

**From:** [noreply@feedback.planningportal.nsw.gov.au](mailto:noreply@feedback.planningportal.nsw.gov.au) on behalf of [Planning Portal - Department of Planning and Environment](#)  
**To:** [REDACTED]  
**Subject:** Rosebery Estate  
**Date:** Saturday, 23 January 2021 5:05:19 PM  
**Attachments:** [dec-2020---eie-submission-rosebery-sepp-amendments\\_210123\\_final-submitted-signed-matthew-scard.pdf](#)

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Submitted on Sat, 23/01/2021 - 17:01

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

Matthew

**Last name**

Scard

**I would like my submission to remain confidential**

No

## Info

**Email**

[REDACTED]

**Suburb/Town & Postcode**

Rosebery 2018

**Submission file**

[dec-2020---eie-submission-rosebery-sepp-amendments\\_210123\\_final-submitted-signed-matthew-scard.pdf](#)

**Submission**

(refer attached for PDF for signed version of the below submission)

**SUBMISSION FOR THE ROSEBERY ESTATE EIE FOR CITY OF SYDNEY**

This submission, dated 23 January 2021, is personally from me and not endorsed or related to my place of work.

The below submission is in response to the Explanation of Intended Effects (EIE) dated December 2020 as provided by The Department of Planning Industry and Environment (DPIE) to support the proposed pause of the Codes SEPP applying to a particular area of Rosebery. It appears that the Rosebery Covenant, which has not been enforced and is therefore not valid, is now being used to justify special character to impose restrictions on future building works.

I confirm I own land in Rosebery that is within the area identified by the EIE. I do not support the proposed pause or any further actions to change the current planning and approval pathways that are open to owners in Rosebery for the reasons provided below.

**THE COVENANT HAS NOT BEEN FOLLOWED OR ENFORCED AND IS NO LONGER VALID**

Many houses in the area, defined to be called the Rosebery Estate in the EIE, do not comply with the covenant. For clarity on the covenant this is a sample taken from my title deed, [REDACTED], dated 20th January 1921.

"they will not erect, cause or allow to be erected on any portion of the land comprised in the written transfer any weatherboard or other wooden residence but will erect only a double fronted cottage residence of one story and shall not erect not more than one such residence upon the land hereby transferred which residence shall have a front elevation of brick or stone or brick and stone with slate or tile roofing and shall stay back at least twenty feet from the alignment of Rothschild Avenue and shall not cost less than four hundred pounds".

There is a long history of non-compliance, either in full or part, by former and current homeowners, developers, Council and the DPIE themselves. For example, if a house has a metal or Colorbond roof, or rendered walls, or timber structures, or weatherboard, or carports in front of the house that breach the setback, or any second story element, or more than one residence on the lot then it doesn't comply with the Rosebery Covenant. Houses approved via Complying Development or by Development Application approval are permitted to break the covenant through a set of design controls established by both DPIE and Council. Council's current DCP breaks the covenant and DPIE's Housing Code and Low Rise Housing Diversity Code (LRHDC) currently allow building works that do not adhere to the covenant's requirements. To base this EIE on the covenant is misleading and shallow in its attempt to confuse residents and owners of the development controls applicable in Rosebery.

There is also a mix of uses that are not consistent with the original intent of The Rosebery Estate and specified in its covenant:

- o Churches
- o A new school currently under construction
- o Dual occupancies (achieved via Council DA or CDC)
- o Granny flats or secondary dwellings (achieved via Council DA or CDC)
- o Businesses operating out of 'houses' (medical, childcare, eye specialists etc)
- o Multi-dwelling housing (apartments) along Gardeners Road

The EIE for the Rosebery Estate states in Section 1.2 that "a covenant is valid until it ceases to be enforced". Clearly neither DPIE nor Council have considered the covenant to be valid when their own design controls allow it to be broken and it has not been enforced.

