

Submission: Rosebery Estate EIE for City of Sydney

Submitted 11/12/2020

I strongly oppose Rosebery from being excluded from the SEPP and Housing Code, which residents of Rosebery currently benefit from. Please consider the points below:

1. Complying Development is fair for all, is consistent NSW wide, is applicable to today's living standards, and allows owners to realize the future value of their asset.

Complying Development Code (CDC) has allowed residents of NSW and Rosebery to renew, renovate or rebuild their homes in a simple but appropriately strict way that is fair to everyone, and provides a quicker timeframe and less expensive pathway than by going through a Council Development Application (DA). The SEPP has very clear, consistent and strict rules, whereas Council's DCP and DA process is subjective and open to interpretation. The design of a home permissible via the Housing Code is also more relevant to today's lifestyle as it permits dwelling types like a two storey, family home with double garage, and still space for a yard/pool and children to play. Not having the option to take advantage of this benefit will devalue houses in Rosebery from the time it may come into effect, and even more so in the future as houses in the area become increasingly redundant.

I am worried that homes in Rosebery will be dramatically devalued if new buyers are deterred by the difficulty, time, cost, and restrictions of building a house via the Council DA process. Similarly, current owners won't improve their homes which will result in houses in Rosebery becoming redundant and undesirable which will devalue both them and the homes around them.

There are many houses in Rosebery that are uncared for and very poorly presented, and I welcome the day that the Housing Code, or Low Rise Diversity Code, allows them to be improved or rebuilt. If Rosebery is exempt it will devalue my asset now and in the future.

Working from home is here to stay, and the Covid experience has demonstrated the need for houses to now accommodate a home office and designated workspace. Ironically Rosebery was designed as a workers' suburb, and now houses need to be adapted and enlarged to accommodate the increasing number of people working from home by providing that additional space.

Intergenerational living is another fast growing housing requirement. Adult and non-dependent children living at home due to housing affordability challenges, and seniors who are unable to live independently being taken in by their children rather than moving to Aged Care, is becoming increasingly common. Siblings or friends often group together in a residential investment or home. Residents of Rosebery need to be able to adapt or build their homes to suit their personal and family needs and it is detrimental to remove Rosebery from the Housing Code and Low Rise Housing Diversity Code that support this. A diverse and inclusive multigenerational community is a positive thing for a neighbourhood and something that the built form housing options should support.

2. Only 43% of Houses in the Rosebery Estate were found to have contributory value to the character in 2006. It will be a lot less than 43% as of December 2020.

If the Department of Planning, Industry and Environment (DPIE) are serious about an issue as significant as exempting the Rosebery Estate from the SEPP, then I request that an independent heritage consultant is engaged to complete a current heritage assessment, as it is pertinent to the

discussion and community understanding. It is underhanded to not provide such baseline information to educate the residents of Rosebery as part of the EIE.

In 2006 the Draft Rosebery Heritage Study found that only 43% of buildings had contributory value to the character of the area. As a result, only one house in the entire Rosebery Estate was heritage listed. 14 years later, it would be expected to be much less than 43%.

In the EIE, the 2006 findings are referred to only in terms of the outcome being that “in May 2008 Council resolved that the Rosebery Estate was not suitable for a heritage conservation area listing based on the findings of a heritage study prepared by Council. The report found that Rosebery was too highly modified to constitute a conservation area”. This glossing over of the fact that only 43% of homes in 2006 had contributory value to the character is misleading misinformed residents on the lack of heritage value of the Rosebery Estate, when they are currently being asked to voice opinions to inform a decision based on heritage and relevance to the estate overall.

I understand that there are some houses in Rosebery that still comply with the full covenant, and the house that was heritage listed following the 2006 study is a lovely example of the original architecture. It has historically been a personal choice in Rosebery if owners choose to modify their homes in a way that breaks or adheres to the original covenant so if a resident feels strongly about the heritage value of their home, they are welcome to seek to heritage list it.

3. There is strong evidence and precedent that the covenant is not valid.

The community is uneducated in what the covenant covers, and believe it is limited to specifying only single storey housing, which is inaccurate. Materials used on the house facade (render and timber), or the roof (metal or colorbond), frequently break the covenant, which specifies that façade materials be brick or tile, and the roof be tile or slate. The covenant specifically prohibits weatherboard, and there are clear examples of weatherboard extensions throughout the Rosebery Estate. There are also a lot of duplexes and granny flats in Rosebery, or two storeys, or carports at the front of the house, which all break the covenant (covenant specifies single dwelling, single storey, and setbacks from the street) and these have been approved via Council or CDC. There is also a range of architectural styles including Mediterranean archways, Spanish mission tiles, Greek columns, modern rendered homes, 60's red brick, and some very contemporary extensions using modern lightweight materials and glass.

