

Commencement of the Low Rise Medium Density Housing Code

File No: X030568

Summary

The City is one of 45 councils with a temporary exemption from the Low Rise Medium Density Housing Code (Code). The exemption expires at the end of June with the Code commencing operation on 1 July 2020. The Code is part of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the SEPP). It allows the development of terrace houses, dual occupancies and manor houses with a complying development certificate issued by a Principal Certifier, usually a private certifier.

In June 2019 the Department of Planning, Industry and Environment (Department) commissioned the University of Technology Sydney to undertake an independent review of the Code. The review, published in July 2019, broadly supported the Code and did not recommend any substantive changes, however it recognised the concerns of councils about the potential impact of the Code on local character.

In September 2019, on the recommendation of the UTS review, the Department extended the deferral of the Code to 1 July 2020. The extended deferral was to allow councils to identify and map areas of "exceptional local character", where, with Ministerial approval, the Code would not apply. It also afforded councils the opportunity to review their local environmental plans to ensure the land uses permitted in their land use zones affected by the Code were appropriate.

In the City of Sydney, application of the Code largely affects the R2 - Low Density Residential zoned land in Rosebery, where sites are large enough to meet the prescriptive requirements of the Code, and development potential available under the Code exceeds that under local planning controls.

The City has reviewed various options to amend the Sydney Local Environmental Plan 2012 (the LEP) to mitigate the potential impacts of the Code, however these options were found to have little to no effect, be inconsistent with Ministerial directions or have unintended negative consequences. Therefore, the most appropriate option is to not make any amendments to the local planning instruments.

Land zoned R2 in Rosebery is identified as a Special Character Area in the LEP because it retains the original subdivision pattern of the original Rosebery Estate, designed by John Sulman to reflect the ideals of the 19th century Garden City Movement. While the City has previously requested exemptions for Rosebery from other parts of the SEPP on the basis of its special character, these exemptions have not been supported by the Department.

This report recommends the Lord Mayor write to the Minister for Planning and Public Spaces asking for the Rosebery Special Character Area currently identified in the LEP be exempt from application of the Code.

The City will also consult with residents in the R2 zone in Rosebery to advise them of the Code's commencement and seek their feedback.

Recommendation

It is resolved that:

- (A) Council note the Low Rise Medium Density Housing Code will come into effect on 1 July 2020;
- (B) Council note the City will consult with residents in the R2 zone in Rosebery to advise them of the commencement of the Low Rise Medium Density Housing Code and to seek their feedback; and
- (C) the Lord Mayor be requested to again write to the Minister for Planning and Public Spaces, requesting the Rosebery Special Character Area identified in Sydney Local Environmental Plan 2012 be exempted from the Low Rise Medium Density Housing Code.

Attachments

Nil.

Background

History of the Low Rise Medium Density Housing Code

1. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the SEPP) includes a series of prescriptive codes for low impact development that can be undertaken without a development application being lodged. The SEPP includes a Housing Code, which permits the building of single occupancy, detached, one or two storey dwellings with a Complying Development Certificate issued by a Principal Certifier authorising the development.
2. The Department of Planning, Industry and Environment published a discussion paper on 27 November 2015 promoting the expansion of the SEPP to include more housing options. This was followed by an Explanation of Intended Effects and a draft Medium Density Design Guide (draft Guide) on 12 October 2016 for public consultation.
3. The City made a submission on the draft Guide, supporting the overarching objectives to increase diversity of housing supply and enable densification where it is appropriate, and highlighting concerns with increasing reliance on the private certification process and specific issues with the draft Guide. The City also contributed to a submission prepared by Local Government NSW on behalf of all councils.
4. The NSW Government Architect ran a "Missing Middle Design Competition" in November 2016 to promote and test the draft Medium Density Design Guide. The Department included feedback from this process, along with issues raised in submissions by the City, Local Government NSW and other stakeholders, and released the Low Rise Medium Density Housing Code (the Code) in April 2018 for commencement on 6 July 2018.
5. In media surrounding the announcement the Minister for Planning suggested applications from councils to seek a deferral from the Code would be considered, to allow them time to assess the impact of the Code and make necessary changes to their local planning controls. The City requested temporary exemption from the Code, which was granted to 1 July 2019.
6. In the intervening time the Department commissioned the University of Technology Sydney to undertake an independent review into the Code, and further extended the deferral to 31 October 2019 awaiting the findings of the review.
7. The review, published in July 2019, broadly supported the Code and did not recommend any substantive changes, however it recognised the concerns of councils about the potential impact of the Code on local character.
8. In September 2019, on the recommendation of the review, the Department extended deferral of the Code to 1 July 2020. The extended deferral was to allow councils to identify and map areas of "exceptional local character", where, with Ministerial approval, the Code would not apply. It also afforded councils with the opportunity to review their local environmental plans to ensure the land uses permitted in their land use zones affected by the Code were appropriate.

