INNER WEST COUNCIL

3212

8 December 2016

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NSW Department of Planning & Environment
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SYDNEY NSW 2001

Dear Lynne,

EXPLANATION OF INTENDED EFFECTS –
PROPOSED MEDIUM DENSITY HOUSING CODE
AND DRAFT MEDIUM DENSITY DESIGN GUIDE

The Inner West Council appreciates the opportunity to comment on the Explanation of Intended Effects - Proposed Medium Density Housing Code and the draft Medium Density Design Guide.

The Council's comments in relation to the Explanation of Intended Effects – Proposed Medium Density Housing Code and the draft Medium Density Design Guide are attached to this letter.

The submission includes a number of suggested changes to help address some of the issues identified.

Council trusts the submission assists the Department in its deliberations.

Should you have any enquiries please contact Peter Wotton, Council's Strategic Planning Projects Coordinator, Marrickville on 9335 2260.

Yours Sincerely

Marcus Rowan
Manager, Planning Services, Marrickville
Trim doc: 139222.16

INNER WEST COUNCIL

EXPLANATION OF INTENDED EFFECTS –
PROPOSED MEDIUM DENSITY HOUSING CODE
AND DRAFT MEDIUM DENSITY DESIGN GUIDE

The Explanation of Intended Effects aims to "*outline the proposed amendments to the state policy on exempt and complying development to introduce a new Medium Density Housing Code*."

The document "*forms an explanation of the intended effect of the proposed amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) and the Standard Instrument Local Environmental Plan (SI SEPP).*

The proposed amendments will introduce a new "Medium Density Housing Code" into the Codes SEPP and introduce new definitions into the SI SEPP to support the new Code." (page 5)

The Explanation of Intended Effects states that *"For a type of development to be considered appropriate for approval through the complying development pathway it must:*

- *Be delivered through a simple set of pre-defined measurable development standards*
- *Result in predicable outcomes with predicable impacts*
- *Have minimal scope for impact on adjoining properties"* (page 7)

For the various reasons detailed throughout this submission, the Medium Density Housing Code, as presently proposed, does not satisfy the above prerequisites for those low rise medium density housing types to be "*a type of development considered appropriate for approval through the complying development pathway*".

General comments:

If the aim of the Explanation of Intended Effects was to provide an outline of how the new Medium Density Housing Code will enable the delivery of a range of low rise medium density housing as complying development, the outline contained within the Explanation does not provide a clear indication as to how (and what) the proposed medium density housing legislative amendments are, and how (and when) those amendments are proposed to be implemented.

The Explanation of Intended Effects is not easy to understand, particularly to understand what amendments are proposed to planning legislation, and how those proposed amendments are to deliver the low rise medium density housing forms the policy envisages.

What it is clearly missing in the Explanation is that it gives no indication that consequential amendments are proposed to environmental planning instruments made under the Standard Instrument, apart from the addition of "*manor house*" to the list of terms contained within those instruments.

The Explanation states "*As a new development type, to enable it across NSW it is proposed to allow a manor house as complying development on any land where multi-dwelling housing or a residential flat building is permitted.*" (page 16)

Under the current definitions contained within the Standard Instrument, the term "*manor house*", as proposed, would be a type of "*residential flat building*".

One of the requirements for a development to be "*complying development*" under the Codes SEPP, is that the development must "*be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*." (Clause 1.18 (1) (b) of the Codes SEPP)).

As a type of "*residential flat building*", a "*manor house*" would only be permissible with consent on land, where development for the purposes of a "*residential flat building*", was "*permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*" and therefore potentially being able to be carried out as complying development. That would not be the case where the environmental planning instrument only permitted "*multi-dwelling housing*" on that land.

Consequently amendments would clearly need to be made to environmental planning instruments to facilitate the changes that the proposed policy envisages.

Environmental planning instruments may be made under the Standard Instrument, but the way in which their Land Use Tables are structured in those instruments, and the types of development that are permitted/prohibited within their respective land use zones, are far from standard. In addition, the provisions in environmental planning instruments relating to minimum lot size requirements and/or minimum site requirements for certain forms of residential development vary considerably between instruments. Therein lies the challenge confronting the making of amendments to planning legislation "*to deliver a range of low rise medium density housing*".

The Explanation of Intended Effects states (in part):

> "*The development proposed as complying development is intended to be of a similar scale as a dwelling house that can be currently carried out as complying development under the General Housing Code in the Codes SEPP*." (page 11)

It is hard to comprehend how a medium density housing "*development proposed as complying development*" under the Proposed Medium Density Housing Code would *"be of a similar scale as a dwelling house that can be currently carried out as complying development under the General Housing Code in the Codes SEPP"* when many of the development standards and design standards proposed (those specified in Parts 3.3 to 3.5 inclusive of the Explanation of Intended Effects) set for such developments are not consistent with the development standards set for dwelling houses "*that can be currently carried out as complying development under the General Housing Code in the Codes SEPP".*

Part 1.3 Proposed Development Types

Whilst the Inner West Council is supportive of efforts to "*rationalise* …. (medium density housing) *terms and create a hierarchy to provide better definition to the development types and reduce confusion*" it is contended that the proposed wording of those terms in the 'Explanation of Intended Effects" will not achieve that objective, and if anything, would only add to confusion.

Under the existing defined medium density housing development types in the Standard Instrument, in many cases the only matter that distinguishes one medium density housing development term from another, is whether the definition for that development type requires each dwelling in that development to be "*on its own lot of land*" ("*attached dwellings*" and "*semi-detached dwelling*") or whether the definition for that development type requires all the dwellings to be "*on one lot of land*" ("*dual occupancy (attached)", "dual occupancy (detached)"* and *"multi dwelling housing")*.

The proposed amendments contained in the Statement of Intended Effects, if adopted, would enable the concurrent Torrens title subdivision of some of those medium density housing development types e.g. "*multi-dwelling housing (terraces)*" (or certain forms of those development types such as "*dual occupancy (attached)*" where both dwellings are "*side by side*" (Division 2 –Two dwellings side by side). (page 32)

The concurrent Torrens title subdivision of those medium density housing development types would mean that the resultant development would fall into a different development type under the definitions (terms) contained within the Standard Instrument. For example the concurrent Torrens title subdivision of a "*dual occupancy (attached)"* development, where the dwellings were located side by side, would result in the dwellings contained in that development each constituting a "*semi-detached dwelling*" under the definitions contained within the Standard Instrument.

Under Clause 2.3 (b) of the Standard Instrument "*a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone*".

A policy that permits the concurrent Torrens title subdivision of a "*dual occupancy (attached)"* development, where the dwellings are located side by side, is fundamentally flawed on planning grounds. The implementation of such a policy would have serious Land Use Table implications. This point is best demonstrated by the following Land Use Table examples.

In the Land Use Table for the R2 Low Density Residential zone in the following environmental planning instruments, the medium density housing development type "*dual occupancy (attached)"* is "*Permitted with consent*" whilst the medium density housing development type "*semi-detached dwelling*" is "*Prohibited*":

- Blacktown Local Environmental Plan 2015;
- Camden Local Environmental Plan 2010;
- Hunters Hill Local Environmental Plan 2012;
- Lane Cove Local Environmental Plan 2009;
- Parramatta Local Environmental Plan 2011;
- Pittwater Local Environmental Plan 2014;
- Ryde Local Environmental Plan 2014;
- Sutherland Local Environmental Plan 2015;
- Sydney Local Environmental Plan 2012;
- The Hills Local Environmental Plan 2013; and
- Willoughby Local Environmental Plan 2012.

The same scenario exists in the Land Use Table for the R3 Medium Density Residential Zone in the following environmental planning instruments:

- Ryde Local Environmental Plan 2014;
- Sutherland Local Environmental Plan 2015;
- The Hills Local Environmental Plan 2013; and
- Warringah Local Environmental Plan 2011.

In the R2 Low Density Residential and R3 Medium Density Residential Zone contained within the environmental planning instruments referred to above, the concurrent Torrens title subdivision of a "*dual occupancy (attached)"* development, where the dwellings were located side by side, would change the development from a development "*Permitted with consent*" in the zone to a development that is "*Prohibited*" in the zone. (It would also mean that the development could not be carried out as "*complying development*" as the development would not "*be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*." (Clause 1.18 (1) (b) of the Codes SEPP)).

Apart from the issue of permissibility, in many environmental planning instruments different development standards apply to "*dual occupancy (attached)"* developments than those that apply to "*semi-detached dwellings*" developments.

Similar implications would exist if the concurrent Torrens title subdivision of "*multi dwelling housing (terraces)*" developments was permitted.

In many cases the concurrent Torrens title subdivision of a "*multi-dwelling housing (terraces)*" development would result in the dwellings contained in that development constituting either a "*dwelling house*", "*attached dwelling*" or "*semi-detached dwelling*" under the definitions contained within the Standard Instrument.

In the Land Use Table for the R2 Low Density Residential Zone in the following environmental planning instruments the medium density housing development type "*multi-dwelling housing"* is "*Permitted with consent*" whilst the medium density housing development type "*attached dwellings*" is "*Prohibited*":

- Bankstown Local Environmental Plan 2015;
- Hurstville Local Environmental Plan 2012;
- Lane Cove Local Environmental Plan 2009;
- Ryde Local Environmental Plan 2014; and
- Sutherland Local Environmental Plan 2015.

In the Land Use Table for the R2 Low Density Residential Zone in the following environmental planning instruments the medium density housing development type "*multi-dwelling housing"* is "*Permitted with consent*" whilst the medium density housing development type "*semi-detached dwelling*" is "*Prohibited*":

- Lane Cove Local Environmental Plan 2009;
- Ryde Local Environmental Plan 2014; and
- Sutherland Local Environmental Plan 2015.

In the Land Use Table for the R3 Medium Density Residential Zone in the following environmental planning instruments the medium density housing development type "*multi-dwelling housing"* is "*Permitted with consent*" whilst the medium density housing development type "*semi-detached dwelling*" is "*Prohibited*":

- Blacktown Local Environmental Plan 2015;
- Bankstown Local Environmental Plan 2015;
- Kur-ring-gai Local Environmental Plan 2015;
- Lane Cove Local Environmental Plan 2009;
- Leichhardt Local Environmental Plan 2013;
- Ryde Local Environmental Plan 2014;
- Sutherland Local Environmental Plan 2015;
- The Hills Local Environmental Plan 2013;
- Warringah Local Environmental Plan 2011; and
- Willoughby Local Environmental Plan 2012.

Once again apart from the issue of permissibility, in many environmental planning instruments different development standards apply to "*multi-dwelling housing"* developments than those that apply to other residential development types.