Section 2.1 of the EIE for the Rosebery Estate notes "Determining the validity of the Rosebery Covenant falls to the beneficiaries of the covenant, in this case it is the landowners in the Rosebery Estate". It is this statement is correct, then by reviewing the housing in Rosebery it is obvious that many residents and owners of homes in Rosebery do not consider it to be valid either when so many houses clearly break the requirements of the covenant. To reiterate this point – every house in Rosebery that currently breaks the covenant is a 'vote' for the covenant not being valid. Irresponsibly, Section 2.1 of the EIE also states that the covenant can be enforced by owners "As the covenant is imposed by a former owner of the land, legal action around enforcement of the covenant must be undertaken by residents, not Council, which is both time consuming and costly." The EIE is advising that neighbours can take legal action against each other for implementing building works that have been approved and sanctioned by Council, or via the DPIE's SEPP. This is creating angst and pitching neighbour against neighbour on the issue. This is not a positive community outcome.

**THE ROSEBERY COVENANT WAS INTRODUCED BY A COMPANY THAT WENT INTO LIQUIDATION IN 1936.**

The Rosebery Covenant was applied by The Town Planning Company of Australia, which was the company who designed, developed and sold the land in Rosebery. The Town Planning Company of Australia went into liquidation on 30 October 1936 (<https://trove.nla.gov.au/newspaper/article/223041611>). There are no identifiable successors including the Administrators appointed, hence the ability to enforce the covenant by the original creator has ended. My title does not contain a nominated beneficiary of the covenant, so therefore there are no beneficiaries who can enforce the covenant on me.

**THE HERITAGE VALUE OF ROSEBERY WAS REVIEWED IN 2006 AND FOUND NOT TO BE STRONG ENOUGH TO CONSTITUTE A HERITAGE CONSERVATION AREA. WHY WOULD THE HERITAGE VALUE HAVE INCREASED 15 YEARS LATER TO MAKE IT SIGNIFICANT NOW?**

Section 1.1 of the EIE states "In May 2008, the City of Sydney Council resolved that the Rosebery Estate are 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 followed an independent heritage study completed in 2006 and published in 2007, which found that less than 50% of houses had contributory value to the heritage of the area. To assist with the community's understanding of the heritage value of Rosebery, Council should supply a copy of the 2007 Rosebery Heritage Review completed by Paul Davis Pty Ltd who is a Heritage Consultant. Council's archives confirm only hardcopy is available. Being such an important document, it is requested the hardcopy is scanned and put on Council's website as per Central Sydney Planning Committee Recommendation E in the report dated: 8 May 2008 ([https://meetings.cityofsydney.nsw.gov.au/Data/Central%20Sydney%20Planning%20Committee/20080508/Agenda/080508\\_cspc\\_item04.pdf](https://meetings.cityofsydney.nsw.gov.au/Data/Central%20Sydney%20Planning%20Committee/20080508/Agenda/080508_cspc_item04.pdf)).

As part of this EIE, and before the SEPP is paused, Council should provide independent assessments into the current (2021) heritage value, and therefore identifiable special character of Rosebery. The brief for an up-to-date Rosebery Heritage Review should include an assessment of the percentage of houses that comply with the covenant, and those that do not, to assist with educating the community into what the covenant means for them and their home, particularly in light of suggestions that neighbours can take legal action on each other for non-compliance.

**URBAN DESIGN AND ARCHITECTURAL EDUCATION INTO THE POSITIVE AND NEGATIVE DESIGN AND COMMUNITY OUTCOMES OF BOTH COUNCIL'S DCP AND DPIE'S SEPP AND CODES IS REQUIRED.**

Given the proposal is to pause the SEPP, Housing Code and LRHDC and revert only to Council's DCP controls, a report should also be provided comparing and contrasting the resulting outcomes of the two. Positive aspects of both controls should be put forwards as equally balanced with the negative concerns.

