10.5 Amendments to the Kiama LEP 2011 to introduce dual occupancy and multi dwelling housing development standards

CSP Objective: 2.0 Well planned and managed spaces, places and environment

CSP Strategy: 2.3 The principles of sustainable development and compliance underpin town planning and local development

Delivery Program: 2.3.1 Conduct development and building assessment/approval functions in accordance with statutory requirements, policies and procedures

Summary

The NSW Government has recently published the Low Rise Medium Density Housing Code. This Code will come into effect when it is introduced into the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Code SEPP) on 6 July 2018. This new Code enables dual occupancy development and certain types of medium density development to be approved as complying development.

Where a Local Environmental Plan (LEP) does not prescribe a minimum lot size for dual occupancies, the new Code enables dual occupancies to be built on 400m² lots. The same scenario will exist for certain types of medium density development which will be able to be built on 600m² lots.

Staff, the Mayor, Councillors and the community have already raised concerns with the new Code. These concerns have been discussed with the relevant State Government representatives. The NSW Minister for Planning has advised Councils with concerns about the new Code to request inclusion to a schedule that will provide a 12 month deferral of the new Code to allow Councils time to insert mechanism/controls into their LEPs. The NSW Department of Planning and Environment (DPE) has advised that in order for a deferral request to be considered Councils need to submit a Planning Proposal for a Gateway Determination by 27 July 2018.

The Code will generally override controls contained in LEPs such as heights and floor space ratios, however the Code will not override the LEP when it comes to development permissibility and minimum lot size requirements for certain developments. This report makes recommendations to amend the Kiama LEP 2011 to take advantage of both of these opportunities to manage the application of the Code by:

a) introducing a minimum lot size for dual occupancies, manor houses and multi-dwelling housing (terrace) across all R2 and R3 zoned land; and

b) introducing a new E4 Environmental Living zone which prohibits dual occupancies, manor houses and multi-dwelling housing (terrace) and apply that zone to the western portion of Silver Hill/Cedar Ridge which is not suitable for conventional residential densities.

It is noted that in September 2017, council resolved to endorse a Planning Proposal to amend the Kiama LEP 2011 to introduce a minimum lot size for dual occupancies.
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in newly zoned R2 land. This resolution will be replaced by the broader recommendation of this report.

Finance

A fee structure for submittal and review of planning proposals has been developed by Council and is contained in Council’s fees and charges schedule. As this Planning Proposal is being prepared internally no fees are payable.

Policy

Requests for rezoning of land require consideration of a number of Acts, Government policies, Council environmental planning instruments and planning documents. Specifically, the Environmental Planning and Assessment Act 1979, Kiama Local Environmental Plan 2011, Illawarra-Shoalhaven Regional Plan, Kiama Urban Strategy and the Kiama Planning Proposal Policy.

Communication/Community Engagement

In accordance with Council’s adopted Planning Proposal Policy, Community Engagement will be carried out following receipt of any Gateway Determination.

Attachments

Nil

Enclosures

Nil

RECOMMENDATION

That Council:

1) Endorse this Planning Proposal for amendments to the Kiama LEP 2011 to proceed to the Department of Planning and Environment for a Gateway determination to:
   a. Introduce a minimum lot size and/or a dwelling density for dual occupancy, manor house and multi dwelling housing (terrace) development in zoned R2 Low Density Residential and R3 Medium Density Residential land,
   b. Make multi dwelling housing (terraces) permissible in the R2 Low Density Residential zone, and
   c. Rezone the western portion of Silver Hill/Cedar Ridge area from R5 Large Lot Residential to E4 Environmental Living.

2) Request plan making delegations for this proposal as a part of the Gateway determination.

3) On receipt of the Gateway Determination, proceed with recommendations including requesting any further studies and public exhibition.
BACKGROUND

At present dual occupancies are permissible in all residential zones throughout the Municipality under the provisions of the Kiama LEP 2011. It is noted that secondary dwellings are also permissible in all residential, rural and the E3 Environmental Management Zone under the provisions of the LEP.

Planning Approval Pathways

Complying Development

Complying development is a combined planning and construction approval for development that can be determined through a fast track assessment by Council or an accredited certifier. New dwellings, alterations and additions to a house, new industrial buildings, demolition of a building, and changes to a business use are currently able to be approved as complying development. The new Code will also allow the construction of dual occupancies (either side by side or one on top of the other), manor houses and multi dwelling housing (terraces) to be approved as complying development.

