

**GR1 – Proposed Commencement of Low Rise Medium Density Housing Code and Greenfield Housing Code**

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**EXECUTIVE SUMMARY**

- The purpose of this report is to outline two proposed amendments to the NSW Planning System to:
  - Introduce a new "Low Rise Medium Density Housing Code" which would allow code based approvals for 1 and 2 storey dual occupancies, manor houses and multi dwelling housing (terraces); and
  - A "Greenfield Housing Code" to allow code based approvals for the construction of, and alterations and additions to 1 and 2 storey dwellings in certain greenfield release areas.
- The introduction of the Low Rise Medium Density Housing Code will result in unmanaged and unplanned growth in residential zoned land in the Shire and will result in an increased burden on Council, particularly in terms of infrastructure provision. The introduction of the Greenfield Housing Code is expected to have minimal impact on the area.
- It is recommended that Council initiate a Planning Proposal to amend the Wollondilly Local Environmental Plan 2011 to introduce a minimum lot area to construct a dual occupancy on residential land and that Council write to the Department of Planning & Environment seeking delayed commencement of the Code and outlining key concerns with the Low Rise Medium Density Housing Code.

**REPORT**

**BACKGROUND TO THE EXISTING STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008**

On 27 February 2009, the State Government introduced *State Environmental Planning Policy (Exempt & Complying Development Codes) 2008* (the SEPP). The existing SEPP allows a range of low impact development to be undertaken without any form of approval from Council (known as Exempt Development), provided that it meets the development standards outlined in the policy. Some examples of development that can be exempt development include decks, garden sheds, carports, fences, repairing a window or painting a house.

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The SEPP also includes a Complying Development Code, where certain types of development can be undertaken through a fast tracked approval process provided that it meets a number of development standards included in the SEPP. The Complying Development Code is made up of a number of codes which allow for Complying Development to be carried out and are outlined as follows:

- Part 3 – Housing Code
- Part 3A – Rural Housing Code
- Part 4 Housing Alterations Code
- Part 4A General Development Code
- Part 5 Commercial & Industrial Alterations Code
- Part 5A Commercial & Industrial (New Buildings & Additions Code)
- Part 5B Container Recycling Facilities Code
- Part 6 Subdivisions Code
- Part 7 Demolition Code
- Part 8 Fire Safety Code.

A summary of the Codes within the Complying Development Code is in Attachment 6.

A development may proceed as 'Complying Development' if a Complying Development Certificate has been issued. A Complying Development Certificate can only be issued if it meets the relevant standards in the Code. There is no merit based assessment for development carried out as Complying Development. If a proposed development meets the standards under the Code, then a Complying Development Certificate must be issued. A Complying Development Certificate can be issued by Council or a Private Certifier.

Unlike an approval for a development application, there is no ability for a Council to include non-standard conditions on a Complying Development Certificate. Only the standard conditions included in the SEPP can be applied to the Complying Development Certificate.

**1. PROPOSED NEW LOW RISE MEDIUM DENSITY HOUSING CODE**

**Overview of the proposed new Code**

In April 2018, the State Government announced that a Low Rise Medium Density Housing Code (the New Code) will be added to the SEPP and will take effect on 6 July 2018.

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An amendment to the Standard Instrument (Local Environmental Plans) Order 2006 is also proposed in order to introduce definitions of Manor House and Multi Dwelling Housing (Terraces). This will result in the definitions being inserted into each Council's LEP across the state. The current definition of Dual Occupancy development in Council's LEP will be retained. The definitions of each of the three (3) types of development included under the New Code are provided below:

**Dual Occupancy**

***Dual Occupancy** means a dual occupancy (attached) or a dual occupancy (detached).*

***Dual Occupancy (attached)** means 2 dwellings on one lot of land that are attached to each other, but does not include a Secondary Dwelling).*

***Dual Occupancy (detached)** means 2 detached dwellings on one lot of land, but does not include a Secondary Dwelling.*

**Secondary Dwellings**

***Secondary Dwelling** means a self-contained dwelling that:*

- (a) is established in conjunction with another dwelling (the **principal dwelling**), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.*