There is a strong precedent in Rosebery that the covenant has no relevance, and this is reflected in the many (and over 57% according to the 2006 heritage review) houses that have not followed it for many years. The EIE states that ‘a covenant is valid until it ceases to be enforced’. Clearly it has not been enforced since a long time prior to 2006, and as of December 2020 both Council’s DCP and the 2008 Housing Code also allow it to be disregarded. If Council believed homes in the Rosebery Estate should adhere to the covenant why didn’t a motion to enforce it commence in 2006? Council’s knowledge of the breaking of the covenant, and the facilitation of breaking the covenant within the requirements of their DCP, and failure to enforce any action to try to enforce it has proven Council’s belief that it is no longer valid.

In addition, meeting minutes from the Draft Sydney LEP 2011 Post Exhibition note that:

Submitter: Residents of Rosebery

Issues Raised: Object to the removal of the long-standing covenant covering the Rosebery Estate

Response: No covenant currently applies to properties in Rosebery. Historically, there was a

covenant on the land titles of properties in Rosebery. Clause 44 of the South Sydney LEP 1998 (gazetted December 1999) suspended this covenant.

Council has clearly documented that the covenant is no longer applicable.

Why is Council not providing this clear response to residents of Rosebery in 2020, just like they did in 2011? Why is Clover Moore, or her office, not clear and consistent in communication to residents?

4. Information provided in the EIE is misleading and deceptive by its omission of the full requirements of the covenant.

I also would like it noted that the information provided in the EIE is misleading and deceptive in its omission of the full covenant requirements. The lack of understanding of the full covenant in Rosebery is surprising, but residents should be able to rely on Clover Moore, on Council and the State Government to provide comprehensive, accurate and unbiased information.

On <https://www.planningportal.nsw.gov.au/rosebery-estate> it states: "The Rosebery Estate is subject to a covenant dating back to 1914 which describes the type of housing that can be built within the Rosebery Estate, including limiting a dwelling to a single storey height. Over time, the Rosebery Covenant has been applied inconsistently, meaning that some two storey dwellings have been developed by development application and by complying development. This is causing uncertainty among landowners and the community about the validity of the covenant and the operation of the Codes SEPP."

Why does it not outline materials, roof materials, setbacks and single storey dwellings that are also equally important parts of the covenant (plus that the house should not cost less than four hundred pounds). The original covenant describes all of these and gives equal weight to each requirement. It does not identify single story as being any more important a requirement than any other. In fact there appears to be more examples of homes in Rosebery with façade materials and roof materials breaking the covenant than those with two storeys.

If the resident reads on for further information, the covenant is still not described in its entirety. On <https://www.planningportal.nsw.gov.au/rosebery-estate> it describes the covenant as limiting "the materials of the front façade to brick or stone, limiting the number of dwellings on a lot and requiring a dwelling to be limited to a single storey height". Whilst this includes a little more information it still does not describe the full covenant. Many houses in Rosebery have roof materials other than the specified slate or tile, or weatherboard extensions, or carports that breach setbacks. Once again, the EIE is misleading and deception in its omission of important facts.

5. Skewed information provided is provided in the EIE: Only the number of two storey developments is communicated, rather than the total number of complying development certificates to downplay the widely used benefits of the SEPP.

There have been many extensions, house rebuilds, and new pools in Rosebery since the SEPP was introduced. Looking at the low number of DAs on Council's website compared to the high amount of building work completed in Rosebery it is obvious that a lot of residents have benefitted from the streamlined process of complying development under the SEPP. The EIE advises there have been six complying development certificates issued since July 2020 and prior to that 11 two storey developments that have been previously completed as complying development. What is the total number of complying development certificates that includes renovations, extensions or even single

storey rebuilds? Being exempt from the SEPP will also prohibit these. Again, the information provided is dangerously misleading in its omission of important facts.

It feels like bullying and intimidation to highlight only 17 houses in Rosebery and imply that they break the covenant, when in 2006 57% of houses did. Why should these owners be victimized for following a planning pathway that many other owners in Rosebery have also followed?

Why doesn't the EIE disclose the total number of complying development certificates issued since the SEPP was introduced to give a fair picture of the number of houses in the Rosebery Estate that have been improved via this pathway?