The new Code includes the following definitions:

\[ \text{manor house} \] 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 \text{residential flat building} - see the definition of that term in this Dictionary.
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multi dwelling housing (terrace) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

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 (terrace).

Note. Multi dwelling housing is a type of residential accommodation - see the definition of that term in this Dictionary

With the introduction of the new Code, manor houses will be made permissible wherever residential flat buildings are permissible. Multi dwelling housing (terraces) will be made permissible wherever multi dwelling housing is permissible.

Council or an accredited certifier can issue a Complying Development Certificate (CDC) without the need to consult with the community or the local Development Control Plan (DCP). The only notification required by a CDC is the requirement to notify Council and adjoining neighbours seven (7) days prior to construction works commencing on the site.

Development Applications

Development Applications are generally determined by councils. Development Applications are assessed on their merits against the provision of the relevant LEP and local DCP. Neighbours are notified of Development Applications by Council when they are lodged. Neighbours and members of the community are able to lodge submissions with Council which need to be considered as part of the assessment process.
Normally, the purpose of LEP controls is solely to regulate appropriate development outcomes. In this case, we are also using LEP controls to manage the process by which developments are assessed and approved, that is, development applications by Council versus complying development certificates by private certifiers.

There is no mechanism under complying development to vary development controls contained in a planning instrument (LEP, SEPP). Therefore, the introduction of minimum lot sizes for the application of the new Code cannot be varied under complying development.

However, as part of the Development Application process, Council can vary the development standards contained in the LEP via a 4.6 variation. It is foreseeable that development proposals may be received in the future that are under the minimum lot size that is now being proposed. In these cases, where the development results in a positive planning, environmental and social outcome, Council should be prepared to be flexible with the application of the minimum lot size for development applications.

**Low Rise Medium Density Housing Code in the Kiama Municipality**

The new Low Rise Medium Density Housing Code will apply to all R1, R2, R3 and RU5 zoned land in the State. Where permitted by the LEP, dual occupancies, manor houses and multi dwelling housing (terraces) may be carried out as Complying Development.

Dual occupancies are permissible in all residential zones throughout the Municipality under the provisions of the Kiama LEP 2011. The new Code will make manor houses and multi dwelling housing (terraces) permissible with consent within the R3 Medium Density Residential zone which applies in parts of Kiama, Gerringong and Gerroa.

Where a LEP does not prescribe a minimum lot size for dual occupancies the new Code enables dual occupancies to be built on 400m² lots. The same scenario will exist for manor houses and multi dwelling housing (terraces) which will be able to be built on 600m² lots. At present the Kiama LEP does not prescribe minimum lot sizes for dual occupancies or manor houses and multi dwelling housing (terraces) and therefore the aforementioned minimum lot sizes would apply.

The NSW Minister for Planning has advised Councils with concerns about the new Code to request inclusion to a schedule that will provide a 12 month deferral of the new Code to allow Councils time to insert mechanism/controls into their LEPs. The NSW Department of Planning and Environment (DPE) has advised that in order for a deferral request to be considered councils need to submit a Planning Proposal for a Gateway Determination by 27 July 2018.

This report focuses on amendments to the Kiama LEP 2011 that will enable a more appropriate application of the Code. Staff have also flagged with the Department of Planning and Environment that ongoing conversations are required to address our concerns about supporting local character outcomes in the application of the Code.

**Previous Council Resolution**

In September 2017 Council resolved to introduce a minimum lot size for dual occupancies in newly zoned R2 Low Density Residential areas (i.e. not applicable across existing areas of R2 zoning). The minimum lot size suggested at that time was
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600m\(^2\) with the exception of newly zoned land at Jamberoo which was suggested for a large 1200m\(^2\) minimum lot size. This would equate to a dwelling density of one dwelling per 300m\(^2\) except in Jamberoo where the density would be one dwelling per 600m\(^2\). Due to resourcing limitations and competing priorities, this Planning Proposal is yet to be progressed.

To minimise the impact and application of the Low Rise Medium Density Housing Code, this previous resolution should be revisited to apply a minimum lot size for dual occupancies, manor houses and multi-dwelling housing (terraces) for all R2 and R3 land across the Municipality. Given this proposed expansion to the introduction of the minimum lot size across all residential areas and two residential zones, it is considered appropriate to revisit the minimum lot size requirement to be included in the new Planning Proposal.