***Note:** See clause 5.4 for controls relating to the total floor area of secondary dwellings.*

*Secondary dwellings are a type of **residential accommodation**—see the definition of that term in this Dictionary.*

**Manor Houses**

***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;*
- (c) The building contains no more than 2 storeys.*

***Note:** Manor Houses are a type of Residential Flat Building.*

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**Multi Dwelling Housing (Terraces)**

*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.**

Development under the New Code may only be carried out on land zoned RU5 Village, R1 General Residential, R2 Low Density Residential and R3 Medium Density Residential. In order for development to be undertaken as Complying Development under the Code, the development must be permitted in the zone under the relevant Council LEP.

The current permissibility of the uses under Wollondilly Local Environmental Plan 2011 (WLEP 2011) is provided in the table below. WLEP 2011 does not currently include any land that is zoned R1 General Residential or RU5 Village and therefore these land use zones have not been included in the table.

	<b>R2 Low Density Residential</b>	<b>R3 Medium Density Residential</b>
Dual Occupancy Development	Permitted with consent	Permitted with consent
Multi Dwelling Housing (Terraces)	Prohibited	Permitted with consent
Manor Houses	Prohibited	Permitted with consent

WLEP 2011 allows Dual Occupancy development in the R2 Low Density Residential Zone and the R3 Medium Density Zone with consent and therefore the New Code would enable dual occupancy development to be undertaken as Complying Development in those zones.

Under the proposed amendments to the Standard Instrument, Multi Dwelling Housing (Terraces) and Manor Houses would be permitted with consent in the R3 Medium Density zone and therefore could be undertaken as Complying Development in that zone under the New Code. Multi Dwelling Housing (Terraces) and Manor Houses will be prohibited uses in the R2 Low Density Residential zone under WLEP 2011 and therefore could not be undertaken as complying development in this zone.

**Land where Complying Development cannot be undertaken**

Clause 1.19 in the SEPP lists exclusions where Complying Development cannot be undertaken (see Attachment 5).



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Exclusions will also be added to the SEPP. Complying Development cannot be undertaken on land which contains a heritage item or a draft heritage item.

Development under the New Code will not be Complying if it includes:

- The erection or alteration of, or an addition to a roof terrace on the top most roof of a building.
- Development that is complying development under the Housing Alterations Code.
- Development on a battle-axe lot.
- Development that is attached to a Secondary Dwelling or Group Home.
- The erection of a building over a registered easement.
- The alteration of, or addition to, a garage or carport that is located forward of the building line.
- The erection of Multi Dwelling Housing (Terrace) on bushfire prone land.

Dual Occupancies and Manor House development may be undertaken as Complying Development on bushfire prone land provided that the development would meet a series of bushfire related standards set out in the SEPP, including a requirement for the development to achieve a bushfire attack level of less than BAL 40 and to be undertaken on a lot which has direct access to a public road.

**Impact of the new Low rise Medium Density Housing Code**

▪ **Dual Occupancy**

The New Code includes standards that a development must achieve and include lot size requirements, setbacks, building configuration and landscaping requirements.

The standard for minimum lot size states *that the area of the lot on which it is undertaken must not be less than **whichever is the greater** of the following:*

- (a) 400 square metres;
- (b) *The minimum lot area specified for dual occupancies in the environmental planning instrument that applies to the land concerned.*

WLEP 2011 does not currently include a minimum lot area that is required to construct a dual occupancy. The New code would therefore allow Dual Occupancies (attached or detached) to be undertaken as Complying Development on a lot as small as 400 square metres in the Local Government Area. WLEP 2011 sets a minimum lot area that is required for the subdivision of an existing Dual Occupancy but does not set a minimum lot area for the construction of a new Dual Occupancy.

Growth

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Council's Development Control Plan currently includes controls that require a lot to be a minimum area of 800 square metres to construct an attached dual occupancy, and an area of at least 975 square metres to support a detached dual occupancy, however this will not carry any weight under the New Code and the minimum 400 square metre lot area would prevail.