In view of the above the concurrent Torrens title subdivision of "*dual occupancy (attached)*" developments where the dwellings are located side by side and the concurrent Torrens title subdivision of "*multi dwelling housing (terraces)*" developments should not be permitted.

Specific comments on the proposed Medium Density Housing Development Terms:

The following comments are provided in relation to the proposed development types and the new and revised terms.

It is noted that the revised term for "*multi dwelling housing*" and the new term "*multi dwelling housing (terraces)"* in Part 1.3 (page 11) are different to the definition of those terms in "Part 3.7 Definitions" of the document (page 43).

For the purpose of this submission, the comments in relation to the terms relate to the proposed definition of those terms contained within Part 3.7 Definitions of the document.

Manor house

Under the Part 3.7 Definitions, a "*manor house*" is proposed to be defined as follows:

> *"**manor house** means a building containing 3 or 4 dwellings on one lot of land, where:*
>
> *(a) each dwelling is attached to another dwelling by a common wall and / or floor, and*
> *(b) the building contains no more than two storeys, excluding any basement storey."*

Comments:

Firstly, the Discussion Paper and Background Paper "*Options for low rise medium density housing as complying development*" exhibited late last year referred to this development type as "*manor home*" rather than "*manor house*". It is not known the reason for the change. It should also be noted that the documentation on the Department's website under the heading "*Medium Density Housing*" refers to the development type as "*manor home*" and not "*manor house*".

Whilst not expressing a preference for one term than the other, whatever the development term chosen, the terminology used should be consistent in all environmental planning instruments. If the term "*manor house*" is the preferred development type term, then the term "*manor home*" in State Environmental Planning Policy (Sydney Region Growth Centres) 2006 should be amended to "*manor house*" and the definition of the term should be consistent with the definition of that term to be included in the Standard Instrument.

The proposed definition of "*manor house*" as currently worded has some inherent problems in that development that would comply with that definition would also fall under the definitions of other "*residential accommodation*" terms defined in the Standard Instrument. For example some forms of "*residential flat buildings*", "*multi dwelling housing*" and "*multi dwelling housing (terraces)"* could constitute a "*manor house*" under the proposed definition of that term contained within the Explanation.

Part (a) of the definition requires each dwelling within the building to be "*attached to another dwelling by a wall and / or floor*". A "*residential flat building*" would satisfy that prerequisite, and provided that building did not contain more than 4 dwellings and was not more than two storeys, excluding any basement storey, that building would fall within the proposed definition of a "*manor house*".

A "*multi dwelling housing*" development, containing not more than 4 dwellings, where each of the dwellings in the development are attached to another dwelling by a common wall would also satisfy the part (a) prerequisite, and providing that development was not more than two storeys the development would fall within the proposed definition of a "*manor house*". A single storey "*multi dwelling housing*" development, containing not more than 4 dwellings, (such as single storey attached villa homes) would also satisfy the proposed prerequisites for a "*manor house*" as a single storey building is a building that "*contains no more than two storeys*".

One of the requirements in the Medium Density Housing Guide for manor houses is that "*Each dwelling has a frontage to a primary, secondary or parallel road*". (Clause 23 in "Section 3.4G - Orientation and Siting"). It is considered that that requirement should be incorporated into the definition.

"To provide better definition to the development types and reduce confusion" it is recommended that the proposed definition of "*manor house*" be refined including the incorporation of wording at the end of the definition (like that contained in the definition of the term "*manor home*" in State Environmental Planning Policy (Sydney Region Growth Centres) 2006) that the term *"but does not include a residential flat building or multi dwelling housing."*

Suggested wording:

> *"**manor house/home** means a 2 storey building (excluding any basement storey) containing 3 or 4 dwellings on one lot of land, where:*

(a) each storey contains 1 or 2 dwellings,
(b) each dwelling has a frontage to a primary, secondary or parallel road; and
(c) access to each dwelling is provided through a common or individual entry at ground level,

but does not include a residential flat building or multi-dwelling housing".

***Note**. Manor houses/homes are a type of **residential accommodation**—see the definition of that term in this Dictionary."*

Multi dwelling housing

Under the Part 3.7 Definitions, the term "*multi dwelling housing*" is proposed to be defined as follows:

> *"**multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with direct access to the dwelling and private open space at ground level, but does not include a residential flat building."*

Comments:

The inclusion of the word "*direct*" and the requirement that direct access is also required to private open space at ground level in the revised definition of "*multi dwelling housing*" is welcomed.

However the definition is not sufficiently definitive enough to distinguish "*multi dwelling housing*" from other forms of "*residential accommodation*". It is considered that the characteristic which distinguishes a dwelling in a "*multi dwelling housing development*" from a dwelling in other forms of "*residential accommodation*" such as a "*manor house/home*" or "*residential flat building*" is the fact that none of the dwellings contained within such developments are located above any part of another dwelling (except in some circumstances where a dwelling may be located above a communal basement car parking level).

"To provide better definition to the development types and reduce confusion" it is recommended that the amended definition of "*multi dwelling housing*" be refined including the incorporation of a prerequisite that none of the dwellings are located above any part of a another dwelling.

Suggested wording:

> *"**multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, where:*
>
> *(a) none of the dwellings are located above any part of another dwelling (excluding any basement storey), and*
> *(b) each dwelling has direct access to the dwelling at ground level, and*
> *(c) the private open space for each dwelling is provided at ground level with direct access from the dwelling to that private open space,*
>
> *but does not include a residential flat building."*
>
> ***Note**. Multi dwelling housing is a type of **residential accommodation**—see the definition of that term in this Dictionary."*

Multi dwelling housing (terraces)

Under the Part 3.7 Definitions, the term "*multi dwelling housing (terraces)*" is proposed to be defined as follows:

> *"**multi dwelling housing (terraces)** means 3 or more dwellings (whether attached or detached) on one lot of land, each with direct access to the dwelling and private open space at ground level and a frontage to a public road."*

General comments:

Adding this new development term is problematic. It is contended that the new development term would not achieve the Department's objective of rationalising terms and creating "*a hierarchy to provide better definition to the development types and reduce confusion*".

The new term "*multi dwelling housing (terraces)"*, when those terraces are attached, is virtually identical to the existing term "*attached dwelling*" in the Standard Instrument, particularly if "*multi dwelling housing (terraces)*" developments are to be permitted to be concurrently Torrens title subdivided. If all the "*multi dwelling housing (terraces)"* were detached and that development was concurrently Torrens title subdivided the resultant development would be akin to a series of "*dwelling houses*". In a "*multi dwelling housing (terraces)"* development containing 3 dwellings where two of the dwellings were attached and the third dwelling was detached, and that development was permitted to be concurrently Torrens subdivided, the resultant development would be a pair of "*semi-detached dwellings*" and a "*dwelling house*" development.

It is considered that the new term "*multi dwelling housing (terraces)"* would not provide better definition to the development types. The introduction of the new term would add further confusion to the medium density housing development types. In light of the comments provided in the preceding paragraph it is also questioned as to whether there is actually a need to introduce the proposed new term.

Rather than introducing the proposed new term "*multi dwelling housing (terraces)"* maybe a better approach to address the "*policy gap*" for that component of the "*missing middle*" would be to permit "*attached dwellings*" and "*semi-detached dwellings*" to be carried out as "*complying development*" on residentially zoned where "*attached dwellings*" and "*semi-detached dwellings*" are permissible with consent under an environmental planning instrument that applies to that land, and permit the concurrent Torrens title subdivision of those developments.

However there would be issues in instances where one of those development types (within a specified residential zone) is permitted with consent and the other development type is prohibited within that residential zone under the environmental planning instrument applying to that land.

Table 1 below provides a comparison of the permissibility of the medium density housing types in the Land Use Tables of the residential zones contained in the environmental planning instruments that apply to land in the Inner West Council LGA.

Table 1: INNER WEST COUNCIL MEDIUM DENSITY LAND USE TABLE MATRIX (RESIDENTIAL ZONES)

Council	R1 General Residential	R2 Low Density Residential	R3 Medium Density Residential	R4 High Density Residential
Ashfield (2013)	N/A	Open zone	Open zone	N/A
Residential accommodation		**NO** (listed)		
Attached dwellings		NO	YES (listed)	
Dual occupancy				
dual occupancy (attached)		YES (listed)	YES (listed)	
dual occupancy (detached)		NO	NO	
Manor houses		NO	YES	
Multi dwelling housing		NO	YES (listed)	
Multi dwelling housing (terraces)		NO	YES	
Residential flat buildings		NO	YES	
Semi-detached dwellings		YES (listed)	YES	
Leichhardt (2013)	Open zone	N/A	Open zone	N/A
Residential accommodation			**NO** (listed)	
Attached dwellings	YES (listed)		YES (listed)	
Dual occupancy	YES		NO	
dual occupancy (attached)	YES		NO	
dual occupancy (detached)	YES		NO	
Manor houses	YES		NO* (without change to the land use table to list "manor houses" as "Permitted with consent"	
Multi dwelling housing	YES (listed)		YES (listed)	
Multi dwelling housing (terraces)	YES		YES	
Residential flat buildings	YES (listed)		YES (listed)	
Semi-detached dwellings	YES (listed)		NO	
Marrickville (2011)	Open zone	Open zone	Open zone	Open zone
Residential accommodation				**NO** (listed)
Attached dwellings	YES (listed)	YES (listed)	YES (listed)	NO
Dual occupancy	**NO** (listed)	**NO** (listed)	**NO** (listed)	**NO** (listed)
dual occupancy (attached)	NO	NO	NO	NO
dual occupancy (detached)	NO	NO	NO	NO
Manor houses	YES	NO	YES	NO
Multi dwelling housing	YES (listed)	YES* (but only where it relates to a building that was designed and constructed for an industrial or warehouse purpose – Clause 6.9)	YES (listed)	NO
Multi dwelling housing (terraces)	YES	NO* (but only if the development is required to be "*permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*," rather permissible in the land use zone it is carried	YES	NO

		out.)		
Residential flat buildings	YES (listed)	YES* (but only where it relates to a building that was designed and constructed for an industrial or warehouse purpose – Clause 6.9)	YES* (but only where it relates to a building that was designed and constructed for an industrial or warehouse purpose – Clause 6.9)	YES (listed)
Semi-detached dwellings	YES (listed)	YES (listed)	YES	NO

Specific comments:

Similar comments to those made in relation to the revised definition of "*multi dwelling housing*" apply to the proposed definition of "*multi dwelling housing (terraces)".*

The inclusion of the words "*and a frontage to a public road"* in the definition is also problematic. Whilst the intent of the inclusion of those words is understood their inclusion could lead to some unfortunate planning outcomes because the term "*public road*" is very broad.