Proposed Amendments to the Kiama LEP 2011

This report suggests expanding upon the September 2017 resolution to introduce minimum lot sizes for dual occupancies and certain types of medium density development for all R2 Low Density Residential and all R3 Medium Density Residential land in the Municipality. These amendments will ensure that complying development is only carried out on land that is of sufficient size to reflect density outcomes that are appropriate for the Municipality’s towns and villages.

Recent development applications have shown that dual occupancies are not appropriate in certain areas of the Municipality. This report also suggests rezoning these areas in order to ensure appropriate development occurs.

R2 Low Density Residential Zone

The R2 Low Density Residential zone applies to areas of Kiama, Gerringong, Gerroa and Jamberoo. Dual occupancies are permissible with consent within the R2 zone. At present the Kiama LEP does not prescribe a minimum lot size for dual occupancies.

To establish an appropriate dwelling density to be reflected in the minimum lot size controls, we have reviewed all dual occupancies approved by the Council in 2018. On average across the Municipality (with the exception of Jamberoo), developments have been approved with a dwelling density of one dwelling per 309m\(^2\) of site area. In Jamberoo, as would be expected, this figure is greater at one dwelling per 428m\(^2\). Rounding to the nearest 100m\(^2\) for ease of application, these densities would equate to:

- 600m\(^2\) minimum lot size for dual occupancies
- 800m\(^2\) minimum lot size for dual occupancies in Jamberoo

The introduction of the new definition of multi dwelling housing (terraces) presents an opportunity for this type of residential development to also be made permissible in the R2 zone. This style of development has direct frontage to the street for all dwellings and provides for private open space at the rear of the dwellings which are consistent with the outcomes for other forms of residential development in the R2 zoned areas.

Applying the dwelling densities discussed above, this would translate to a minimum lot size for terrace housing of 900m\(^2\) across the Municipality and 1200m\(^2\) at Jamberoo.

R3 Medium Density Residential Zone
The R3 Medium Density Residential zone applies to areas of Kiama, Gerringong and Gerroa (there are no R3 zones in Jamberoo). With the introduction of the new Code, manor houses and multi dwelling housing (terraces) will be made permissible within the R3 zone. Dual occupancies are also permissible with consent within the R3 zone. At present the Kiama LEP does not prescribe a minimum lot sizes for dual occupancies, manor houses or multi dwelling housing (terraces).

Council’s September resolution did not include minimum lot sizes for manor houses or multi dwelling housing (terraces) or dual occupancies within the R3 zone.

When compared to the R2 zone a higher level of dwelling density should be encouraged within the R3 zone. As outlined above, this report suggests introducing a dwelling density that equates to one dwelling per 300m² for dual occupancies R2 Low Density Residential in Kiama, Gerringong and Gerroa and one dwelling per 400m² in Jamberoo. For residential development in the R3 zone an appropriate dwelling density of one dwelling per 200m² is suggested.

This would translate to the introduction of a minimum lot size of 400m² for dual occupancies and 800m² for manor houses and multi dwelling housing (terraces) in the R3 Medium Density Residential.

Areas not suitable for dual occupancies

The introduction of the standard instrument LEP offered two alternative zones for rural residential/large lot areas, these being R5 Large Lot Residential or E4 Environmental Living. Kiama Council applied the R5 zone to these residential areas and permitted dual occupancies.

Dual occupancy development in these areas is limited by the DCP to lots that have a minimum area of 2000m². There are no current limitations on minimum lot size for dual occupancies contained in the LEP.

The Silver Hill/Cedar Ridge area, Stewart Place and David Smith Place are zoned R5. The following diagram shows the areas that are currently zoned R5 within the Municipality.
An internal review of the existing R5 zoned lands has highlighted a location where dual occupancies may no longer be suitable due to character, environmental values or servicing limitations.

The Silver Hill/Cedar Ridge area contains a number of topographical and environmental constraints that make dual occupancy development less appropriate in some parts of this large lot residential area. The diagram below shows the topographical and environmental constraints of the Silver Hill/Cedar Ridge area, as well as the numerous reciprocal right-of-ways. In addition to the natural constraints, the existing subdivision pattern, which includes lengthy right-of-ways, makes servicing (i.e. garbage collection etc.) problematic with any increases to housing density.
An E4 zone which reflects the environmental constraints and which prohibits dual occupancies, residential flat buildings and multi-dwelling housing may be more appropriate for this area.