6. Local Members are providing incorrect advice on the covenant.

Ron Hoenig MP, in a comment on his own post on his Facebook page 'Ron Hoenig MP', is advising residents "You can build a two-storey house in Rosebery that is consistent with the covenant as long as the frontage is single storey. Many residents have done this & still maintain the look and feel of Rosebery". What is particularly concerning is that he is providing this incorrect advice while the EIE is on exhibition and open for resident feedback. On request, a screengrab of this can be provided for the Department of Planning, Industry and Environment's records.

Ron's post on 1 November 2020 is also misleading in its omission of important information. He writes: "Residents of Rosebery will be pleased to know that the NSW Government is finally considering excluding Rosebery from the "Low Rise Medium Density House Code". This is also misleading as he doesn't mention that the Housing Code, which many Rosebery residents have already benefited from in completing their rebuilds, extensions, renovations and pools, will also be excluded in the EIE that has been put forward to exempt Rosebery from the SEPP.

7. The Housing Code and the Low Rise Housing Diversity Code were introduced separately, and should be considered and reviewed separately

Clover Moore, Local Members, a small group of residents who have created an Action Group, and now DPIE in this current motion, are benefiting from the confusion between the covenant, Council's DCP, the Housing Code and the Low Rise Housing Diversity Code.

The Housing Code introduced state-wide in 2008, and the Low Rise Housing Diversity Code 2012, were implemented years apart and provide two different outcomes for the community. Combining both and using the scare tactic of 'apartments could be built next door to you' (as permissible in the Low Rise Housing Diversity Code) to also exclude the Housing Code which is limited to single residential homes does not provide appropriate choice. It seems to be a deliberately misleading tactic to confuse residents. If Clover Moore and the Department of Planning, Industry and Environment seek to exempt Rosebery from either of the codes they should be considered separately and with separate community consultation after a clear education process of what each entails. It is unlikely that residents will have appropriate knowledge of the planning controls to be able to respond to the current EIE with support for one and opposition for the other, when that option hasn't been provided.

8. The local community, and even the Action Group who initiated this, are very confused

Residents who formed a Rosebery Residents Action Group have been rallying community support, organized a meeting with Clover Moore on 12th September 2020, have a Facebook page called 'This is Rosebery' and letterbox dropped the community in December 2020. On 16th June 2020 'This is Rosebery' posted "You can also lodge a complaint with the Building Commissioner if you believe a

home that is being built on your street or in the suburb that breaches the Covenant, you can report directly to the Building Commissioner” and provided a link with to the Office of the NSW Building Commissioner along with a photo of him. Screenshot of this post can be provided on request.

On 13th August 2020 ‘This is Rosebery’ posted “We have legal advice that the Rosebery Covenant is in place and still relevant”. Screenshot of this post can be provided on request.

Their letterbox drop in early December 2020 states “The Rosebery Residents Action Group (RRAG) has obtained legal advice from our QC confirming the enforceability and legality of the covenant, which has also been provided to Council and NSW Planning”. A copy of this letter can be provided on request.

On 9th December 2020 ‘This is Rosebery’ posted that they are not “seeking to move away from the SEPP and stick to the original covenant” and “The Rosebery Action Group wants the City of Sydney Council to once again take ownership of the DA process and remove the use of Complying Development.” Then they refer to a “City of Sydney SEPP”. Screenshot of this post can be provided on request.

If the group who initiated the move to exempt Rosebery from the SEPP is confused between Council’s DCP and the DPIE’s SEPP, and has engaged a QC to prove that the covenant still applies but then later advises that they don’t want to “stick to the original covenant” this demonstrates they are unclear in what they are asking for. Why is this issue now being taken up by DPIE? It again highlights that the misinformation being propagated has confused the community, and owners of Rosebery are not in an informed position to be campaigning for any changes to the current planning laws.

The Action Group’s ethics should also be questioned, where posts from the community on their ‘This is Rosebery’ Facebook page that do not align to their opinion are deleted. A screenshot of a deleted post from 11/12/2020 can also be provided. This group, who does not speak for the community and is censoring the community’s voice, is not a credible source for Clover Moore, Council or DPIE.

It’s an embarrassment that Clover Moore’s office has invested time and money in a cause initiated by a group who are inconsistent with their objective, and who clearly don’t understand the planning codes or design controls they are opposing or supporting, and who lack credibility. Add to that the confusion caused by Local Members (i.e. Ron Hoenig) who are providing the community with incorrect advice. It’s disappointing that the DPIE has initiated action because of it. It’s bewildering that an exemption from the SEPP is being considered on the basis of this, and I suggest that the entire exercise cease before any more time and money is invested.