An example of this is Privacy. Privacy is cited by some residents as a negative outcome from two storey dwellings (this is permitted by both Council's DCP and the SEPP's Housing Code and LRHDC), but if an education process was provided this sentiment may change. Council's DCP allows a second storey to the rear however it is the rear aspect of a house that is oriented towards a neighbour's private rear garden and where overlooking may be argued as an issue. Having a second storey at the front of the house will overlook the street which is not a privacy concern to neighbours and is in fact of benefit to the community by providing passive surveillance. The community are very uneducated in the design controls of the Housing Code, LRHDC and Council's DCP, and their positive and negative impacts, and those who are in favour of the pause are capitalizing on that and providing skewed messaging to support their argument.

**PAUSING THE SEPP IS HASTY AND NOT A CONSIDERED OR FAIR PROCESS THAT ENABLES INFORMED DECISION MAKING BY THE COMMUNITY.**

Before Council and DPIE apply a 2-year pause, the evidence to support the pause should be provided first in the exhibition material and be recent, relevant, clear and independent; all supported by Council meetings and public hearings to explain the pause. If the heritage significance of Rosebery and the validity of the Rosebery Covenant is the basis for the argument to pause the SEPP, then the outcomes of an up-to-date 2021 Heritage Study, all requirements of the full Rosebery Covenant, and the percentage of houses in Rosebery that actually follow that full Rosebery Covenant should be made available first.

Clover Moore attended a meeting held by the Rosebery Action Group in Turrwul Park in September 2020 specifically for those who oppose the SEPP, but Council has not held any other meetings that allow open and honest discussion amongst the whole of Rosebery in a forum that does not intimidate or suppress contrasting views.

DPIE and Council should implement a thorough stakeholder and community engagement plan prior to making any change to the current permissibility or asking for feedback to support a change. Non subjective and unbiased flyers, information sessions, notice boards and displays in public spaces, and imagery depicting the design controls in the DCP compared to the Housing Code, LRHDC and the Covenant. These are all standard programs implemented by authorities when changes or works that impact the community are proposed or upcoming, and are common practice for proposed playgrounds, community centres, buildings or transit infrastructure works. None of this has been delivered but DPIE is expecting feedback that will inform a significant change to the value of Rosebery and options available to homeowners.

**THE SMALL GROUP LOBBYING CLOVER MOORE, COUNCIL AND DPIE TO EXCLUDE ROSEBERY FROM THE SEPP ARE NOT REPRESENTATIVE OF THE ROSEBERY COMMUNITY.**

Given the number of dwellings included in the Rosebery Estate, those voicing their support for the Rosebery Covenant, or objections to the SEPP are a small minority. Despite letterbox drops to build support and gain followers the Rosebery Residents Action Group Facebook Page 'This Is Rosebery' has less than 50 likes, and its posts receive very low engagement. Comments that express alternate opinions have been seen to be deleted. The meeting that the Rosebery Resident Action Group held in September 2020 which was attended by Clover Moore claimed to have 'over eighty Rosebery residents' however I know that not all of those who attended did so in support of the Action Group, so the number of supporters on the day was less than 80.

If DPIE and/or Council are looking to quantify resident sentiment then the number of building works that have taken place via a Complying Development Certificate for any building works rather than following Council's DA process should be considered, and everyone should be counted as a 'vote' in favour of Rosebery homeowners wanting to retain the benefits of the SEPP.

#### THE COMMUNICATION OF, AND THE INFORMATION PROVIDED IN THE EIE ITSELF IS FLAWED, BIASED AND MISLEADING.

When this EIE was initially issued the letter came from Clover Moore's office, not The City of Sydney Council. The original letter was hand delivered to letterboxes in Rosebery only. Not until it was raised by a property owner who does not live in Rosebery did Council realise they had not followed their own Council policy to advise "property owners" and issue the letter through their online database of owners. Clover Moore, by writing only to residents of Rosebery, excluded owners who may be investors and who have a strong financial interest in the future improvement potential of Rosebery and the positive impact the ability the SEPP provides for improvement on the value of their land.