The term "*public road*" is not defined under the Standard Instrument.

Under the Environmental Planning and Assessment Act a "*public road*" is defined as follows:

> ***"public road** has the same meaning as in the Roads Act 1993."*

Under the Roads Act 1993 a "*public road*" is defined as follows:

> *"**public road** means:*
> *(a) any road that is opened or dedicated as a public road, whether under this or any other Act or law, and*
> *(b) any road that is declared to be a public road for the purposes of this Act."*

From a Standard Instrument perspective the term "*public road*" would be a "parent term". Types of public roads include main roads, highways, freeways, tollways, parallel roads, primary roads, secondary roads and lanes. It is contended that "*multi dwelling housing (terraces)*" with a frontage to some those "public roads" would not be appropriate.

In addition the information contained within the Explanation relating to this development type "*frontage to a public road*" is inconsistent and confusing. On page 13 the requirement is that "*Each dwelling must have a frontage to a primary road.*" Under the Detailed Design controls on page 24 "*Each dwelling is required to have a frontage to a primary, secondary or parallel road*".

From the Explanation of Intended Effects it is understood that the intention to create a separate development category of "*multi dwelling housing (terraces)*" is to enable that form of development to be carried out as complying development subject to meeting "*pre-defined measurable development standards*".

It is contended that one of the characteristics which distinguishes "*multi dwelling housing (terraces)*" from the parent term "*multi dwelling housing*" is that all the dwellings in such developments must front the street, as opposed to "*multi dwelling housing*" developments such as "*mews style, townhouses, villas where each dwelling does not have a frontage to the street*".

If the term "*multi dwelling housing (terraces)"* is to be retained, to address the issues raised above it is suggested that the term be defined as follows:

> *"**multi dwelling housing (terraces)** means 3 or more dwellings (whether attached or detached) on one lot of land, where:*
>
> *(a) none of the dwellings are located above any part of another dwelling (excluding any basement storey), and*
> *(b) each dwelling has direct access from the street to the dwelling at ground level, and*
> *(c) the private open space for each dwelling is provided at ground level with direct access from the dwelling to that private open space,*
>
> *but does not include an attached dwelling, residential flat building or semi-detached dwelling."*
>
> ***Note**. Multi dwelling housing (terraces) are a type of **multi dwelling housing**—see the definition of that term in this Dictionary."*

Note:

The wording of the existing terms in the Standard Instrument Dictionary relating to the medium density housing spectrum should be reviewed in light of the amendments proposed "*to provide better definition to the development types and reduce confusion*".

The Standard Instrument defines a residential flat building as follows:

> *"**Residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing."*

If the term "*manor house/home*" is to be included in the Standard Instrument Dictionary, to avoid confusion the term "*residential flat building*" should be amended to read:

> *"**Residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling, manor house/home or multi dwelling housing."*

The tense in part (c) of the definition of "*attached dwellings*" should be corrected with the definition amended to read as follows:

> "**attached dwelling** means a building containing 3 or more dwellings, where:
>
> (a) each dwelling is attached to another dwelling by a common wall, and
> (b) each of the dwellings is on its own lot of land, and
> (c) none of the dwellings ~~is~~ are located above any part of another dwelling.

Table 2: Specified Complying Development

Table 2 lists the following development types as "Specified Complying Development:

i. Two dwellings side by side (attached);
ii. Two dwellings (detached);
iii. Multi Dwelling housing (terraces);
iv. Dual Occupancy (attached – one above the other) and Manor Houses (3-4 dwellings) (pages 12 and 13)

Some of the development types listed as Specified Complying Development do not relate to defined terms (existing or proposed) in the Standard Instrument. It should also be noted that one of the development types listed ("Two dwellings (detached)") is not referred to in "Part 3 Development Standards" in the Explanation of Intended Effects. If that development type is proposed to be a form of development being considered for "*complying development*" the Explanation of Intended Effects needs to include development standards and design standards for that development type.

Part 1.4 The Role of the Design Guide

It is pleasing to see that a Medium Density Design Guide (MDDG) has been developed to encourage best practice design of low rise medium density dwellings. Whilst no objection is raised in principle to a design guide for medium density residential developments the following points are made.

Firstly a number of controls contained within the document are inconsistent with the principal development standards and design standards specified in the Explanation of Intended Effects for some residential development types. It is unclear what the intended controls are proposed to be.

Secondly some of the controls proposed for the various medium density housing development types have thresholds not appropriate for that particular development type, for example the control contained in Clause 65 relating to manor houses specifies a control for lot widths < 7.5m. The controls in the MDDG need to be reviewed to ensure that they are appropriate for the medium density housing development type.

Some of the controls in the MDDG are also inconsistent with the controls that apply to other similar types of development under Part 3 General Housing Code, for example the controls for detached studios. Some of the controls are also inconsistent with the controls in other planning documents such as the Apartment Design Guide, for example the proposed minimum dwelling size for 2 bedroom and 3 bedroom dwellings are over 25% greater than the minimum size specified for those dwellings in the Apartment Design Guide. Apart from the controls being inconsistent, the additional dwelling size requirement raises issues in relation to affordability.

The solar and daylight access control requirements proposed are also different to those contained in the Apartment Design Guide in that the ADG specifies a minimum 3 hours direct sunlight between 9.00am and 3.00pm at mid winter in areas outside the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas (Objective 4A-1). Whilst on the issue of solar and daylight access controls it is considered that Clause 32 of the manor house and dual occupancy (attached) where one dwelling is located above another controls, should apply to the living room or private open space of all dwellings within that development, not just 75% of those dwellings as currently proposed.

Some of the controls in the MDDG are also expressed in a different manner to the way the controls are expressed in other sections of the Codes SEPP, for example the controls relating to FSR. The proposed controls in the Explanation of Intended Effects and the MDDG for the medium density housing development types are specified as "Maximum FSR" whereas the controls in Part 3 General Housing Code of the Codes SEPP are specified as a percentage of the area of the lot for different lot size ranges.

The controls in all environmental planning instruments need to be expressed in a consistent manner. A decision needs to be made whether the controls are expressed in the manner as set out in the "New Simplified Housing Code" or expressed in the manner set out in the MDDG and then once that decision is made, expressed consistently in that manner throughout the Codes SEPP and the MDDG (and in other environmental planning instruments where residential development is permitted to be carried out as complying development, such as "*secondary dwellings*" and "*group homes*" under the Affordable Rental Housing SEPP).

All the controls within Part 3, Part 3A, Part 4 of the Codes SEPP and the proposed Medium Density Housing Code need to be reviewed to ensure consistency with the development standards and design standards set for the respective development types including the standards set for any attached ancillary development or detached development associated with the respective residential development types.

The Explanation of Intended Effects states that "*It is not proposed that the MDDG would automatically override council controls. Council would need to adopt the MDDG by reference within a development control plan…..Where a council does adopt the MDDG it is to be adopted in its entirety…..Where council does adopt the MDDG it will still need (to) prepare the principal development standards that include height, floor space ratio, landscaped area and setbacks.* " (pages 7 and 8)

The MDDG states that:

> *"The purpose of this Design Guide is intended to inform the strategic planning of a local area and assist councils and communities to determine the future form of development in the area. Part 2 provides specific guidance for developing local controls…..*
>
> *The future character of an area is to be determined by the local council and community. The Design Guide encourages a design-led strategic planning process to determine the type, scale and built form of medium density housing permitted in an area.*
>
> *The development controls established as a result of this process will be expressed in the Local Environmental Plan (LEP) and Development Control Plan (DCP) that applies to the site."* (page 6)

Principal development standards relating to height and floor space ratio are contained within environmental planning instruments and in the case of Leichhardt LEP 2013, a principal development standard relating to landscaped areas for residential accommodation in Zone R1 is contained within that instrument (Clause 4.3A). A planning proposal would be required to make any amendments to those development standards.

Adopting the MDDG by reference within a development control plan would require an amendment to be made to that DCP. Amendments to DCPs are required to follow the procedures as outlined in the Environmental Planning and Assessment Act.

Making amendments to a Council's planning controls are now considerably more complex than at the time when the Discussion Paper and Background Paper "*Options for low rise medium density housing as complying development*" was released because many councils have subsequently been amalgamated.

The provisions and development standards contained within environmental planning instruments vary considerably including the way in which Land Use Tables are structured in those instruments, and the types of development that are permitted/prohibited within respective land use zones and the requirements relating to minimum lot size and/or minimum site requirements for certain forms of residential development.

There are also considerable differences between the environmental planning instruments that apply to land within the newly amalgamated council areas.

The Inner West Council has commenced work on harmonising the three environmental planning instruments that apply to land in the Council area. There are considerable differences and inconsistences between those three environmental planning instruments. For example, there are a total of 360 differences in what is permitted with consent or prohibited in the Land Use Tables for the respective zones contained within the 3 environmental planning instruments that apply to land in the council area. Some of those differences relate to the permissibility of certain medium density housing development types (refer to Table 1). For example all forms of dual occupancy development are prohibited under Marrickville LEP 2011 whereas "*dual occupancy (attached)*" development is permitted in certain residential zones under Ashfield LEP 2013 and Leichhardt LEP 2013.

There are also considerable differences between the three Development Control Plans that apply to land in the Inner West Council, including differences in the planning controls and design guidelines that relate to low rise medium density housing development types.

Council's limited strategic planning resources are focusing on harmonising the existing environmental planning instruments and development control plans that apply to land in the Inner West Council area into a single environmental planning instrument and a single development control plan.

To expect a Council to divert its strategic planning resources to prepare three separate planning proposals to amend the development standards relating to medium density housing types in the each of those environmental planning instruments and to prepare amendments to the controls and design guidelines relating to such development in each of the respective Development Control Plans is totally unrealistic, especially at a time when those resources should be focused on harmonising the existing controls to create a new environmental planning instrument and a new development control plan for the entire Council area.

On a separate note it is questioned as to why, where a council adopts the MDDG, the MDDG has to be adopted in its entirety, particularly in the short term for those councils that have been amalgamated.

Presumably where more than one environmental planning instrument applies to the land in an amalgamated council area, a Council could adopt the MDDG for that part of its area where one and/or more than one, but not all, of those environmental planning instruments apply. For example with "*dual occupancy (attached)*" developments being permitted with consent in certain residential zones under Ashfield LEP 2013 and Leichhardt LEP 2013 and all forms of dual occupancy development prohibited under Marrickville LEP 2011 it would make little sense for a council to adopt a guide that includes specific provisions relating to a form of development that is prohibited in all residential zones under an environmental planning instrument that applies to land in the council area. The above example also

demonstrates issues relating to the requirement that if adopted, the MDDG has "*to be adopted in its entirety*."

