

ITEM 11.5	PLANNING PROPOSAL - RESPONSE TO LOW RISE MEDIUM DENSITY CODE
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2018/326034
ATTACHMENTS	1 Department of Planning & Environment letter (Included In Attachments Booklet) 2 Council's 2016 Submission (Included In Attachments Booklet) 3 Table of Current and Proposed Planning Controls (Included In Attachments Booklet) 4 Draft Planning Proposal - Response to Low Rise Medium Density Code (Included In Attachments Booklet)

EXECUTIVE SUMMARY

PURPOSE

To seek Council's approval to submit a Planning Proposal to the Department of Planning and Environment to enable deferral from the Low Rise Medium Density Housing Code (the Code).

SUMMARY

The Low Rise Medium Density Housing Code (the Code), made under State Environmental Planning Policy (Exempt and Complying Development), permits attached and detached dual occupancies, multi-dwelling housing, and manor houses, and the subdivision of such developments, as complying development where those uses are currently permitted under Council's Local Environmental Plans (LEPs). The Code is set to commence on 6 July 2018.

The Code may result in higher density development than currently permissible under Council's codes, particularly in low density R2 zones.

The Minister for Planning has recently announced that he will consider deferring the commencement of the Code in some Council areas for 12 months subject to the submission of a Planning Proposal by those Councils to "rectify local planning controls to meet the strategic intent of each Council area" in the Department of Planning & Environment letter (Attachment 1). The Planning Proposal must be submitted to the Department of Planning by 27 June 2018.

A Planning Proposal has been prepared which prohibits:

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

The Planning Proposal will not resolve all issues with the Code; amendments to the Code itself will still be required. It is therefore anticipated that the submission of this Planning Proposal will be the starting point for a discussion with the Department of Planning about how best to implement the changes during the period of deferral from the Code (the next 12 months).

RECOMMENDATION OF ACTING GENERAL MANAGER PLANNING PLACE & COMMUNITY

That

- A. Council submit a Planning Proposal to the Department of Planning and Environment to ensure local planning controls continue to both meet the strategic intent of Council's low density residential zones and to defer the commencement of the Low Rise Medium Density Code.
 - B. Council write to the Minister for Planning to seek exemption from the Low Rise Medium Density Housing Code
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REPORT

BACKGROUND

In late 2015, the Department of Planning and Environment exhibited a Discussion Paper: *Options for low rise medium density housing as complying development*. The Discussion Paper proposed standards for the development of dual occupancies, multi-dwelling houses and manor homes, as well as subdivision, to be undertaken as complying development so as to “assist in the delivery of more housing, providing greater housing choice and better design outcomes for medium density development across the State”.

The former Councils of Manly, Warringah and Pittwater provided submissions to the Discussion Paper, specifically objecting to the proposal to allow dual occupancies; multi-dwelling houses, manor homes and subdivision within all low density residential neighbourhoods.

In late 2016 the draft Low Rise Medium Density Code was exhibited. Council considered the exhibited draft Code at its meeting of the 13 December 2016 and resolved to make submissions highlighting major concerns with the Code including excessive densities and speculative development in low density areas, particularly in areas under the Manly and Pittwater LEPs as detailed in Council’s 2016 submission (Attachment 2).

The Code, made under State Environmental Planning Policy (Exempt and Complying Development Codes) 2007 (the ‘Codes SEPP’) is scheduled to commence on 6 July 2018. The Code does not address concerns previously raised by Council.

On 22 May the Department of Planning and Environment advised that the Minister would consider deferring the commencement of the Code to allow Councils to seek certain changes to its LEPs ahead of the Code such that the strategic intent for each Council area is still met.

In its letter of 22 May 2018, the Department also advised that:

- Council will need to lodge a planning proposal with the Department of Planning and Environment by 5.00 pm 27 June 2018.
- The Planning Proposal must address, or identify that it will address the following:
 - the area of land zoned R2 Low Density Residential, R1 General Residential and R3 Medium Density Residential (Table 1)
 - the number of lots eligible for manor house or multi-dwelling housing development as complying development under the code in the R2, R1 or R3 zone (Table 4)
 - the number of multi-dwelling housing developments approved by the council in the R2, R1 and R3 zone in the past 5 years (Table 5)
 - whether the proposal is supported by a housing strategy that has been developed in consultation with the community.
- The information required to support the proposal is necessary to ensure that a full understanding of the outcomes of changing the planning controls in the R2 zone has on the future provisions of housing diversity in the local government area.
- The proposal will need to be finalised by 1 July 2019.

While the above instructions for the Planning Proposal limit considerations to residential flat buildings (including manor homes) and multi-dwelling housing (including terraces) in the R2 Low Density Residential zone, Council’s 2016 submission also addressed issues with planning controls applicable to Dual Occupancy as Complying Development which should also be addressed by Council’s Planning Proposal.