At present the Kiama LEP 2011 does not contain any E4 Environmental Living zoned land. The only form of residential development that is required to be permissible in the E4 zone is single dwelling houses. The objectives of the E4 are provided below.

**Objectives of zone**

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

This report suggests rezoning the western portion of the Silver Hill/Cedar Ridge area from R5 Large Lot Residential to E4 Environmental Living in accordance with the following diagram, thus prohibiting dual occupancies in this area.
The R5 zoned areas of Stewart Place and David Smith Place are generally free of topographical and environmental constraints and as such no change to their zoning is proposed.

**Planning Proposal**

A Planning Proposal explains the intended effect of, and justification for, a proposed amendment to the LEP. The introduction of new controls and zoning into the Kiama LEP 2011 will enable a more appropriate application of the Low Rise Medium Density Housing Code when it eventually commences in Kiama.

The Planning Proposal will seek to:

- introduce a minimum lot size of 600m² for dual occupancies and 900m² for multi dwelling housing (terraces) in R2 Low Density Residential zones in Kiama, Gerringong and Gerroa
- introduce a minimum lot size of 800m² for dual occupancies and 1200m² for multi dwelling housing (terraces) in R2 Low Density Residential zones in Jamberoo
- make multi dwelling housing (terraces) permissible with consent in the R2 Low Density Residential zone
- introduce a minimum lot size of 400m² for dual occupancies and 800m² for manor houses and multi dwelling housing (terraces) in the R3 Medium Density Residential zones
- introduce the E4 Environmental Living zone which prohibits dual occupancies, residential flat buildings and multi-dwelling housing
- rezone the western portion of the Silver Hill/Cedar Ridge area from R5 Large Lot Residential to E4 Environmental Living in accordance with the diagram above.
If Council agrees with the outlined intended amendment, staff will prepare a Planning Proposal which is consistent with the requirements of the Kiama Planning Proposal Policy, the Department of Planning and Environment’s (DPE) ‘Guide to Preparing Planning Proposals’, the Illawarra-Shoalhaven Regional Plan, Kiama Urban Strategy (KUS), relevant State Environmental Planning Policies (SEPPs), and applicable Section 9.1 Ministerial Directions.

**Plan Making Delegations**

Council has received delegations for local plan making powers under Planning Circular PS16-005 and Section 3.36 of the *Environment Planning and Assessment Act 1979*. Staff will request delegated Plan making powers for this planning proposal. This request will be sent to DPE as part of the request for a Gateway determination. Following the Gateway determination, Council will be directed as to any further requirements to obtain additional studies, consult with public authorities and exhibit the proposed amendment to the Kiama LEP.

**Conclusion**

Staff, the Mayor, Councillors and the community have already raised concerns in relation to the operation of the new Low Rise Medium Density Housing Code. These concerns have been forwarded to the relevant State Government representatives. The NSW Minister for Planning has advised Councils with concerns about the new Code to request inclusion to a schedule that will provide a 12 month deferral of the new Code to allow Councils time to insert mechanism/controls into their LEPs. The NSW Department of Planning and Environment (DPE) has advised that in order for a deferral request to be considered councils need to submit a Planning Proposal for a Gateway Determination by 27th July 2018.

The necessity to make the intended amendments to the Kiama LEP 2011 has become evident as a result of the recent publication of the Low Rise Medium Density Housing Code. This new Code enables dual occupancy development and certain types of medium density development to be approved as complying development. Where a LEP does not prescribe a minimum lot sizes for dual occupancies the new Code enables dual occupancies to be built on 400m$^2$ lots. The same scenario will exist for manor houses and multi dwelling housing (terraces) which will be able to be built on 600m$^2$ lots. Currently the Kiama LEP 2011 does not prescribe a minimum lot sizes for dual occupancies, manor houses or multi dwelling housing (terraces).

If Council agree with the outlined intended amendments, staff will prepare a Planning Proposal and subsequently submit it to the Department of Environment and Planning for a Gateway Determination. If a positive Gateway Determination is issued the Planning Proposal will be placed on public exhibition and subsequently reported back to Council for final endorsement.