The table below presents the number of lots within the R2 zone in the Shire which could support a Dual Occupancy development as Complying Development under the New Code. The lots have been calculated to exclude land as per the requirements of the SEPP (included in Attachment 5).

Town/Village	Number of lots (greater than 400sqm) eligible for Complying Development under the new Low Rise Medium Density Housing Code	Number of lots (greater than 800sqm) eligible for Complying Development under the Low Rise Medium Density Housing Code	Additional Dwellings enabled by the Code
Appin	769	439	330
Bargo	630	601	29
Buxton	457	132	325
Camden Park	589	197	392
Douglas park	115	114	1
Mount Hunter	58	57	1
Picton	774	528	246
Silverdale	500	481	19
Tahmoor	1,156	886	270
The Oaks	369	342	27
Thirlmere	581	497	84
Warragamba	486	58	428
Wilton	712	506	206
Yanderra	192	182	10
<b>Total</b>	<b>7,388</b>	<b>5,020</b>	<b>2,368</b>

Under the current planning controls (being Council's LEP and DCP), a Dual Occupancy development can be carried out on a lot greater than 800 square metres with consent. Column 2 shows there are 5020 lots zoned R2 where Dual Occupancy development can be carried out with a development application and now, as Complying Development.

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An estimated 7,388 lots would now be eligible to undertake a dual occupancy development under the New Code as Complying Development. The lower minimum lot size of 400 square metres under this Code means that an additional 2,368 additional lots could be carried out.

These figures or the difference may increase once current planning proposals are finalised and new residential land is introduced.

As noted in the table above, the New Code substantially increases the number of lots capable of supporting a Dual Occupancy development. Due to the recent release of the New Code, there hasn't been sufficient time to fully consider the implications of the additional growth and any additional infrastructure that would need to be provided to support such growth.

Complying Development is unlikely to be undertaken within a large section of the R3 zoned land in Picton due to the area being within a Heritage Conservation Area and a small area of The Oaks is also excluded being in a mapped Special Area. All other R3 zoned land in the Shire is capable of supporting Complying Development under the New Code.

The proposed New Code does not contain a density control and therefore the forecast of the potential number of dwellings on land has been at a density of 45 dwellings per hectare, which is the maximum density for medium density development contained in Council's Development Control Plan. 21% of the land area has also been excluded from the dwelling calculation for public roads, open space etc in accordance with the Landcom Guidelines and this is considered to be a conservative approach as the public road network and general subdivision pattern of the existing R3 zoned lands in the Shire's towns and villages already exist.

The potential additional number of dwellings that could be constructed as medium density development, (in the form of Manor Houses or Multi Dwelling Housing (Terraces) under the New Code on R3 zoned land is provided in the table below:



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Town/Village	Area of R3 zoned land where Complying Development could be undertaken under the Low Rise Medium Density Housing Code	Number of existing dwellings within the R3 zone	Additional (new) dwellings that could be constructed as medium density development under the Low Rise Medium Density Housing Code
Appin	5.9ha	54	155
Bargo	5.5ha	51	144
Douglas Park	4.1ha	6	139
Picton	7.3ha	47	212
Tahmoor	27.8ha	253	735
The Oaks	1.6ha	28	29
Thirlmere	8.1ha	77	211
<b>Total</b>	60.3ha	516	1,625

Growth

It is recommended that, as a matter of priority, Council initiate a Planning Proposal to introduce a clause into its LEP which prescribes a minimum lot size for a dual occupancy development on land in the R2 and R3 zones across the Shire. It is recommended that this clause provide that a Dual Occupancy cannot be constructed on a lot that is less than the following:

- (a) In the case of an attached Dual Occupancy - 800 square metres.
- (b) In the case of a detached Dual Occupancy - 975 square metres.

This would ensure that any Dual Occupancy in the area could only be carried out as Complying Development consistent with Council's consent controls.