How and where the Code applies in the City of Sydney

9. The Code draws on local planning instruments to determine where it is applicable. It only applies to land zoned RU5 - Village, R1 - General Residential, R2 - Low Density Residential or R3 Medium Density Residential. Further, the development types it covers, being multi dwelling housing (terraces and manor houses) and dual occupancies, must be permissible in the relevant land use zone in the local planning instrument.
10. In Sydney Local Environmental Plan 2012 (the LEP), R1 - General Residential allows multi dwelling housing and dual occupancies, and R2 - Low Density Residential allows dual occupancies. Sydney LEP 2012 has no RU5 - Village or R3 - Medium Density Residential zones. That means landowners will be able to use the Code to deliver terrace houses, manor houses and dual occupancies in R1 zoned areas, and just dual occupancies in R2 zoned areas.
11. The Code also establishes a prescriptive set of minimum controls for site area, site width, landscape site coverage, front, rear and side setbacks, road access, car parking and other requirements. Where these minimums cannot be achieved on a site, the Code does not apply and the local planning controls would instead apply and a development application is required.
12. If the Code applies, it then provides development standards, including maximum height and gross floor area, instead of the local planning controls.
13. To test the impact of the Code, geographic information system (GIS) testing was undertaken to identify the number of sites the Code would apply to. Sites zoned R1 and R2 were counted, while sites that are ineligible according to the Code due to being heritage listed, being in a heritage conservation area, or having a site area less than 400 square metres were removed. Strata subdivided sites, and sites owned by Land and Housing Corporation were also removed. While the remaining sites could undertake complying development, they must also comply with the maximum floor space ratio (FSR) in the Code. In cases where the available FSR under the LEP is higher, it is likely the landowner would pursue a development application to access the greater development capacity, despite possible time savings under the Code's planning pathway.
14. The Code applies to 675 sites in the local area, and 603 of those sites would reasonably choose to develop under the Code. These sites are between 400 and 850 square metres in size and mostly located in the suburb of Rosebery. These sites would be eligible to develop a certain type of 'dual occupancies' under the Code.
15. These dual occupancies, described under Division 2 of the Code, are defined as two dwellings delivered on a site which may be detached or attached, but where no part of a dwelling is located above any part of another dwelling. For these, the Code requires a minimum site area of 400 square metres, and allows a maximum height of 8.5 metres and maximum floor space ratio equivalent to 25% of the site area + 300 square metres. This translates into an FSR of 1:1 for a 400 square metre site, scaling down to 0.8:1 for a 550 square metre site and 0.6:1 for an 850 square metre site. The development controls contained in the Code and the LEP are compared at Table 1.

Table 1: Comparison of development standards

	Sydney LEP 2012 and DCP 2012 (Rosebery Estate)	Low Rise, Medium Density Housing Code - Division 2 Dual Occupancies
Floor space control	FSR 0.6:1 (GFA: 60% of site area)	GFA: 25% of site area + 300 square metres (FSR <0.6:1 to 1:1)
Maximum height	7.5 metres	8.5 metres
Site area	N/A	400-2000 square metres
Minimum site width	N/A	12 metres
Parking	Maximum 2 spaces per dwelling	Minimum 1 space per dwelling

16. The Code does not apply to secondary dwellings or "laneway housing".

Assessing the impact of the Code

17. While it is estimated that 603 sites may deliver dual occupancies under the Code, the likelihood of these sites developing under the Code is lower. This is because the Code includes prescriptive site-specific controls such as minimum site width, street access configuration, setbacks, landscape coverage and off-street parking, which not every site is capable of accommodating. Further, there is little apparent market interest in dual occupancies in this area, demonstrated by the few examples of the building typology observed in the area, despite it being permitted under the Sydney LEP 2012 and the South Sydney LEP 1998 previously.
18. Noting the limited applicability of the Code in the local area, the City remains concerned about the outcomes it may deliver. A complying development pathway for this form of development can result in lower quality design, potential impacts on local character, lack of consultation with neighbours and increased amenity impacts for neighbours. The City's preference is for appropriate medium density development, such as dual occupancies, to be determined through a development application pathway.