Given the short amount of time given to prepare the Planning Proposal it is anticipated that further strategic analysis will be required to be undertaken by Council for the Department in addition to Council's initial Planning Proposal submission.

In relation to the Department of Planning & Environment questions above, the following Figures 1 to 5 indicate some preliminary data in relation to low rise medium density eligibility and approvals across Northern Beaches LEPs.

Table 1 – Areas of land zoned residential (GIS Mapping based)

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
R2 Low Density Residential	2,745,805.93m ²	24,656,557.93m ²	5,307,026.15m ²	32,709,390.01 m ²
R1 General Residential	2,125,466.45m ²	No R1 zone in this LEP	No R1 zone in this LEP	2,125,466.45 m ²
R3 Medium Density Residential	142,496.32 m ²	1,651,499.80 m ²	1,556,407.75m ²	3,350,403.87m ²

Table 2 – Eligible number of lots for Dual Occupancy

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
R2 Low Density Residential	3788 lots	0 (no dual occupancy permitted in this zone)	2057 lots	5845 lots
R1 General Residential	2475 lots	N/A (no R1 zone in this LEP)	N/A (no R1 zone in this LEP)	2475 lots
R3 Medium Density Residential	104 lots	1311 lots	266 lots	1681 lots

Table 3 – Number of approvals for dual occupancy in the past 5 years

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
R2 Low Density Residential	1 approval	No dual occupancy permitted in this zone.	15 approvals	16 approvals
R1 General Residential	2 approvals	No R1 zone in this LEP	No R1 zone in this LEP	2 approvals
R3 Medium Density Residential	0 approvals	0 approvals	0 approvals	0 approvals

* Note: Total figures exclude land under Warringah LEP 2000 – 'Deferred Lands' which does not contain standard (LEP) instrument zoning and incorporation of data under this LEP is subject to further research under the Planning Proposal

** Note: Total 'eligible' lots includes environmental sensitive lands yet to be excluded subject to further analysis.

Table 4 – Number of lots eligible ** for low rise medium density housing

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
R2 Low Density Residential	2301 lots	0 (not permitted with consent in this zone)	NA	2301 lots
R1 General Residential	860 lots	N/A (no R1 zone in this LEP)	N/A (no R1 zone in this LEP)	860 lots
R3 Medium Density Residential	63 lots	1070 lots	419 lots	1552 lots

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

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
R2 Low Density Residential	0 approvals	0 approvals	0 approvals	0 approvals
R1 General Residential	2 approvals	No R1 zone in this LEP	No R1 zone in this LEP	2 approvals
R3 Medium Density Residential	4 approvals	15 approvals	3 approvals	22 approvals

* Note: Total figures exclude land under Warringah LEP 2000 – ‘Deferred Lands’ which does not contain standard (LEP) instrument zoning and incorporation of data under this LEP is subject to further research under the Planning Proposal

** Note: Total ‘eligible’ lots includes environmental sensitive lands yet to be excluded subject to further analysis.

As can be seen from the above, the number of approvals for low rise medium density development over the past 5 years is low compared to the estimated number of lots which are eligible for Comply Development under the new Code. However, as outlined below, the code will introduce new controls that are more relaxed than the current Council controls. Accordingly, the uptake of these development types will be expected to increase under the Code.

IMPACT OF THE CODE

The issues associated with the Code may be summarised as follows:

- It permits the subdivision of dual occupancy development into smaller allotments than currently permissible under Pittwater and Manly LEPs in the R2 zone
- It permits dual occupancy development with lesser setback and car parking requirements than currently permissible under Pittwater and Manly Development Control Plans (DCPs) in the R2 zone
- It permits the subdivision of ‘manor houses’ and ‘multi-dwelling housing’ into smaller allotments than currently permissible under the Manly LEP in the R2 zone
- It permits ‘manor houses’ and ‘multi-dwelling housing’ at a higher density than currently permissible under the Manly DCP in the R2 zone

- It permits manor houses, multi-dwelling housing and dual occupancies in the R3 medium density residential zone in Warriewood Valley with significantly less landscaped area than currently required under Pittwater DCP.

A more detailed assessment of the current and proposed controls is provided in the table of current and proposed planning controls (Attachment 3).

Manor Houses

Manor Houses are being introduced under the Standard Instrument (LEP) Order from 6 July 2018 and will be defined in the LEP Dictionary as follows:

manor house means a 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).

Note. Manor houses are a type of residential flat building—see the definition of that term in this Dictionary.

The Code 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 uses are 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. 200sqm 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 in the vicinity of 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 so as to retain the zones’ strategic intent.