Implementation issues

The Explanation of Intended Effects does not contain any details in relation to the implementation of the proposed amendments. It is clear from the Explanation that a council "*will still need to prepare the principal development standards that include height, floor space ratio, landscaped area and setbacks*".

A planning proposal would be required to make any amendments to those development standards contained in environmental planning instruments. Regardless whether a council adopts the Medium Density Housing Guide changes would be required to be made to a council's Development Control Plan(s) because the proposed amendments contain new development types (such as "*manor houses*") that did not exist when those Development Control Plans were prepared and consequently the development control plan(s) do not contain provisions/controls relating to the new development types. There may also be a need for a council to amend its Contribution Plan to set contributions for the new development type.

The Explanation of Intended Effects does not state whether the proposed Medium Density Housing Code is intended to be incorporated into the Codes SEPP before the principal development standards prepared by Councils have been incorporated into their respective environmental planning instrument(s) and development control plan(s).

Changes to planning policy need to be carried out in a holistic manner. From a planning perspective it would not be a good practice to introduce new forms of complying development into the Codes SEPP until the principal development standards prepared by Councils have been incorporated into their respective environmental planning instrument(s), especially considering that some of the requirements that need to be met for a development to be complying development relate to standards contained within those environmental planning instruments.

Part 1.5 (first Part 1.5) Permissibility

The example provided to demonstrate medium density housing permissibility under the proposed amendments "*To construct a dual occupancy as complying development, dual occupancies must be permitted development in the zone that applies to the land*. ….."(page 16) is very poorly chosen and not well thought out.

Firstly, the parent term "*dual occupancies*" should not be used in the example. That is especially the case as it would appear that the only type of dual occupancy being considered to be able to be carried out as complying development under the proposed amendments are "*dual occupancy (attached)*". It is acknowledged that that may not necessarily be the case (dependent on which part of the Explanation of Intended Effects is relied upon) but based on Part 3 Development Standards of the document, the only type of dual occupancies being considered for complying development are "*dual occupancy (attached)"* where the dwellings are either located "*side by side*" (Division 2) or "*one dwelling over the other*" (Division 4).

It should also be noted that the term "*dual occupancies*" is listed (either directly or indirectly by the listing of the parent term "*residential accommodation*") as prohibited in the Land Use

Tables in many zones in environmental planning instruments. In some of those instruments only the child term "*dual occupancy (attached)"* is permitted with consent within the zone.

The example also implies that to be "*complying development*" the development "*must be permitted development in the zone that applies to the land."* That is not necessarily always the case.

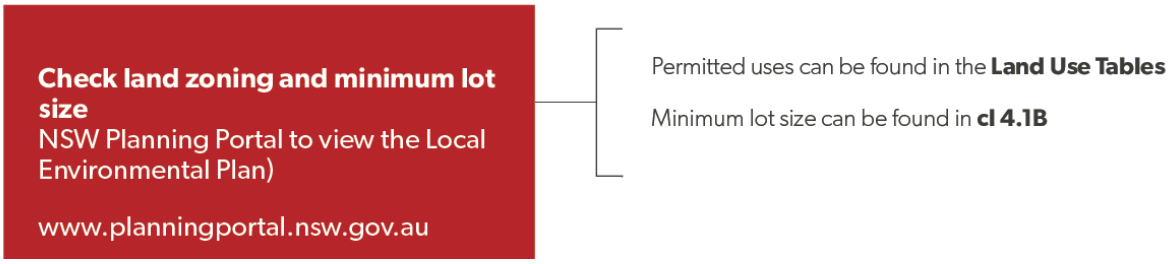
It is not always the case because of the way the Department specified that LEP Land Use Tables had to be set up under the Standard Instrument, which required the listing of certain uses in the land use tables as "*Permitted with consent*" when those uses are only permitted in specific circumstances.

This is probably best explained by giving an example. Under Marrickville Local Environmental Plan 2011 (MLEP 2011) "*multi dwelling housing*" and "*residential flat buildings*" are permitted with consent under the Land Use Table for the R2 Low Density Residential zone. However by virtue of Clause 6.9 of MLEP 2011, "*multi dwelling housing*" and "*residential flat buildings*" developments are only permitted on land within that zone where "*the development relates to a building that was designed and constructed for an industrial or warehouse purpose, and was erected before the commencement of this Plan*." The same scenario exists in the R2 Low Density Residential zone under Botany Bay Local Environmental Plan 2013 where "*multi dwelling housing*" and "*residential flat buildings*" are permitted with consent under the Land Use Table for the R2 Low Density Residential zone but those development types are only permitted on land within that zone where the development is "*a building that was designed and constructed for, or on land that, on the commencement of this Plan, was used for, a purpose other than residential accommodation.*" (Clause 6.11).

Under the Codes SEPP one of the prerequisites for a development to be "*complying development*" is that the development type must "*be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*." (Clause 1.18 (1) (b) of the Codes SEPP)

Consequently under the Codes SEPP to be complying development it is not a case that the development must be permissible with consent in the land use zone in which it is carried out, it is the case that the development must be permissible with consent **on the land** under the environmental planning instrument applying to that land.

Note:
The issue raised above has serious implications for the "Steps for Preparing a CDC" detailed on page 8 of the Medium Density Design Guide, an extract of which is produced below:



The land zoning of a property and the Land Use Table for that zone can be checked on the NSW Planning Portal.

However what needs to be stressed is that whilst the land zoning and the Land Use Table for that zone can be checked on the Planning Portal, reliance solely on the information available from the Portal does not necessarily mean that a particular type of development is "*permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*." (Clause 1.18 (1) (b) of the Codes SEPP)

As discussed previously, certain development types, whilst listed as permitted with consent in the Land Use Table for the zone, are only permitted in specific circumstances under some environmental planning instruments, for example "*multi dwelling housing*" and "*residential flat buildings*" in the R2 Low Density Residential zone under MLEP 2011.

In addition certain development types may be prohibited under the Land Use Table for the zone, but may be a development type permitted with consent under Schedule 1 of that environmental planning instrument as "additional permitted uses for particular land" (Clause 2.5).

The Explanation of Intended Effects states that:

> *"It is proposed to amend the Standard Instrument LEP to add the manor house, which is currently not a defined term.*
>
> *As a new development type, to enable it across NSW it is proposed to allow a manor house as complying development on any land where multi-dwelling housing or a residential flat building is permitted.*
>
> *Further it is proposed to restrict complying development to R1, R2, R3 and RU5 land use zones. R4 zoned land is excluded as typically larger scale residential flat buildings are anticipated in this zone."* (page 16)

By virtue of the above it is presumed that, in the case of "*complying development*", the "*any land*", where "*manor houses*" would potentially be able to be carried out as complying development, only means land zoned R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential or RU5 Village, and only where "*multi-dwelling housing or a residential flat building is permitted"* on that land.

It is unclear from the Explanation of Intended Effects as to how the Department intends to make "*manor houses*" a type of development "*Permitted with consent*" on all "*land where multi-dwelling housing or a residential flat building is permitted."*

A manor house, "*being a building containing 3 or more dwellings*" and not being an "*attached dwelling*" or "*multi dwelling housing*", would constitute a "*residential flat building*" under the definitions currently contained within the Standard Instrument. "*Residential flat buildings*" are a type of development that is "*Prohibited*" in the R2 Low Density Residential zone in all 39 environmental planning instruments that apply to land in the Sydney metropolitan area that contain the R2 zone (NB Leichhardt LEP 2013 does not contain the R2 Low Density Residential zone). "*Residential flat buildings*" are a type of development that is prohibited in the R3 Medium Density Residential zone in 18 of 39 of those instruments which contain the R3 zone.

Apart from stating that "*It is proposed to amend the Standard Instrument LEP to add the manor house, which is currently not a defined term."* (page 16), the Explanation of Intended

Effects does not include specific details as to how the relevant planning legislation is proposed to be amended to address permissibility issues.

Specifically, the Explanation of Intended Effects does not give any indication as to whether any amendments are proposed to be made to the Land Use Tables of environmental planning instruments. It is contended that in the case of most environmental planning instruments where the Land Use Table for the zone is a "closed zone" as opposed to an "open zone", that a "*manor house*" would not "*be permissible, with consent, under an environmental planning instrument applying to the land",* and as such would not be able to be carried out as "*complying development*". The only exception would be where an environmental planning instrument lists the parent term "*residential accommodation*" as "*Permitted with consent*" in the Land Use Table for the zone. Some environmental planning instrument's Land Use Tables with "open zones" list the parent term "*residential accommodation*" as "*Prohibited*" in the Land Use Table for the zone. A "*manor house*" would be prohibited within those zones regardless as to whether "*multi dwelling housing*" or a "*residential flat building*" is permitted on that land under that environmental planning instrument.

It is considered inappropriate "*to publicise an explanation of the intended effect of the proposed instrument and to seek and consider submissions from the public on the matter*" when the "Explanation of Intended Effects" does not provide a clear indication or understanding as to how the amendments proposed are to be implemented. To have any meaningful public consultation, the Explanation of Intended Effects needs to be perfectly clear and outline what amendments are proposed to the state policy on exempt and complying development, the Standard Instrument, and if any consequently amendments are proposed to environmental planning instrument(s) made under the Standard Instrument, what those amendments are.

As discussed previously, without any consequently legislative changes, including changes to the Land Use Tables in environmental planning instruments, a "*manor house*" development, being a type of "*residential flat building*" development, would only be potentially able to be carried out as complying development on land where development for the purposes of a "*residential flat building*" was "*permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*."

As development for the purposes of a "*residential flat building*" is not a type of development that is "*permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out*" on land zoned R2 Low Density Residential in any of the environmental planning instruments that apply to land in the Sydney metropolitan area, a "*manor house*" development could not be carried out as complying development on land zoned R2 Low Density Residential under those instruments.

It should be noted that if "*manor houses*" were to be made a mandated "permitted with consent" use in those residential zones (R1, R2 or R3), where "*multi-dwelling housing*" is a type of development that is "*permissible, with consent, under an environmental planning instrument applying to the land",* in the R2 Low Density Residential zone in all but 7 of 39 instruments that apply to land in the Sydney metropolitan area "*manor houses*" would be prohibited.

As "*residential flat buildings*" are a mandated permitted with consent use in the R1 General Residential zone under the Standard Instrument "*manor houses*" could be made a mandated permitted with consent use in that zone under the Standard Instrument.

The Explanation of Intended Effects advised that the Department intends to exclude "*manor house*" developments from the R4 High Density Residential zone "*as typically larger scale residential flat buildings are anticipated in this zone*" (page 16). To achieve that objective the term "*manor house*" should be mandated as "*Prohibited*" in the R4 High Density Residential zone under the Standard Instrument.