The information provided in the EIE document is also biased and misleading in its omission of important information. In Section 2.1 it states "Since the Low Rise Housing Diversity Code commenced in Council's local government area on 1 July 2020, six complying development certificates have been issued in the Rosebery Estate. Council have reported that there are at least 11 two storey developments that have been previously completed using complying development. This demonstrates the covenant is not being applied consistently, which has resulted in high level of uncertainty amongst residents in the Rosebery Estate." This statement is dangerously misleading. The 17 houses mentioned here are not the only examples of the covenant not being applied consistently (please refer to points relating to the covenant raised earlier). Every house with render, or Colorbond, or weatherboard, or any two storey element, or secondary dwelling is an example of the covenant not being applied consistently; not just these 17 houses that are mentioned in the EIE. Single storey houses built, renovated or improved since 2008 via the Housing Code can and have also broken the covenant through unpermitted mixes of materials, or been built in a 'character' that is not a Californian or Federation bungalow, however only these 17 have been isolated as examples.

Given the intent of this pause is to remove the benefits of the SEPP, the EIE should provide the number of owners in Rosebery who have improved or built their houses via Complying Development. This number is an active show of support to retain the current planning controls and demonstrates how many homeowners in Rosebery have already benefited from it.

The above statement in Section 2.1 is concerning for a second reason. The EIE is combining information of the number of approvals introduced 'since the Low Rise Housing Diversity Code commenced.... On 1 July 2020' which we would assume to be predominantly dual occupancies, terraces and manor homes, together with the number of 'two storey developments that have been previously been completed using complying development' which would be single dwelling homes as permitted by the Housing Code. This is a very confusing statement that combines the LRHDC with 'some but not all' Housing Code approvals. Those 11 two storey homes are some but not all Complying Development works completed in Rosebery under the Housing Code, but the EIE couples them with the newer approvals via the LRHDC.

The letter issued from Clover Moore's office on 14 December 2020 that advised homeowners of the EIE to pause the SEPP omitted other necessary information related to future processes and timeframes. It mentioned "any current applications under the Codes SEPP will continue to be processed" but did not give a timeframe or process for homeowners to know when applications under the SEPP will cease to be processed. DPIE's EIE also does not provide this important information. This is also causing angst amongst homeowners with the intent to benefit from current approval pathways via the SEPP in the future.

#### THE IMPROVEMENT POTENTIAL OF HOMES IN ROSEBERY ADS TO THEIR VALUE AND THEIR LAND VALUE. RESTRICTING OPTIONS BY EXCLUDING OR PAUSING THE SEPP WILL REDUCE THE VALUE OF PROPERTY IN ROSEBERY.

The original homes in Rosebery have little relevance to today's lifestyle, family structures, work from home requirements or even cars. Families in 2021 require a bedroom for every child, a guest bedroom for visiting relatives and a home office/study. Adult children often still live at home, or grandparents are cared for. If the family would like to retain yard space for children to play, then the only option is a second storey. The SEPP allows homes to be improved or rebuilt using a clear, fair, and consistent pathway that is quicker and cheaper than following a DA process. Council's DCP requiring the second storey to be set back removes valuable habitable room potential, and realistically does not impact on a neighbour's privacy (one of the key resident arguments against the SEPP) as the second storey of the house faces the street.

Cars and parking provisions is a problem for the original houses too. Families today frequently have two or more cars. Many of the original houses may still have a single detached garage at the rear accessed by a long side driveway and it is quite common now that today's family sized cars do not fit down that driveway. The result is that 'Rosebery the Garden Suburb' has become a suburb of concreted front yards with cars parked across them. 'Character' has been cited as a reason for the pause or removal from the SEPP. Please consider how a concreted front yard with multiple cars across it is currently detracting from the character of the streetscape. The SEPP allows a single or double garage home with internal access to be built that satisfies this need and provides a presentable solution allowing the front yard to be planted with a garden.

Under the SEPP and Complying Development, homeowners have choice and an approval process that is clear, fair, consistent and straightforward and this ads potential improvement value to old and unappealing properties in Rosebery. Planning NSW's website <https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Low-Rise-Housing-Diversity-Code/The-Low-Rise-Housing-Diversity-Code> reiterates this point stating (in relation to LRHDC) "The Code promotes faster housing approvals saving homeowners time and money."