Multi Dwelling Housing

The definition of Multi dwelling housing is being amended under the Standard Instrument (LEP) Order from 6 July 2018 to include Multi dwelling housing (terraces) in the LEP Dictionary as follows:

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land where:

- (a) each dwelling has access at ground level, and
- (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—see the definition of that term in this Dictionary.

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.

Note. Multi dwelling housing (terraces) are a type of multi dwelling housing—see the definition of that term in this Dictionary.

While multi dwelling housing is currently permitted in the Manly LEP R2 Low Density 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 Zone R2 Low Density in both the Manly and Pittwater LEPs. Dual Occupancies are a prohibited use in Warringah LEP's R2 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.

Further analysis may be required in reviewing the impact of this aspect of the Planning Proposal on dwelling supply given that this form of low rise medium density is more common. Some other matters which could be further investigated include options to only permit dual occupancy as Complying Development that cannot be subdivided and/or as a Complying Development type in which one dwelling is not located above another dwelling.

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

Warriewood Valley

Warriewood Valley has strict controls in relation to water management as it is highly flood prone and adjacent to the Endangered Environmental Community of the Warriewood Wetlands. The 'built upon' area identified as part of the flood modelling undertaken by Council for water cycle management, stipulates 50% site coverage/landscaped area for a Sector. Water management facilities have been designed and constructed in accordance with this requirement. However, the Code allows for no landscaped area for some dual occupancies, based on lot size. This may result in additional run-off and impacts on water quality as the water management facilities were not designed to deal with the additional flows.

Accordingly, the Planning Proposal supports omitting manor houses, multi-dwelling housing and dual occupancies as a permissible use with Consent in the R3 zone in the Warriewood Valley under the Pittwater LEP 2014.

PLANNING PROPOSAL

The intended outcome of the Planning Proposal is to defer the application of the Low Rise Medium Density Housing Code to R2 Low Density Residential zones in all Northern Beaches Council LEPs, retaining the zones' strategic intent.

In summary, the Planning Proposal prohibits:

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

A full copy of the Draft Planning Proposal to Low Rise Medium Density Housing Code (Attachment 4).

CONCLUSION

The Planning Proposal is prepared in accordance with the Department's Guide to preparing Planning Proposals as well as specific requirements specified in its letter to Council dated 22 May 2018 as outlined in this report. In particular, detailed analysis of land supply in Northern Beaches residential areas will likely be required ahead of the preparation of future more comprehensive Housing Strategies including matters such as the number of lots eligible for low rise medium density housing and the number of approval for such housing across the residential zones.

The Low Rise Medium Density Housing Code is currently drafted to broadly apply in Councils' Residential zones wherever low rise medium density housing is currently permitted with development consent. As such, the only way to limit the application of the Codes is to prohibit these housing types in the LEP. Councils' Planning Proposal seeks to limit the carrying out of Complying Development under the Code through proposed amendments to the Land Use Table in the R2 zone in the Manly and Pittwater LEPs to meet the zones' strategic intent and the R3 zone in the Warriewood Valley under Pittwater LEP 2013.

The Minister for Planning has advised that he will consider deferral of the new Code and it is anticipated that the submission of the Planning Proposal will meet requirements for Northern Beaches Council to be deferred from the new Code. This report also concludes that Council's strategic intent with particular regard to low density residential areas may otherwise be better served by amendments to the Codes SEPP which exempt Council from the low rise medium density housing Codes in its low density zones but still retain current provisions which permit certain types of low rise medium density as DAs subject to stringent LEP and DCP controls.

CONSULTATION

The Department of Planning and Environment exhibited the draft Low Rise Medium Density Housing Code in 2016. Following Council's submission in response to the exhibition, the next direct consultation in this matter was recently received by the Department regarding the Minister of Planning's announcement on the SEPP and considerations that it may be deferred in certain circumstances. Further consultation will be required to progress the Planning Proposal as detailed in the report with both the Community and the Department. Statutory public participation processes

will occur following a Gateway approval for the Planning Proposal from the Department of Planning.

TIMING

The Planning Proposal is required to be submitted to the Department on 27 June 2018.

FINANCIAL CONSIDERATIONS

There are no substantive financial considerations, with the preparation of the Planning Proposal being an operational matter.

SOCIAL CONSIDERATIONS

There are no social considerations.

ENVIRONMENTAL CONSIDERATIONS

There are substantial environmental considerations associated with the preparation of the Planning Proposal. In particular, the Low Rise Medium Density Housing Code is considered likely to erode the character of established low density neighbourhoods and cause objectionable amenity impacts.

GOVERNANCE AND RISK CONSIDERATIONS

Governance and risk considerations are standard procedural considerations in relation to actions arising from the recommendation of this report.