Options for mitigating impacts

19. The City has explored strategic planning options to respond to the commencement of the Code and mitigate the potential impacts of the Codes introduction.
20. One option is to remove dual occupancies from the R2 - Low Density Residential land use table. This would largely remove the application of the Code from the local area. However, this would make dual occupancies prohibited development, and not permissible even with a development application.

21. Dual occupancies have been permissible in the R2 zone since the South Sydney local environmental plan was introduced in 1998. Dual occupancies are a suitable use in the zone because of the generous lot sizes and because the use contributes housing diversity in the local area. Dual occupancies, similar to terrace or semi-detached houses, are very common throughout the council area. This aligns with the zone objective to provide for the housing needs of the community within a low density residential environment. Dual occupancies can also be designed to respect local character and minimise impacts to neighbours.
22. This option to prohibit dual occupancies would therefore work against the objectives of the zone. It would also be inconsistent with Ministerial Direction for residential zones, which says a planning proposal must broaden the choice of housing types and not reduce residential density.
23. Another option is to increase development capacity controls in the LEP to meet or exceed those available under the Code, to increase the incentive for using a development application planning pathway rather than the Code. This would entail “up zoning” the 603 identified sites to have increased maximum height and FSR controls, removing some of the incentive of the Code. However, this would not remove the complying development option for landowners, who may still pursue the option for time and money savings. This option would involve a major change to the prevailing planning controls for the area, with limited justification and no guarantee that development would not be undertaken under the Code.
24. It is recommended that no changes are made to the LEP as the above options are inconsistent with Ministerial directions, have unintended negative consequences or would have little to no effect.
25. A further consideration is that the R2 zoned land in Rosebery is mapped and identified in the LEP as a Special Character Area. If the Minister also agrees the area is of exceptional local character, it can become exempt from application of the Code. Given most eligible sites are in this part of Rosebery, exemption would mean a significant reduction in its impact on the local area.
26. The City has previously requested this area to be exempt from application of the General Housing Code in the SEPP due to its Special Character Area status. However, the Department have not supported this approach in the past.
27. Notwithstanding the above, this report recommends the Lord Mayor write to the Minister for Planning and Public Spaces again asking that the Rosebery Special Character Area currently identified in the LEP be exempt from application of the Code.
28. The City will also consult with residents living in R2 – Low Density Residential zoned properties in Rosebery to advise them of the commencement of the Code and seek their feedback.

Key Implications

Strategic Alignment - Sustainable Sydney 2030 Vision

29. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:

(a) Direction 8 - Housing for a Diverse Population

Medium density housing contributes to the vital "missing middle" in new housing development, between residential apartment buildings and single dwelling detached houses. Dual occupancy development is an important avenue for residents with changing needs to "right size" their housing while remaining in the area.

(b) Direction 9 - Sustainable Development, Renewal and Design

The City's development assessment process ensures new housing performs well for residents, achieves design excellence and high sustainability performance, and meets the expectations of neighbours and the local community. The complying development pathway sidesteps this process in favour of a standardised and prescriptive code.

Strategic Alignment – City Plan 2036: Local Strategic Planning Statement

30. City Plan 2036 sets out a 20-year land use planning vision, balancing the need for housing and economic activities while protecting and enhancing local character, heritage, public places and spaces. This report is aligned with the following actions:

(a) Action L3.2 – Increase the mix of dwelling types, tenures and sizes to support a diverse community.

Low and medium density housing serves social and cultural needs of specific groups, delivering much needed diversity and choice of housing. Dual occupancy development is a way to more efficiently use land and deliver detached and attached housing in existing residential areas. The retention of standalone housing also contributes to housing diversity in the local area.

(b) Action L3.3 – Work with the NSW Government to facilitate medium density housing that is designed and built to respect the established local character or an area and the amenity of future residents and the existing community through a process in which the community is consulted.

This report recommends seeking Rosebery's exemption from the Code, to ensure medium density development is subject to development assessment and community consultation.

Relevant Legislation

31. Environmental Planning and Assessment Act 1979.

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

Options

33. An alternative option is for Council to request the Chief Executive Officer to prepare a planning proposal to prohibit dual occupancies from the R2 - Low Density Residential land use table. A planning proposal would also need to be approved by the Central Sydney Planning Committee. This option is not recommended for the reasons described in this report.

Critical Dates / Time Frames

34. The City's temporary exemption from application of the Low Rise Medium Density Housing Code will expire on 1 July 2020.

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