Under the Standard Instrument neither "*multi dwelling housing*" or "*residential flat buildings*" are mandated "*Permitted with consent*" uses in the R2 Low Density Residential zone. As discussed previously "*Residential flat buildings*" are a type of development that is "*Prohibited*" in the R2 Low Density Residential zone in all 39 environmental planning instruments that apply to land in the Sydney metropolitan area that contain the R2 Low Density Residential zone.

"*Multi dwelling housing*" is type of development that is permissible with consent in the R2 Low Density Residential zone in only 7 of those environmental planning instruments. If "*manor houses*" were to be permitted with consent in the R2 Low Density Residential zone in those environmental planning instruments, the Land Use Table for the R2 Low Density Residential zone in each of those instruments would need to be amended individually, as the change could not be made via amendments to the Standard Instrument.

Notwithstanding the above, "*manor houses*" are considered an inappropriate type of development for land zoned R2 Low Density Residential, regardless whether an environmental planning instrument permits "*multi dwelling housing*" on that land. The inappropriateness of that form of development on land zoned R2 Low Density Residential is acknowledged/recognised in existing planning legislation. For example the Standard Instrument has not mandated "*residential flat buildings*" as a use permitted with consent in the zone. (In addition the Standard Instrument has not even mandated "*multi dwelling housing*" as a use permitted with consent in that zone). It is also noted that "*manor homes*" were considered inappropriate in the R2 Low Density Residential zone under State Environmental Planning Policy (Sydney Region Growth Centres) 2006. Of the 12 Precinct Plans listed in the Appendices of that SEPP, eleven of the Precinct Plans listed contain controls relating to residentially zoned land. All but one of those precincts contain land zoned R2 Low Density Residential. "*Manor homes*" are a prohibited form of development in the R2 Low Density Residential zone in all of those planning precincts.

As a separate matter it is stressed that the introduction of any new terms into the Standard Instrument Dictionary has to be approached with a great deal of caution because the introduction of a new term(s) can have significant implications/ramifications or unforeseen consequences for the Land Use Tables for specified zones contained in "*Part 2 Permitted or prohibited development*" of environmental planning instruments made under the Statement Instrument, particularly where the Land Use Table for the zone is an "open zone" as opposed to a "closed zone".

The introduction on new residential terms would have implications not just to the residential zones contained within environmental planning instruments. This is probably best illustrated by giving an example using the Land Use Tables for the B1 Neighbourhood Centre, B2 Local Centre and B4 Mixed Use zones in the environmental planning instruments that apply to land in the Inner West Council. Each of those 3 zones is contained in Ashfield Local Environmental Plan 2013, Leichhardt Local Environmental Plan 2013 and Marrickville Local Environmental Plan 2011. All of those zones in the respective instruments are "open zones".

Table 2 provides an analysis of the implications of the inclusion of the terms "*manor house*" and "*multi dwelling housing (terraces)"* in the Standard Instrument Dictionary (with no changes to the current Land Use Tables for the respective business zones):

Table 2: INNER WEST COUNCIL MEDIUM DENSITY LAND USE TABLE MATRIX (CERTAIN BUSINESS ZONES)

	ASHFIELD		**LEICHHARDT**		**MARRICKVILLE**	
B1 NEIGHBOURHOOD CENTRE ZONE						
	Open zone		**Open zone**		**Open zone**	
	Permissibility	Notes	Permissibility	Notes	Permissibility	Notes
residential accommodation	**NO** (listed)				**NO** (listed)	
dual occupancies	NO		YES (listed)		NO	
dual occupancy (attached)	NO		YES		NO	
dual occupancy (detached)	NO		YES		NO	
manor houses	NO		YES		NO	
multi dwelling housing	NO		YES (listed)		NO	
multi dwelling housing (terraces)	NO		YES		NO	
residential flat buildings	NO		YES (listed)		NO	
B2 LOCAL CENTRE ZONE						
	Open zone		**Open zone**		**Open zone**	
	Permissibility	Notes	Permissibility	Notes	Permissibility	Notes
residential accommodation	**NO** (listed)				**NO** (listed)	
dual occupancies	NO		YES (listed)		NO	
dual occupancy (attached)	NO		YES		NO	
dual occupancy (detached)	NO		YES		NO	
manor houses	NO		YES		NO	
multi dwelling housing	NO		YES (listed)		NO	
multi dwelling housing (terraces)	NO		YES		NO	
residential flat buildings	NO		YES (listed)		NO	
B4 MIXED USE ZONE						
	Open zone		**Open zone**		**Open zone**	
	Permissibility	Notes	Permissibility	Notes	Permissibility	Notes
residential accommodation			**NO** (listed)		**NO** (listed)	
dual occupancies	YES		NO		NO	
dual occupancy (attached)	YES		NO		NO	
dual occupancy (detached)	YES		NO		NO	
manor houses	YES		NO		NO	
multi dwelling housing	YES		NO		NO	
multi dwelling housing (terraces)	YES		NO		NO	
residential flat buildings	YES		YES (listed)		NO	

No doubt the same scenarios identified above would exist in other environmental planning instruments. If new terms such as "*manor house/home*" are to be introduced into the Standard Instrument, the Land Use Tables in each environmental planning instrument would need to be individually reviewed and appropriate amendments made where necessary.

Part 1.5 (second Part 1.5) Subdivision

Concurrent consent for dwelling and subdivision

The explanation states (in part) that many councils have provisions in their LEPs "*that allow…..or a concurrent subdivision of two or more dwelling houses where the minimum lot size does not equal the standard for subdivision alone*."

Clause 4.1 of the Standard Instrument is an optional clause. Most environmental planning instruments (37 out of 40) that apply to land in the Sydney metropolitan area contain the Standard Instrument optional Clause -"4.1 Minimum subdivision lot size".

The minimum lot size requirements in those instruments are specified in a number of different ways, including specifying different minimum lot size requirements dependent on location. Some instruments contain "Lot Size Maps" as well as a "Lot Size for Dual Occupancy Development Maps". Other instruments specify minimum site requirements for dual occupancy developments, some specify different minimum site requirements dependent on the zoning of the land and some specify separate minimum site requirements for "*dual occupancy (attached)*" and "*dual occupancy (detached)"* development. Some instruments include clauses specifying minimum lot requirements or minimum density requirements for certain types of medium density housing. In many cases those minimum site requirements are specified in the written instrument and not the "Lot Size Map".

The Explanation of Intended Effects states that "*A new standard instrument clause would ensure a uniform approach across NSW. The new format will be required as councils make amendments to their local environmental plans in the future."* (page 19)

The proposed new standard instrument clause reads as follows:

"***4.1C Concurrent consent for development and subdivision [optional]***

(1) The objective of this clause is are:
- *(a) encourage housing diversity without adversely impacting on residential amenity, and*
- *(b) to ensure that lot sizes are consistent with the predominant subdivision pattern of the area and maintain a low density residential character in existing neighbourhoods.*

(2) This clause applies to land in the following zones:

(3) [insert land use zones] AND OR

(4) Identified as "Area [insert number]" on the Lot Size Map

(5) Despite clause 4.1 consent may be grated (sic) to a single application to which this clause applies that is both of the following;
- *(a) the subdivision of land into 2 lots*
- *(b) the erection of a dwelling house, attached dwelling or semi-detached dwelling on each lot resulting from the subdivision if the size of each lot is equal to or greater than:*
  - *(i) for the erection of an attached or semi-detached dwelling – [insert number more than less 60]% of the area on the lot size map in relation to that land, or*

(ii) For the erection of a dwelling house-[insert number more than less 75]% of the area on the lot size map in relation to that land, or"

The wording of the proposed clause shown above is confusing to say the least. The last clause finishes with the word "*or*". It is not known whether additional provisions are intended for the clause or whether this is a typo. The instruction for inserting a number *"[insert number more than less…]"* in subclauses (5) (b) (i) and (ii) is perplexing especially with the wording "*is equal to or greater than*" that appears before those subclauses. The wording also is at odds with the wording of Clause (d) in Part 6 – Subdivision Code on page 41 of the Explanation of Intended Effects.

As detailed above the provisions relating to minimum lot size requirements and/or minimum site requirements for certain forms of residential development vary considerably between instruments with some instruments containing different requirements for land in their area dependent on location or different minimum site requirements dependent on development type or the zoning of the land.

The residential subdivision pattern of an area forms an integral part of the character of its area. Residential subdivision patterns are wide and varied both within local government areas and between local government areas.

The minimum lot size requirements and/or minimum site requirements for certain forms of residential development specified in environmental planning instruments have been specifically formulated to ensure good planning outcomes and take into account the unique context and neighbourhood character of areas, built form and scale and subdivision patterns and character variations between residential areas.

There is an important relationship between lot size and built form scale in residential areas. A planning policy that permits the subdivision of land into lots well below the minimum site requirements specified in an environmental planning instrument would seriously harm that relationship and has the potential to cause significant impacts on the character of many residential areas where the character of the area is based on its fine grained subdivision pattern.

It is incongruous that a clause which has an objective "*to ensure that lot sizes are consistent with the predominant subdivision pattern of the area and maintain a low density residential character in existing neighbourhoods" (objective 1(b))* would allow the erection of certain types of residential development on lots of land well below the minimum site requirements set under the environmental planning instrument applying to that land.

It should also be noted that the provisions contained in Proposed Clause 4.1C are based on "Lot Size Map". As detailed previously some environmental planning instruments have a "Lot Size Maps" as well as a "Lot Size for Dual Occupancy Development Maps", and in some instruments the minimum site requirements for certain forms of medium density housing types are contained in the written instrument and not the "Lot Size Map". If the proposed clause is to be included it needs to be amended to include requirements that take into account the provisions relating to minimum site requirements for various forms of medium density housing contained within those environmental planning instruments.

Proposed Clause 4.1C is listed as an optional clause but the wording before the proposed clause states that "*The new format* (Clause 4.1C) *will be required as councils make*

amendments to their local environmental plans in the future" suggests that the clause will not be made optional.

It is considered that a clause relating to the concurrent consent for development and subdivision should not be a mandated clause especially in those environmental planning instruments that have not adopted the optional "Clause 4.1 Minimum subdivision lot size" Standard Instrument clause.

As a separate note, it is considered that in the case of those environmental planning instruments that do not contain the optional "Clause 4.1 Minimum subdivision lot size" clause that the respective Councils should be given the opportunity to determine whether to now include the subject clause in light of the amendments proposed.