A maximum lot size of 1400 square metres is recommended in order to undertake a dual occupancy in an R2 or R3 zone, as there are some areas of the Shire where the land is zoned R2 Low Density Residential, but have quite a large minimum lot size (for example 2000 square metres) due to natural constraints of the site or character of the area. Council's DCP currently states that dual occupancies shall not be undertaken on land where the lot size exceeds 1400 square metres. This is to ensure that R2 zoned land with conventional lot sizes (for example 700 square metres or 975 square metres) are subdivided onto their own title before a dual occupancy is allowed, and that R2 zone lots with a larger lot size are retained.



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▪ **Multi Dwelling Housing**

a) Insufficient Infrastructure in the area to enable Code Based Medium Density Housing Approvals

There are areas in the Shire zoned for residential development where the property frontage is not serviced by kerb and gutter and there is minimal or no subsurface drainage infrastructure. New development is often the trigger for the upgrade of this infrastructure with the developer bearing all or part of the costs. In the past, if a development application for a Dual Occupancy or medium density development is proposed on a site, then Council has had the ability to condition infrastructure improvements as part of the approval for that development (for example, a condition could be imposed requiring kerb and gutter to be constructed along the road frontage as part of the development).

Code based development that is carried out under the SEPP includes a pre-determined set of conditions that must be imposed by either Council or the private certifier in issuing a Complying Development Certificate. Therefore, there is no ability for Council to impose conditions requiring infrastructure upgrades to service a development. The pre-determined conditions that form part of the Low Rise Medium Density Housing Code do not cater for local infrastructure upgrades to be provided as part of medium density development carried out under the Code.

In Council's submission on the proposed draft amendments (March 2016), it was suggested that one way of addressing this issue could be to create an 'infrastructure control lot' similar in principle to a flood control lot to identify properties in the Shire which may require additional infrastructure. The New Code that has not incorporated such measures and as a result one and two storey Dual Occupancies, Manor Houses, and Terraces may be carried out as Complying Development in areas with insufficient infrastructure to support such development.

b) Implications for Council's Development Contributions Plan.

All types of development that could be carried out as Complying Development under the New Code, including one and two storey Dual Occupancies, Terrace housing and Manor Houses would attract Development Contributions under Council's Contributions Plan. These are typically paid at a certain amount per additional dwelling. For Dual Occupancies and Medium Density Housing, the contributions applicable are currently imposed as a condition on any development application approval and are payable prior to the commencement of works on the development.

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The New Code includes standard conditions that a Private or Council certifier must impose on a Complying Development Certificate. These conditions include a requirement for evidence that any contribution has been paid before works commence. Council will need to update its Development Contributions Plan to ensure that appropriate procedures are in place for the collection of contributions from development which is subject to a Complying Development Certificate.

As outlined above, the New Code is likely to increase the number of additional dwellings currently forecast in the Contributions Plan. Council's Contributions Plan would need to be updated to reflect the number of dwellings that could potentially be provided under a Code based approvals process. The works program which forms part of the Contributions Plan would also need to be reviewed to consider the infrastructure required to support the increased number of dwellings.

Council's Development Contributions Plan may also need to consider the additional financial burden imposed on Council, through the loss of Council's power to require infrastructure upgrades associated with medium density development where infrastructure is lacking, such as installation of kerb and gutter, road and drainage upgrades or footpath connections.

Council is currently undertaking a review of its Development Contributions Plan and the impacts of the New Code may need to be factored into any housing market analysis or dwelling forecasts that form part of this review.

c) Limited Sewer Capacity of Towns

Several towns and villages within Wollondilly currently have limited sewer capacity, particularly Oakdale, which Sydney Water confirmed in 2013 had capacity for 300 additional dwellings in the town. Residential growth has occurred in the area since this time and Sydney Water's recent advice states that there is currently spare capacity for 143 additional dwellings. There are two (2) current Planning Proposals for the town of Oakdale which may utilise this spare capacity.

The township of Oakdale is zoned R2 and therefore, one and two storey Dual Occupancies may be carried out under the New Code as Complying Development. This could have implications for Sydney Water's ability to service future additional housing provided under the Code and sewer capacity in the area. Bargo has also been identified by Sydney Water as having limited sewer capacity.