Planning NSW's website outlines the many benefits of the Housing Code and gives the following benefits on <https://www.planning.nsw.gov.au/Policy-and-Legislation/Exempt-and-complying-development-policy/The-Housing-Code>

- simple and clear planning rules, with easy-to-follow diagrams
- saving time and money for homeowners
- cutting red tape
- more certainty for certifiers and councils when assessing proposals
- faster and more efficient housing delivery.

Another page on Planning NSW's website <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Complying-development> describes the cost savings for homeowners obtaining approvals under Complying Development as "Approvals under the fast-track complying development pathway can be issued in as little as 20 days. Homeowners can save up to \$15,000 when building a house under complying development, with savings up to \$2,600 for renovations". By taking away this option homeowners in Rosebery will be left out of pocket. It also describes the time savings for homeowners as "Fast-tracked complying development approvals can be issued in as little as 20 days. This compares with the average determination time for a development application of 70 days".

Taking the approval pathways provided by the SEPP away (or pausing for 2 years) will reduce improvement potential of houses in Rosebery, devalue each individual owner's home and reduce the overall value and appeal of the suburb collectively.

#### THE HOUSING CODE AND THE LOW RISE HOUSING DIVERSITY CODE ARE NOT THE SAME AND WERE IMPLEMENTED 12 YEARS APART. THEY SHOULD BE CONSIDERED INDEPENDENTLY AND THE COMMUNITY REQUIRES EDUCATION ON THE DIFFERENCE BETWEEN THE TWO BEFORE PROVIDING FEEDBACK ON EITHER.

The Housing Code has been in force for 13 years since it was introduced in 2008, following a Heritage Study that found that the Rosebery Estate did

not have significant heritage value to constitute a heritage conservation area, and less than 50% of homes were of contributory value. For 13 years homeowners in Rosebery have enjoyed the benefits of Complying Development. Nobody is complaining about the Housing Code.

The LRHDC is very misunderstood, as while it allows dual occupancies, terraces, and manor homes it does not allow high rise apartments – contrary to community messaging. While it appears unpopular in the community (likely due to lack of education), and Council was given two extensions (1/7/2019 - 31/10/2019 and then finally to 1/7/2020) to provide feedback, Council could not provide just reasons for the Rosebery Estate to be exempt and the LRHDC was introduced in 2020.

The LRHDC has been in force for 6 months. The timing of the EIE and desire to pause both codes has likely been triggered by opposition to the LRHDC. Do residents understand the difference between the two codes and that, despite commentary from some Rosebery residents, apartments cannot be built under the LRHDC? Communications from the Rosebery Residents Action Group speaks only of the Low Rise Housing Diversity Code in their letterbox drops to residents (2 letters were distributed in December 2020). Letter 1 states "There is GOOD NEWS resulting from of our well attended community meeting and resident petition: The NSW Government is seeking feedback on the proposal to exempt Rosebery Estate from the planned Low Rise Housing Diversity Code for 2 years." Letter 2 begins "Some very good news last week the NSW Government will be seeking feedback on a proposal to exclude Rosebery Estate from the Low Rise Housing Diversity Code for two years, this was a direct result from the community meeting held on the 12th September 2020 and your support." This small group of residents campaigning to have the Rosebery Estate exempt are speaking only of the LRHDC, and not the Housing Code which was established 13 years ago. Their correspondence infers that the meeting held on 12th September 2020 which was attended by Clover Moore, was related just to the LRHDC, and not the Housing Code that this EIE is also covering.

Miscommunication about what is permissible under the code is common on the Rosebery Residents Action Group Facebook Page too. A post on 11 December 2020 stated "When you don't have good, community-based planning controls in place eventually it becomes a free for all. So far, the large apartment blocks in Rosebery have been situated in the Northern Part of the suburb. This was due to these sites having been Commercial/Industrial sites. When it becomes a free for all (if we want to go down the scaremongering path) this is what eventually happens". An image of a red brick single storey home with tall apartment buildings behind is shown. A later comment to their own post in January states (in relation to a DA Application for a Duplex on Gardeners Road) "if they allow the duplex and double-storey then it is only a matter of time before a developer pushes for mini blocks of units (mansion houses) ..... what we are trying to bring to residents' attention is planning changes might be made that allow unit blocks, mansion houses etc to be built in Rosebery."