3.2 Structure

Medium Density Housing Code

The Medium Density Housing Code is proposed to be broken up into the following divisions:

> "*Division 1: Requirements for complying development under the Medium Density Housing Code*
> *Division 2: New dual occupancies*
> *Division 3: New multi-dwelling terraces*
> *Division 4: Manor houses and new attached dual occs (one over the other)*
> *Division 5: Tertiary development standards"* (page 31)

The following comments are provided in relation to each of those Divisions.

Division 1

The Explanation of Intended Effects does not contain Division 1. It is imperative that the public knows what the proposed requirements for complying development under the Medium Density Housing Code are. Without those requirements how could it be reasonably argued that the Explanation of Intended Effects document provides an adequate explanation of the intended effect of the proposed instrument in accordance with the requirements under Section 38 of the Environmental Planning and Assessment Act.

3.3 Division 2 – Two Dwellings Side by Side

In the proposed structure of the Medium Density Housing Code Division 2 is titled "New dual occupancies". Under Section 3.3 of the Explanation Division 2 is titled "*DIVISION 2 – TWO DWELLINGS SIDE BY SIDE*". (page 32)

To be in accordance with the development terms in the Standard Instrument and the intent of the amendment the title of the Division should be amended to read "Division 2 – Dual occupancy (attached) where each dwelling is located side by side."

Notwithstanding the above, if the concurrent Torrens title subdivision of that development is to be permitted, under the definitions contained within the Standard Instrument the resultant development would constitute a pair of "*semi-detached dwellings*" and not a "*dual occupancy (attached)*". The implications associated with that change of development classification are discussed in more detail later in this submission.

The heading "SPECIFIED DEVELOPMENT" is not in accordance with the heading used in Division 4 and not in accordance with the headings used in the Codes SEPP. To ensure consistency the heading should read "Development that can be complying development under this code".

The specified development includes the parent term "*dual occupancy*" and does not contain a requirement (apart from the title) that the two dwellings must be "*side by side*".

Division 2 lists the following development that can be complying development:

(a) *The erection of a new 1 or 2 storey dual occupancy and any attached ancillary development*
(b) *The alteration of or an addition to a dual occupancy and any attached ancillary development*
(c) *The development may also contain a basement for the purpose of car parking and access to that parking* (page 32)

The proposed list of the types of development that could be complying development is poorly worded. To avoid confusion (and misinterpretation) the list needs to be very specific and only permit the type of development that is intended. In particular the list should specify that the only type of dual occupancy development permitted to be carried out as complying development is "*dual occupancy (attached)"* and only when the dwellings contained in that development are located side by side with each dwelling fronting a street. It should also specify a requirement that neither dwelling is to be located above any part of the other dwelling.

The type of development that could be complying development listed in Part (b) also needs to be reworded to ensure that the "*alteration of or an addition to a dual occupancy"* prevents the erection of a third storey.

Parts (a) and (b) include the term "*attached ancillary development*". That term is not currently defined in the Codes SEPP. The term was included in the proposed amendments contained in State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Housing Code) 2016. Even if the proposed terms "*attached ancillary development*" and "*detached ancillary development*" contained in that Amendment were adopted, as those terms specifically relate to dwelling houses, they would not apply to "*dual occupancy (attached)"* developments. A Separate definition of the term "*attached ancillary development*" would be required for the development type proposed in Division 2, or alternatively the proposed definition of that term contained in the Amendment would need to be reworded so that it also applied to "*dual occupancy (attached)*" developments.

It should also be noted that the Explanation of Intended Effects does not contain any primary development standards for "*attached ancillary development*", for dual occupancy (attached) developments. Without any proposed primary development standards to comment upon, and in light of the comments made above, development for "*any attached ancillary development*" should not be "specified development" permitted to be carried out as "*complying development*" under the Codes SEPP at this stage.

The Specified Development in proposed Part (c) relates to the development for the purposes of a basement where the basement is *"for the purpose of car parking and access to that*

parking". A "*basement*" is a form of attached ancillary development. Apart from the reasons referred to above it is considered inappropriate to allow basements to be carried out as complying development. To permit basements to be carried out as complying development would not be a good planning outcome particularly in low density residential areas with fine grain subdivision patterns characterised by terrace housing. The intrusion of a basement garage opening, would significantly disrupt the character of those areas and streetscapes, particularly if the vehicular access to that basement is provided from a primary road.

It should also be noted that it would be difficult to provide the necessary gradients to access a basement car parking level from a primary road with the proposed minimum Primary Road setback development standard and that a vehicle accessing a car parking space provided within such basement on land 6 metres in width would not be able to enter and leave the basement in a forward direction.

It should also be noted that the Design criteria (Objective 3.1F-2 Control 21 and Objective 3.1G-3 Control 31) under the Medium Density Design Guide for this form of development would allow basements to project up to 1 metre above ground level and permit basement excavation up to 3 metres in depth as close as 1 metre from a boundary. Similar to the comments made in relation to the intrusion of basement garage openings, the provision of such basements would result in poor streetscape presentation and would not be a good planning outcome particularly in low density residential areas with fine grain subdivision patterns characterised by terrace housing as it would significantly disrupt the character of those areas and streetscapes.

It is also noted that the type of development that could be complying development listed in Part (c) is problematic, in that by virtue that the other proposed complying development provision for dual occupancies only permits the "*erection of a new 1 or 2 storey dual occupancy"* (Part (a)). As a basement would constitute a "*storey*" under the definitions contained within the Standard Instrument, under the wording of the proposed provisions a basement would only be permitted as complying development in the case of the "*erection of a new 1 ~~or 2~~ storey dual occupancy"*

In light of the above comments, it is recommended that "Specified Development types listed in Division should be amended to read as follows:

Development that can be complying development under this code

The following development can be complying development under this code:

(a) The erection of a new 1 or 2 storey dual occupancy (attached) development where:

(i) Each dwelling is located side by side;
(ii) Neither dwelling is located above any part of the other dwelling; and
(iii) Each dwelling fronts a primary road, secondary road or parallel road,
~~any attached ancillary development~~,

(b) The alteration of or ~~an~~ ground or first floor addition to a dual occupancy (attached) development ~~and any attached ancillary development~~,

~~(c) The erection of a basement to a dual occupancy, but only where the basement is for the purpose of car parking and access to that parking.~~

The concurrent Torrens title subdivision of a "*dual occupancy (attached)"* development should be specifically excluded to ensure that the development does not constitute a pair of "*semi-detached dwellings*" under the definitions contained within the Standard Instrument. Concurrent Torrens title subdivision should also be excluded as different primary development standards should be set for the two development types.

In relation to the other proposed requirements that a lot needs to meet the following comments are provided:

Proposed requirements (b) and (c)

Those requirements read as follows:

"(b) the area of the lot must not be less than the minimum lot size in an LEP for a dual occupancy
"(c) each strata lot must not have an area less than 200m2"

As stated previously, the concurrent Torrens title subdivision of dual occupancy (attached)" developments should be excluded. It should also be noted that requirement "(c)" has some inherent problems because the area of a strata lot is determined differently to the area of a Torrens title lot. The area of an individual strata lot can be greater than the area of the land upon which a dwelling is located. That is particularly the case when the dwelling on the land is not single storey.

The area of an individual strata lot is the area owned by the owner. It includes the floor area of the building and any other areas which form part of that lot. Those other areas may include a car parking space and in the case of certain medium density housing types may include the area of external courtyard(s). The area of a strata lot that contains a 2 storey building would have greater strata lot area than a single storey building built on the same land size.

Consequently a requirement that "*each strata lot must not have an area less than 200m2"* is inappropriate.

Proposed requirement (b) needs to be reworded. Firstly the term dual occupancy needs to be qualified so that the development type only relates to "*dual occupancy (attached)"* where each dwelling is located side by side.

Most environmental planning instruments (37 out of 40) that apply to land in the Sydney metropolitan area contain the Standard Instrument optional clause -"4.1 Minimum subdivision lot size". The minimum lot size requirements in those instruments are specified in a number of different ways, including specifying different minimum lot size requirements dependent on location. Some instruments contain "Lot Size Maps" as well as a "Lot Size for Dual Occupancy Development Maps". Other instruments specify minimum site requirements for dual occupancy developments, some specify different minimum site requirements dependent on the zoning of the land and some specify separate minimum site requirements for "*dual occupancy (attached)*" and "*dual occupancy (detached)"* development.

Unlike proposed requirement (b), proposed requirement (d) is a one size fits all standard and does not include a qualifier that the width of the lot must not be less than the minimum lot width specified in an LEP for dual occupancy development. Some environmental planning

instruments specify a minimum "*road frontage*" or a "*minimum width at the front building line*" for dual occupancy developments. Where a minimum lot width development standard is specified in an environmental instrument in most cases the lot width specified is greater than the minimum 12m specified in proposed requirement (d).

The comments in Table 2 of the Explanation of Intended Effects in relation to this development type include "*Provisions for greater width where the garage is accessed from a primary road*." (page 12) Such provisions are not included in the Division 2 complying development requirements for the development type.

The provision of garages accessed from primary roads on narrow blocks would result in inappropriate built form outcomes that detract from the streetscape and the neighbourhood character of residential areas. This would particularly be the case in low density residential areas with fine grain subdivision patterns characterised by terrace housing where no off street parking is provided for those terraces (unless via a rear lane). Apart from significantly disrupting the character of those areas and streetscapes and provision of such parking would result in the loss in the limited kerb side parking available for those terraces as well as reducing the area available for street tree planting to enhance the public domain.

It is noted that under Clause 65 of the Medium Density Design Guide relating to "Two dwellings side by side", where the lot width is less than 7.5m the required car parking for such developments is required to be "*provided from a secondary road, parallel road or lane*". The above clause is inconsistent with the controls that apply under Part 3 General Housing Code of the Codes SEPP. Under Clause 3.27 Garages, carports and car parking spaces of the Codes SEPP "*A garage may only be erected on a lot that has a width, measured at the building line, of less than 8m if the access to the garage is only from a secondary road, parallel road or lane*" (subclause (3)).

The complying development minimum lot width controls for the provision of parking for dwelling houses and dual occupancies (attached) where the dwellings are located side by side should be consistent. Where vehicular access is provided from a primary road to an attached dual occupancy where the dwellings are located side by side a minimum frontage of 16m (8m + 8m) should be required.