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The potential uptake of development that could occur under the New Code is likely to impact on the sewer capacity of existing towns. It is therefore recommended that Council write to Sydney Water advising of the potential uplift in dwellings that could occur under the Low Rise Medium Density Housing Code, particularly in towns that have previously been identified as having limited sewer capacity for further growth (e.g. Oakdale).

d) The Code will provide a pathway for Dual Occupancy development to be undertaken on unsewered land as Complying Development

The New Code does not exclude one and two storey Dual Occupancy development and medium density housing from being undertaken on unsewered land. There are some residential zoned areas in the Shire such as Yanderra where reticulated sewer has not yet been made available to the residential area of the township. The exclusions under part 1.19 of the SEPP which are outlined above, only exclude Complying Development from being undertaken on unsewered land if that land is within a drinking water catchment.

For areas such as Yanderra, which contains land zoned R2 but does not have reticulated sewer available, a person may obtain a Complying Development Certificate for a one or two storey Dual Occupancy on this land without appropriate sewerage services being available. WLEP 2011 currently prohibits Dual Occupancy development on unsewered land, however, this will have no weight upon commencement of the SEPP.

This situation does not apply to Menangle due to its Heritage Conservation Area listing.

e) Impact on land within the Bingara Gorge Estate and potential to exceed the allocated dwelling cap for this site

Bingara Gorge Estate was originally identified during the masterplanning process as having capacity for 1,165 residential allotments. In 2016, the Land & Environment Court held that this number was to increase to 1,800 residential allotments. The cap on dwelling number in the Bingara Gorge area is included within Council's Development Control Plan. The DCP also includes a maximum lot yield for each proposed precinct within the estate to ensure that the dwelling yield is appropriately spread across the estate and that each precinct is developed according to the constraints and location of the area.

Bingara Gorge is zoned predominantly R2 Low Density Residential with a mix of lot sizes and it would therefore be possible that the New Code could be applied to construct Dual Occupancy dwellings in this area as Complying Development.

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**2. PROPOSED NEW GREENFIELD HOUSING CODE**

**Overview of proposed new Greenfield Housing Code**

The Greenfield Housing Code will also commence on 6 July, 2018. It will enable the following to be undertaken as Complying Development:

- (a) The erection of a new 1 or 2 storey dwelling house and any attached development.
- (b) The alteration of, or addition to a 1 or 2 storey dwelling house (including any addition that results in a two storey dwelling house) and any attached development.
- (c) The erection of detached development and the alteration of, or an addition to any detached development.

The Code applies to any area identified as being within the area on the Greenfield Housing Code Area Map. In the case of Wollondilly, the mapped areas include the following land:

- 1-41 and 65 Marsh Road, Silverdale  
This land is known as the Lion Safari Park Site and is shown as attachment 2 in this report.
- 10 and 12 Appin Road, Appin  
This site was part of the Bulli Appin Road Planning proposal finalised on 13 October 2017, shown as Attachment 3 in this report.
- Picton Tahmoor Thirlmere (PTT) Land  
Within the six rezoned precincts finalised on 31 January 2014 and the R2 portion of land which was included in the PTTAG site and was finalised on 19 June 2015 shown in attachment 4 in this report.
- Bingara Gorge Land  
Within the Bingara Gorge residential release area shown in attachment 4 in this report.

**Land where Complying Development cannot be undertaken under the Greenfield Housing Code**

The same land based exclusions under clause 1.19 in the SEPP which currently apply to the Housing Code and Rural Housing Code (and which will also apply to the Low Rise Medium Density Housing Code) will also apply to the Greenfield Housing Code. These exclusions are provided in Attachment 5 to this report.