9. For any exclusion period to commence BEFORE resolving the inconsistent application of the Rosebery Covenant, and the roll out of the education program that the DPIE will develop for all stakeholders, is capitalizing on confusion.

The process that has commenced is not appropriate given the lack of community understanding of the full covenant, the confusion between the Housing Code and the Low Rise Housing Diversity Code, and the misleading and incorrect information provided by Clover Moore, Local MPs and people who have assumed positions of power. The DPIE is asking the community for feedback on an issue they do not understand. The wording of the covenant and its full set of requirements is clear and easy to understand when it is read, however many have not read it and believe the misinformation that is circulating. Residents and stakeholders should be educated in it first to understand what they are voicing their support or opposition for.

10. Let action, and the number of owners who have already benefited from the SEPP, prove Rosebery's desire to retain its benefits.

There have been many building works in Rosebery that have been completed via CDC. Can this number be communicated please, as the number of owners in Rosebery who have used the SEPP is a show of support for the SEPP and the benefits of CDC to continue to apply to the Rosebery Estate. Surely actions speak louder than words.

11. This has a high impact to those who have purchased their homes recently based on the current SEPP, Housing Code and the Low Rise Housing Diversity Code.

The Rosebery real estate market has been strong, and high sales prices have been achieved for homes "in original condition on large flat blocks" which is what new homebuyers seeking to buy a property that they can rebuild or renovate are seeking. Most recently a story circulated on Domain that "Family buys \$2,375,000 Rosebery house at auction to knock it down". Choosing a builder and signing a building contract can take nearly a year, however if the exclusion is introduced quickly then recent buyers may not be afforded the time to actualise their intent to rebuild or renovate, which was possible when they purchased in Rosebery.

Longstanding homeowners in Rosebery may be equally impacted, where the Covid financial crisis has delayed their plans to renovate, extend or rebuild their homes. Commencing a negative and restrictive planning control quickly is not fair to the residents of Rosebery.

12. The Office of Clover Moore's communication of the EIE and request for feedback is unfair and skewed.

The letter from Clover Moore "Update on Rosebery Estate Housing Codes, 30 November 2020" advising of the EIE was distributed via letterbox drop. It was not sent to the registered address of owners. This means that owners with a financial interest in their property, i.e. they own it as an investment and are renting it out, or it may be currently vacant as they plan to substantially renovate or rebuild it (or it may currently be in the process), have been omitted from this process and this will likely skew results in favour of the exemption as owners who would object to the proposed changes have not been given an opportunity to voice their opinion. This is not a fair and equitable process. Does Council have a policy to effectively communicate in a fair and equitable manner to the legal title holder of each lot?

13. If Rosebery, after being included in and benefitting from the SEPP, is later allowed to be exempt it sets a dangerous precedent for other Councils and the DPIE.

If DPIE allows Rosebery to be removed from the SEPP, especially considering the above points of how this particular EIE has come about, this would set a precedent for all NSW councils to campaign to be exempt from the SEPP if they wished. Does DPIE want to set this precedent?

Conclusion.

In conclusion, being exempt from the Housing Code and Low Rise Housing Diversity Code will detract from the quality of housing, and reduce the ability of residents to improve their homes to meet their lifestyle requirements now and in the future. It will negatively impact house values now, and in the future. The covenant has been broken by so many houses for so long with no enforcement that it is no longer valid, however the Resident Action Group, Clover Moore, Local Members and DPIE are

currently using it to cloud and confuse the community's understanding of what's permissible under Council's DCP, or the Housing Code, or the Low Rise Housing Diversity Code which all override it.

The fact that DPIE has given this process attention, given the uneducated viewpoint of the Action Group that started this movement and the misinformation spread by Ron Hoenig to rally support, is disappointing. The resulting EIE process now being implemented is biased and skewed in favour of the exemption through the choice of information used to inform residents and the fact that Clover Moore's office only communicated it via a letterbox drop to residents and not owners. Actions should speak loudly and the number of builds that have already benefited from CDC should be communicated, not just the victimisation of the number of individual homeowners choosing to use it to build a two-storey home.

Lastly the short timeframe to the roll out of an exemption will inhibit people with intent to rebuild or renovate their home under the planning control options they currently benefit from, and the fact that the DPIE is asking an uneducated community to provide feedback before they have a complete and unbiased understanding is underhanded.

This has been very badly managed, and it is the residents who care about the future of Rosebery who will suffer if the exemption is implemented. I strongly oppose Rosebery from being exempt from the Housing Code and the Low Rise Housing Diversity Code which it can currently benefit from.