The Rosebery Residents Action Group are educating the community incorrectly. In their first letter in December they advised that the LRHDC is 'planned', and on their Facebook Page they are confused by the concept of manor homes. They even call out that they are taking a scaremongering approach in talking about apartments. This further highlights the confusion between the long established Housing Code and the newly introduced LRHDC, even from those who are actively opposed to the LRHDC and taking a position of authority in the community.

Why is the Housing Code which has provided benefit to many homeowners for 13 years being grouped in this proposed 'pause' with the unpopular and misunderstood LRHDC? The two received individual community consultation, and were introduced 12 years apart, so any motion from Council or DPIE to pause or remove either should surely be done as two independent exercises and with clear and separate community consultation.

#### DPIE AND COUNCIL HAVE NOT BEEN TRANSPARENT WITH WHAT WILL HAPPEN DURING OR AFTER THE 2 YEAR PAUSE.

In November 2020, at the same time as the EIE was exhibited, Council applied to DPIE for a Draft Local Character Clause amendment to the LEP (<https://www.planningportal.nsw.gov.au/local-character>). The Local Character Clause, if implemented, will require the Housing Code and LRHDC to comply with the clause. This is essentially another way for Council to control design outcomes as per their DCP. This means there will only be one design option open to homeowners in Rosebery.

It seems underhanded that two related matters are exhibited at the same time but the application for the Draft Local Character Clause amendment has not been mentioned in the EIE for the Rosebery Estate, or via letters from the office of Clover Moore. Why has Clover Moore not mentioned and advised of this to the owners of Rosebery along with communications relating to the Rosebery Estate EIE?

It also seems convenient that the SEPP pause duration of two years may buy time until the Local Character Clause amendment to the LEP can be implemented. If Council is successful in applying a Local Character Clause, and DPIE and Council are successful in applying the pause to the SEPP for 2 years, that means the SEPP and current benefits of the Housing Code and LRHDC as it is today may never return – the pause could be permanent. DPIE, Council and Clover Moore are not being transparent with the community.

For all the points raised in the above submission, the argument for character based on an old and irrelevant covenant is not supported.

#### RECOMMENDATION TO COUNCIL AND DPIE:

1. If DPIE and Council are looking to determine if the covenant is enforceable: Look to the built form in Rosebery for proof of the sentiment of homeowners in Rosebery. Consider the number of houses in Rosebery (over 50% in 2006) that break the covenant as proof that homeowners in Rosebery believe the covenant is no longer valid or enforceable. Also look to their own design controls that do not adhere to it.
2. If DPIE and Council are looking to quantify community support for the SEPP and Housing Code: Publish the number of Complying Development Certificates for any building works that have been issued in Rosebery and consider these as a 'vote' by Rosebery homeowners to retain the current planning controls and oppose the notion of a pause.
3. If DPIE and Council believe there is now more heritage significance in Rosebery than there was in 2006: It is recommended a 2021 Heritage Study of Rosebery is completed.
4. If DPIE and Council want to follow a fair and robust process to reconsider current planning controls: The Housing Code that has existed for 13 years and benefitted many homeowners in Rosebery should be reviewed and treated independently from the LRHDC that has recently been implemented. If planning controls that currently benefit homeowners are being considered to be removed, then community feedback should be sought after a fair and unbiased education process that presents current heritage reports and urban design/architectural advice. This education piece should also detail timeframes and process for the pause and be honest and transparent about the current application by Council to DPIE for a Local Character Clause and how the two interrelate.

I am available to meet with Council or DPIE to further discuss any of the points or recommendations above.

Signed:  
Matthew Scard

**I agree to the above statement**

Yes