

Resolution of Council

27 July 2020

Item 8.2

Low Rise Housing Diversity Code - Consultation Outcomes

Moved by Councillor Thalys, seconded by the Chair (the Lord Mayor) –

It is resolved that:

- (A) Council note the Low Rise Housing Diversity Code came into effect on 1 July 2020;
- (B) Council note the Lord Mayor raised the issue in relation to Rosebery in a meeting with the Minister for Planning and Public Spaces on 21 July 2020 and made the following points:
 - (i) the majority of submissions from the community consultation opposed the introduction of the Code, citing concerns that it would impact on the special character of the area and breaches a covenant imposed by the original land owners of the Rosebery Estate;
 - (ii) the City's established local planning framework is the best mechanism to deliver housing diversity, provide certainty and protect local character;
 - (iii) the City has consistently done its part in delivering on state government housing targets and objectives for housing diversity; and
 - (iv) the Council's strong preference is to list the Rosebery Special Character Area identified in Sydney Local Environmental Plan 2012, as land excluded from the Code; and
- (C) to support the City's request to list the Rosebery Special Character Area identified in the Sydney Local Environmental Plan 2012, as land excluded from the Code, the Chief Executive Officer be requested to forward a copy of the legal advice obtained by Rosebery residents to the Department of Planning Industry and Environment, which states:

- (i) Clause 1.20(1) of the Code's SEPP provides that the development able to be carried out in accordance with the Codes SEPP in effect overrides a covenant restricting the carrying out of that development. However, sub-clause (2)(c) states that the subclause (1) does not apply "to a covenant imposed by an owner or former owner of the land concerned, other than a covenant that has been required by a council to be imposed";
- (ii) accordingly, clause 1.20(1) of the Codes SEPP cannot be relied upon to overcome the operation and effect of the Covenant (if it is a valid restrictive covenant);
- (iii) the Covenant restricts the carrying out of development on the Land and its operation and effect is not suspended by a complying developer certificate (CDC) issued under the Codes SEPP (including under the Low Rise Housing Diversity Code); and
- (iv) if a CDC is issued under the Codes SEPP that permits the carrying out of development contrary to the terms of the Covenant, the CDC could not be relied upon to provide protection from a breach of the Covenant (and the legal ramifications that could flow from that breach).

The motion, as varied by consent, was carried unanimously.

X030568