dwelling housing and dual occupancy developments approved in the R2 Low Density Residential and R3 Medium Density Residential zoned in the LGA in the past five years; and
- whether the proposal is supported by a housing strategy that has been developed in consultation with the community.

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

The Department considers the planning proposal is either yet to demonstrate its consistency or justify its inconsistency with section 9.1 Direction 3.1 Residential Zones. Council will be required to undertake further detailed quantitative analysis prior to exhibition to ensure the proposal gives effect to the objective of this Direction or justify any inconsistency.

State environmental planning policies

State Environmental Planning Policy (Affordable Rental Housing) 2009

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

Under the SEPP, infill affordable housing applies to the development of dual occupancies and multi-dwelling housing if these land uses are permitted with consent under another environmental planning instrument.

The prohibition of dual occupancies and multi-dwelling housing as sought by the planning proposal with respect to the Manly LEP 2013 and Pittwater LEP 2014 would preclude this type of development from being carried out under the SEPP.

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

On 6 July 2018, the new Low Rise Medium Density Housing Code commenced.

The Code was introduced to encourage more low-rise medium-density housing to be built in NSW to provide better housing choice and affordability with improved quality design. The Code will allow one-storey and two-storey dual occupancies, manor houses and multi-dwelling housing (terraces) to be carried under a Complying Development assessment track.

In relation to the planning proposal, the Code applies where these forms of low-rise medium-density residential types are permitted. As such, the intended outcome of the planning proposal will preclude certain residential development from being carried out pursuant to the Codes SEPP.

A Gateway condition is recommended requiring Council to provide a quantitative analysis demonstrating the number of lots that would be eligible for dual occupancies, manor houses and multi-dwelling housing permitted under the Code, taking into account exclusions under the Codes SEPP.

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

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal states it will address social impacts arising from the delivery of the Code.

The Department considers further explanation of any social effects is required. Accordingly, the planning proposal should be revised to adequately address any social effects prior to public exhibition.

Environmental

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

The planning proposal is unlikely to result in any adverse environmental impacts given the intended outcome of the proposal will result in less forms of low-rise residential development as Complying Development under the Code or as merit-based development assessment.

Economic

It is recommended that landowners within the applicable zones/areas under the Manly LEP 2013 and Pittwater LEP 2014 be informed about the proposal and its exhibition and given suitable time to make their own assessment on the matter.

The issues raised will then be considered as part of the finalisation of this proposal, including reconsideration of section 9.1 Direction 3.1 Residential Zones and the impacts of the Low Rise Medium Density Housing Code.

CONSULTATION

Community

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

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

Agencies

Consultation with other state agencies is not considered necessary. The proposal will not increase demands on infrastructure, nor does it have the potential to impact on the natural environment or heritage values.

TIME FRAME

The proposal indicates a time frame of 12 months to finalise the plan. The LEP should be completed by 1 July 2019, as this time frame is considered appropriate to allow sufficient time to prepare any additional information that may be required and place the proposal on public exhibition.

LOCAL PLAN-MAKING AUTHORITY

Council has not requested to be the local plan-making authority. Given the implications this planning proposal may have on state policy, it is recommended that Council not be granted local plan-making authority.

SAVINGS AND TRANSITIONAL PROVISIONS

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

CONCLUSION

The planning proposal is supported to proceed to Gateway subject to conditions. It is considered that the conditions of the Gateway will provide quantitative information necessary to understand the full implications of the proposal.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. note that the consistency with section 9.1 Direction 3.1 Residential Zones is unresolved and will require justification.

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

1. The planning proposal should be updated to:
 - (a) exclude the proposed amendment to prohibit multi-dwelling housing in any R3 Medium Density Residential zone under the Pittwater LEP 2014;
 - (b) clearly set out the existing and proposed provisions with respect to the relevant LEPs proposed for amendment;
 - (c) to explore alternative LEP amendments in relation to dual occupancies to address Council's concerns with application of the Low Rise Medium Density Housing Code;
 - (d) provide a quantitative analysis to assess the impacts of the proposal on housing diversity and supply as follows:
 - i. the total area of land zoned R2 Low Density Residential and R3 Medium Density Residential in the LGA;
 - ii. the number of lots eligible for dual occupancies and manor houses/multi-dwelling housing under the Low Rise Medium Density Housing Code in the R2 Low Density Residential and R3 Medium Density Residential zones for the Manly LEP 2013 and the Pittwater LEP 2014, taking into account the Codes SEPP exclusions; and
 - iii. the number of dual occupancy and multi-dwelling housing developments approved in the R2 Low Density Residential and R3 Medium Density Residential zones in the LGA in the past five years; and
 - (e) assess the proposal's consistency with the objectives and actions in the Greater Sydney Region Plan;

- (f) assess the proposal's consistency with the North District Plan's planning priorities;
 - (g) provide further detail on how the planning proposal is consistent with Council's relevant local strategies;
 - (h) explain whether the proposal is supported by a housing strategy that has been developed in consultation with the community; and
 - (i) include a new savings transition clause to ensure that proposed amendments do not affect any development applications or appeal processes.
2. The revised planning proposal should be forwarded to the Department for review and approval prior to exhibition.
 3. Council should write to all affected landowners about the exhibition of the proposal outlining the effect of the proposed changes.
 4. The time frame for completion of the LEP is by 1 July 2019.



Brendan Metcalfe
Acting Team Leader
Sydney Region East



Amanda Harvey
Director, Sydney Region East
Planning Services

Contact Officer: Yolande Miller
Senior Planner, Sydney Region East
Phone: 9274 6500