In light of the above comments, if this form of development is to be permitted to be carried out as complying development on a lot, it is recommended that the requirements be amended to read as follows:

The code only applies to complying development on a lot that meets the following requirements:

(a) The lot must be in a Zone R1, R2, R3 or RU5 (but only where development for the purposes of a "*dual occupancy (attached)"* is permissible with consent) under an environmental planning instrument applying to the land on which the development is carried out,
(b) The lot must have vehicular access to a primary, secondary or parallel road,
(c) The lot must not be a battle axe lot,
(d) The area of the lot must not be less than:

i. the minimum lot area specified for a "*dual occupancy (attached)"* development in an environmental planning instrument that applies to the land; or

ii. where there is no minimum lot size for a "*dual occupancy (attached)"* development specified in an environmental planning instrument that applies to the land:

a. the minimum lot size specified on the Lot Size Map for the land under the environmental planning instrument that applies to the land; or

b. 400m2

whichever is the greater.

(e) The width of the lot must not be less than:

i. the minimum lot width specified for a "*dual occupancy (attached)"* development in an environmental planning instrument that applies to the land; or

ii. 12m measured at the building line, where vehicular access to the required parking for the development is provided from a public road other than a primary road,

iii. 16m measured at the building line, where vehicular access to the required parking for the development is provided from a primary road,

whichever is the greater.

(f) There must not be more than 2 dwellings on the lot at the completion of the development,

(g) Both dwellings must be contained within one building,

(h) Both dwellings must have a frontage to a primary, secondary or parallel road,

(i) Both dwellings must have vehicular access to a primary, secondary or parallel road at the completion of the development.

Development Standards and Design Standards

General comments:

Some of the proposed principal development standards for this development type are not consistent between Division 2 and the standards contained within Part 3.1 of the Medium Density Design Guide. Similarly there are also inconsistencies between some of the proposed principal development standards for the other development types in Division 3 and Division 4 with the respective standards contained within the Medium Density Design Guide.

It is also considered imperative that there are not only consistent development standards that apply to the various medium density housing forms but also consistency between the development standards that apply to other housing forms permitted to be carried out as complying development under the Codes SEPP (and other State Environmental Planning Policies, such as the Affordable Rental Housing SEPP).

It is considered that the Explanation of Intended Effects is also misleading in that it infers that the principal development standards set for the developments proposed as complying development for the medium density housing types "*is intended to be of a similar scale as a dwelling house that can be currently carried out as complying development under the current General Housing Code in the Codes SEPP.*" (page11). Some of the proposed development

standards contained in the Explanation of Intended Effects are markedly different to those currently contained in Part 3 General Housing Code of the Codes SEPP.

Specific comments:

In relation to the proposed "Maximum FSR" development standard the following comments are provided. Clause 4.5 "Calculation of floor space ratio and site area" of the Standard Instrument sets out the way in which a "*floor space ratio*" of a development is to be calculated.

The proposed Maximum FSR development standard for development under Division 2, by starting at a threshold of 200-300m2 appears to be based on requirement (c) that "*each strata lot must not have an area less than 200m2*". The floor space ratio of a development is required to be determined based on the definition of "*site area*" for the entire land on which that development is proposed to be carried out, not the area of part of the site.

Based on the comments provided previously in relation to the proposed requirements for this form of development the minimum site area threshold for the maximum FSR development standard should commence at ≥400m2.

Similarly the minimum site area threshold for the minimum landscaped area development standard should also commence at ≥400m2. A minimum landscaped area development standard and a minimum area of private open development standard for each dwelling should also be set for complying development.

The proposed side setback development standards are not consistent with the standards set for complying development under Part 3 General Housing Code.

3.4 Division 3 Multi Dwelling Housing (Terraces)

The words at the beginning of this Division reading "*This form of development."* should be deleted.

The heading "Specified development" is not in accordance with the heading used in Division 4 and not in accordance with the headings used in the Codes SEPP. To ensure consistency the heading should read "Development that can be complying development under this code".

The proposed Specified development provisions have many similar issues to those identified in the comments relating to the proposed Division 2 provisions.

In light of the above comments it is suggested that the types of development listed as "Specified Development" that can be complying development under Division 2 be amended to read as follows:

Development that can be complying development under this code

The following development can be complying development under this code:

(a) The erection of a new 1 or 2 storey multi dwelling housing (terraces) ~~and any attached ancillary development~~,

(b) The alteration of or ~~an~~ ground or first floor addition to a multi-dwelling housing (terraces) ~~and any attached ancillary~~ development.

~~(c) The erection of a basement to a multi-dwelling housing (terraces), but only where the basement is for the purpose of car parking and access to that parking.~~

For the same reasons as detailed in the comments provided in relation to Division 2, requirements based on strata lot areas and strata lot widths are inappropriate.

The minimum area of a lot specified in Division 2 includes a requirement that "*the area of the lot must not be less than the minimum lot size in an LEP*" for that development type. A similar provision should be included in the requirements relating to "*multi dwelling housing (terraces)"* in Division 3.

A number of environmental planning instruments specify minimum site requirements for multi dwelling housing developments. In those instruments, the minimum site requirements for multi dwelling housing developments are specified in a number of different ways. All of those instruments specify a minimum site area for multi dwelling housing developments, some specify different minimum site area requirements dependent on the zoning of the land and some instruments also specify a minimum frontage development standard for such developments. Some instruments specify density requirements, including one instrument that specifies a multi dwelling housing density control for land in the R2 Low Density Residential zone with a minimum site area per dwelling requirement based on the number of bedrooms contained in that dwelling (Clause 4.5A of Ryde Local Environmental Plan 2014).

The lot width requirement in proposed requirement (c) is "*a width at the building line of not less than 6m"*.

The comments in Table 2 of the Explanation of Intended Effects in relation to this development type include "*Provisions for greater width where the garage is accessed from a primary road*." (page 13) Such provisions are not included in the Division 3 complying development requirements for the development type.

It is noted that under Clause 68 of the Medium Density Design Guide relating to "Terrace Houses", where the lot width is less than 7.5m the required car parking for such developments is required to be "*provided from a secondary road, parallel road or lane*". Similar to the comments made in relation to the provisions proposed for dual occupancies (attached) where the dwellings are located side by side the minimum lot standard should be 8m instead of the 7.5m currently proposed.

In light of the above comments, if this form of development is to be permitted to be carried out as complying development on a lot, it is recommended that the requirements be amended to read as follows:

The code only applies to complying development on a lot that meets the following requirements:

(a) The lot must be in a Zone R1, R2, R3 or RU5 (but only where development for the purposes of a "*multi dwelling housing"* is permissible with consent) under an environmental planning instrument applying to the land on which the development is carried out,

(b) The lot must have vehicular access to a primary, secondary or parallel road,
(c) The lot must not be a battle axe lot,
(d) The area of the lot must not be less than:
    i. the minimum lot area specified for a "*multi dwelling housing"* development in an environmental planning instrument that applies to the land; or
    ii. where there is no minimum lot size for a "*multi dwelling housing"* development specified in an environmental planning instrument that applies to the land:
        a. In the case of developments containing 3 multi-dwelling housing (terraces) - 600m2;
        b. In the case of developments containing more than 3 multi dwelling housing (terraces) – 600m2 plus an additional 200m2 for each multi-dwelling housing (terrace) in excess of 3,
(e) The width of the lot must not be less than:
    i. the minimum lot width specified for a "*multi dwelling housing"* development in an environmental planning instrument that applies to the land; or
    ii.
        a. In the case of developments containing 3 multi dwelling housing (terraces) - 18m plus an additional 2m for each terrace where vehicular access to that terrace is provided from a primary road;
        b. In the case of developments containing more than 3 multi dwelling housing (terraces) – the minimum width required under subclause (e) ii. a. plus:
            i. an additional 6m for each additional multi dwelling housing (terrace) where vehicular access to that terrace is provided from a road other than a primary road, and
            ii. an additional 8m for each multi dwelling housing (terrace) where vehicular access to that terrace is provided from a primary road,

    whichever is the greater.
(f) Each multi dwelling housing (terrace) must have a frontage of not less than 6m to a primary, secondary or parallel road,
(g) Notwithstanding subclause (f), where vehicular access to a multi dwelling housing (terrace) is provided from a primary road, the multi dwelling terrace must have a frontage to that road of not less than 8m,
(h) Each multi dwelling housing (terrace) must have vehicular access to a primary, secondary or parallel road at the completion of the development.

<u>Development Standards and Design Standards</u>

As with the other types of complying development proposed some of the standards in the Explanation are not consistent with those contained within Part 3.2 of the Medium Density Housing Guide.

In light of the comments provided above (and the comments made in relation to Division 2) the principal development standard relating to "*Min lot size for each dwelling*" should be deleted. NB The minimum lot standards are included in the recommended changes to complying development requirements detailed above.

The proposed maximum height of building development standard of "*9.0m*" should be reduced to 8.5m to be consistent with the maximum height development standard set for the other development types and to ensure that the development proposed as complying development is "*of similar scale as a dwelling house that can be currently carried out as complying development under the current General Housing Code in the Codes SEPP*". (page 11)

The proposed "Maximum gross floor area" development standard specifies controls that do not relate to the standard. The development standard should be expressed as a maximum FSR (like the other proposed controls) rather than a maximum gross floor area. Expressed in that manner for reasons similar to those detailed in the specific comments to Division 2 the minimum site area threshold should commence at ≥600m2.

3.5 Division 4 Manor house and Dual Occ

Firstly the two development types, namely "*manor house*" and "*dual occupancy (attached)"* should not be included in the same division. If those medium density housing types are to be included in the Codes SEPP as complying development a separate division should be included in the Codes SEPP for each development type. Different development standards would apply to the two development types and different requirements should be set for the respective development types to be complying development. The later point is demonstrated in the proposed requirements set in Division 4 of the Explanation of Intended Effects. For example proposed requirements (b), (e), and (i) are clearly inappropriate requirements for a dual occupancy (attached) development, and proposed requirements (a) and (j) are clearly inappropriate for a manor house development.

As discussed previously, under the zoning provisions in many environmental planning instruments, the two development types are not both "Permitted with consent" uses in the Land Use Table in respective residential zones. For example "*dual occupancy (attached)*" developments may be permissible in the R2 Low Density Residential zone but "*manor houses*" would be prohibited. For the reasons discussed previously "manor houses" should not be made a mandated use permitted with consent in the R2 Low Density Residential zone.

The development standards and design standards contained within a council's planning controls have been specifically developed to ensure built form outcomes respond to the desired future character of the area and that are compatible with the character of the local area in which those developments take place. Within most LGAs, especially those that have been amalgamated, there are significant context, character, built form and scale variations.

As a general rule the development standards and design standards contained within a council's planning controls that apply to development in the R2 Low Density Residential zone vary considerably from the planning controls that apply to development in the other residential zones, particularly the side setback controls. The side setback controls are generally much greater in the other residential zones, partly to ensure that the resultant built forms retain or create a rhythm or pattern of spaces between buildings that define and add character to the streetscape.