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Complying Development under the Greenfield Housing Code may be carried out on the following land provided that it also meets the development standards included in the Code:

- (a) Land within Zone R1, R2, R3, R4 or RU5 zone.
- (b) The area of the lot must be not less than 200 square metres.
- (c) The width of the lot must not be less than 6m measured at the building line.
- (d) The lot must have a minimum depth of 25m (from the property boundary adjacent to the primary road of the lot to the rear property boundary of the lot).
- (e) There must be only one dwelling house on the lot at the completion of the development.
- (f) The lot must have lawful access to a public road at the completion of the development.
- (g) If the development is on a battle-axe lot - the lot must be at least 12m by 12m (not including the access laneway) and must have an access laneway that is at least 3m wide.
- (h) If the development is on a corner lot, the width of the primary road boundary of the lot must be at least 6m.

**Key Concerns with the impact of the Greenfield Housing Code**

It is unlikely that the Greenfield Housing Code would have significant implications for Wollondilly. Unlike the Low Rise Medium Density Code, the Greenfield Subdivision Code will only enable a single dwelling house to be constructed on certain land as Complying Development. The Code only applies to existing mapped areas which are the subject of recent Planning Proposals and the necessary infrastructure (such as kerb and gutter etc) will be provided as part of the subdivision approval and certification process. The Code will only enable one dwelling per lot to be undertaken as Complying Development and will not contravene the infrastructure requirements that are imposed at the development application stage. The controls in the Greenfield Housing Code are also similar to the controls contained in the current Housing Code contained in Part 3 of the SEPP which applies to all residential land in the Shire.

**CONSULTATION**

The proposed amendments were exhibited as part of the Draft Medium Density Design Guidelines in 2016. Council made a detailed submission to the proposed amendments which is included at attachment 1.

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**FINANCIAL IMPLICATIONS**

The introduction of the Low Rise Medium Density Housing Code could have a negative financial implication on Council by shifting the cost of infrastructure typically associated with these types of development (for example kerb and gutter, improvements to road pavement, footpath connections etc), as Council does not have the ability to impose these requirements as part of Code based approvals. This will need to be considered in Council's current Contributions Plan Review and Works Schedule.

**ATTACHMENTS INCLUDED A SEPARATE BOOKLET**

1. Council submission on exhibited amendments (March, 2016).
2. Greenfield Housing Code Area Map 1 - Marsh Road, Silverdale.
3. Greenfield Housing Code Area Map 2 - Appin Road, Appin.
4. Greenfield Housing Code Area Map 3 - PTT and PTTAG sites, and Bingara Gorge Estate at Wilton.
5. Land Based exclusions under 1.19 - Complying Development SEPP
6. Table outlining codes with Complying Development Codes.

**RECOMMENDATION**

1. That Council prepare a Planning Proposal to amend Wollondilly Local Environmental Plan 2011 to ensure that the minimum lot size to subdivide an existing dual occupancy in a residential zone under clause 4.1A of LEP 2011 is also the minimum lot size required to construct a new dual occupancy.
2. That the minimum lot size for the construction of a new Dual Occupancy on land within the R2, R3 or B4 zones meet the following lot sizes.
  - (a) in the case of an attached Dual Occupancy - 800 square metres.
  - (b) in the case of a detached Dual Occupancy - 975 square metres.

Despite the above, a dual occupancy cannot be undertaken on any lot greater than 1,400 square metres.

3. That the Planning Proposal be forwarded to the Greater Sydney Commission for a Gateway Determination.
4. That Council request the Greater Sydney Commission to grant Council delegation to make amendments to Wollondilly Local Environmental Plan 2011 in accordance with Section 3.36 of the Environmental Planning and Assessment Act, 1979.

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5. That Council write a further letter to the Department of Planning & Environment that includes the following:
  - A request to suspend the commencement date of the Low Rise Medium Density Housing Code to the Wollondilly Local Government Area, at least until such time as Council has finalised an amendment to its LEP to introduce a minimum lot size for the construction of Dual Occupancies on R2 and R3 zoned land.
  - Council's concerns over the ability of the existing infrastructure in the area to support such development being undertaken via a Code based approvals process and that the concerns raised in its submission from March 2016 relating to infrastructure remain.
6. That Council write to Sydney Water advising of the potential uplift in dwellings that could occur under the Low Rise Medium Density Housing Code in towns within the Shire, in particular those which have been identified as having limited sewer capacity (namely Bargo and The Oaks/Oakdale).