In light of the above it is suggested that different primary development standards and design standards be set for complying development for "*dual occupancy (attached)"* development

under the Division for those developments in the R2 Low Density Residential zone from those set in the other residential zones.

It is also questioned the need to include requirements (a), (b), (i) and (j) in light of the general requirements for complying development under the Codes SEPP that the development must "*be permissible, with consent, under an environmental planning instrument applying to the land"* (Clause 1.18 (1) (b)). The specification of those requirements is also inconsistent with the approach taken in relation to Division 2 and Division 3.

The following comments are made in relation to the development proposed to be complying development under Division 4:

i. The words "*1 or*" should be deleted out of requirement (b) as a "*manor house*" by definition can't be a 1 storey building;

ii. Requirements (a), (b) and (c) include the term "*attached ancillary development*" and requirement (d) includes the term "*detached ancillary development*". Those terms are not currently defined in the Codes SEPP. Those terms were included in the proposed amendments contained in State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Housing Code) 2016. Even if the proposed terms "*attached ancillary development*" and "*detached ancillary development*" contained in that Amendment were adopted, as those terms specifically relate to dwelling houses, they would not apply to "*manor houses*" or "*dual occupancy (attached)"* where one dwelling is located over the other. Separate definitions of the terms "*attached ancillary development*" and "*detached ancillary development*" would be required for the development types proposed in Division 4, or alternatively the proposed definition of those terms contained in the Amendment would need to be reworded so that it did not relate exclusively to dwelling houses.

   It should also be noted that the Explanation of Intended Effects does not contain any primary development standards for either "*attached ancillary development*", "*detached ancillary development*" or "*detached development*" for manor house or dual occupancy attached developments. Without any proposed primary development standards to comment upon, and in light of the comments made above, development for "*any attached ancillary development*" and "*detached development or an alteration or addition to a detached ancillary development*" should not be permitted to be carried out as "*complying development*" under the Codes SEPP at this stage.

iii. It would not be possible for a manor house development to "*also contain a basement for the purpose of car parking and access to that parking*" by virtue of requirement (b)"

In relation to the other proposed requirements that a lot needs to meet the following comments are provided:

"(c) the area of the lot must not be less than 600m2"

Division 4 of the Statement of Intended Effects sets a principal development standard of a minimum site area of 600m2 for "*manor house*" and "*dual occupancy (attached) (where one dwelling is located over the other)*" developments. It is noted that the development standard is not in accordance with the minimum site area for such development specified in Table 2: Specified Development for such development of "*Min lot size* – ***as specified in an LEP****, or 600m2*".

As stated previously most environmental planning instruments (that apply in the Sydney metropolitan area) contain the Standard Instrument optional clause -"4.1 Minimum subdivision lot size". In those instruments, the minimum lot size requirements are specified in a number of different ways, including specifying different minimum lot size requirements dependent on location. Some instruments contain "Lot Size Maps" as well as a "Lot Size for Dual Occupancy Development Maps". Other instruments specify minimum site requirements for dual occupancy developments.

Because of the different ways the minimum lot size requirements are specified in environmental planning instruments, part (c) needs to specify that the minimum area of the lot is the minimum lot size that applies to **that land** under the *"environmental planning instrument applying to the land on which the development is carried out"*. In some environmental planning instruments, the minimum area of a lot required for a dual occupancy development may be different to the minimum area required for other types of development. Some instruments also specify a minimum "*road frontage*" or a "*minimum width at the front building line*".

Other issues

One of the requirements in the Medium Density Housing Guide for manor houses is that "*Each dwelling has a frontage to a primary, secondary or parallel road*". (Clause 23 in "Section 3.4G - Orientation and Siting"). It is considered that that requirement should be included as one of the complying development requirements for manor house developments.

In light of the above comments proposed Division 4 needs to be separated into 2 sections with the following requirements:

DIVISION 4A MANOR HOUSE

Development that can be complying development under this code

The following development can be complying development under this code:

(a) The erection of a new 2 storey manor house
(b) The alteration of, or a ground floor or first floor addition to, a manor house

The code only applies to complying development on a lot that meets the following requirements:

(a) The lot must be in a Zone R1, R3 or RU5 (but only where development for the purposes of a "*manor house*" is permissible with consent) under an environmental planning instrument applying to the land on which the development is carried out,
(b) The lot must have a frontage to a primary road,

(c) The lot must not be a battle axe lot,
(d) The area of the lot must not be less than the minimum lot size specified in an environmental planning instrument applying to the land, or 600m2, whichever is the greater,
(e) The width of the lot must not be less than 15m measured at the building line,
(f) There must not be more than 4 dwellings on the lot at the completion of the development,
(g) All dwellings must be contained within one building,
(h) All dwellings must have a frontage to a primary, secondary or parallel road,
(i) The lot must have vehicular access to a public road at the completion of the development

DIVISION 4B DUAL OCCUPANCY ATTACHED (one dwelling over the other)

Development that can be complying development under this code

The following development can be complying development under this code:

(a) The erection of a dual occupancy (attached) development where one dwelling is located over the other
(b) The alteration of, or a ground floor or first floor addition to, a dual occupancy (attached) development where one dwelling is located over the other

The code only applies to complying development on a lot that meets the following requirements:

(a) The lot must be in a Zone R1, R2, R3 or RU5 (but only where development for the purposes of a "*dual occupancy (attached)"* is permissible with consent) under an environmental planning instrument applying to the land on which the development is carried out,
(b) The lot must have a frontage to a primary road,
(c) The lot must not be a battle axe lot,
(d) The area of the lot must not be less than:
    i. the minimum lot area specified for a "*dual occupancy (attached)"* development in an environmental planning instrument that applies to the land; or
    ii. where there is no minimum lot size for a "*dual occupancy (attached)"* development specified in an environmental planning instrument that applies to the land:
        a. the minimum lot size specified on the Lot Size Map for the land under the environmental planning instrument that applies to the land; or
        b. 600m2

    whichever is the greater.
(e) The width of the lot must not be less than:

i. the minimum lot width specified for a "*dual occupancy (attached)*" development in an environmental planning instrument that applies to the land; or

ii. 15m measured at the building line,

whichever is the greater.

(f) There must not be more than 2 dwellings on the lot at the completion of the development,

(g) All dwellings must be contained within one building,

(h) The lot must have vehicular access to a public road at the completion of the development.

Development Standards and Design Standards

Appropriate development standards and design standards should be developed for each development type, and in the case of "*dual occupancy (attached)"* developments under this Division, it is recommended that separate standards apply to such developments for the R2 Low Density Residential zone from the other residential zones where such development is permitted with consent.

The following comments are provided in relation to the principal development standards and design standards contained in the Explanation of Intended Effects (page 38).

As with the other types of complying development proposed some of the standards in the Explanation are not consistent with those contained within Part 3.4 of the Medium Density Housing Guide (including Maximum FSR, landscaped area forward of the building line and side setbacks for development site, and rear setback). The principal development standard relating to "Common wall" and side setback controls is not applicable the development types specified in Division 4. In addition the last two "*Principal Development Standards*" relate to a different residential development type ("*dwelling house*").

The proposed 0.9m side setback ("*for the front half of the lot up to 15m*") for development sites development standard is inappropriate for manor house developments, is below the proposed minimum side setback development standard for '*multi dwelling housing (terraces)*" under Division 3, and well below the minimum side setback requirements specified for residential flat buildings in council's planning controls. It is also contended that the proposed side setback development standard is contrary to the "design principles" set under the MDDG, in particular Principle 1: Context and neighbourhood character; Principle 2: Bulk form and scale; and Principle 9: Visual appearance.

3.6 PART 6 SUBDIVISION CODE

The Statement of Intended Effects states that "*It is proposed to expand this part* (Part 6 – Subdivision Code of the Codes SEPP) *to include Torrens title subdivision but only when*" (page 40).

The Statement stops mid-sentence and does not provide any detail as to the "*only when*" Torrens title subdivision is recommended for inclusion in the Codes SEPP as complying development.

Strata subdivision of dual occupancies

As detailed previously it is unclear from the information contained within the Explanation of Intended Effects as to what type(s) of dual occupancy are recommended for inclusion in the Codes SEPP as complying development.

The following comments are based on the presumption that the types of dual occupancy developments proposed to be included as complying development are only "*dual occupancy (attached)*" where each dwelling is located "*side by side*" and each of those dwellings fronts a primary road, secondary road or parallel road (Division 2) or "*dual occupancy (attached)*" where one dwelling is located over the other (Division 4).

No objections are raised in principle to the strata subdivision of those dual occupancy developments being a form of development being able to be carried out as complying development subject to compliance with the development standards contained in Clause 6.2 of the Codes SEPP.

However to provide a clearer description and to avoid confusion and interpretation issues it is recommended that the title be changed to "Strata subdivision of dual occupancies (attached)" and the provisions make it clear that they only apply to "*dual occupancy (attached)"* developments where:

(i) each dwelling is located "*side by side*" and each of those dwellings fronts a primary road, secondary road or parallel road; or
(ii) one dwelling is located over the other, and the development fronts a primary road.

Torrens title subdivision

The issue of the concurrent Torrens title subdivision of certain types of medium density housing development types has been discussed previously in this submission. The wording in the "Specified Development" provisions clearly demonstrates the point made previously that the concurrent Torrens title subdivision of some medium density housing development types would mean that the resultant development would constitute a different type of development, a type of development separately defined in the Standard Instrument.

In many cases the concurrent Torrens title subdivision of multi-dwelling housing (terraces) development would result in the dwellings contained in that development constituting either a "*dwelling house*", "*attached dwelling*" or "*semi-detached dwelling*" under the definitions contained within the Standard Instrument.

It should be noted that under Clause 2.3 (b) of the Standard Instrument "*a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone*".

Specified Development

The proposed 'Specified Development" in effect acknowledges that the concurrent Torrens title subdivision of some types of medium density housing developments would change that development to another type of development defined in the Standard Instrument by recommending inclusions in the Codes SEPP as complying development "*The Torrens title*

subdivision of land for the purpose of a dwelling house, attached dwelling or semi-detached dwelling".

The matter is further complicated that under some environmental planning instruments different development standards may be set for those types of development than the respective medium density housing development type, and in some cases development for one or more of the purposes of a "*dwelling house, attached dwelling or semi-detached dwelling"* may not be permissible with consent on that land under the environmental planning instrument.

Under Part 6 – Subdivisions Code the proposed Specified Development provisions read as follows:

"*The Torrens title subdivision of land for the purpose of a dwelling house, attached dwelling or semi-detached dwelling is development specified for this code where:*

(a) the land is zoned R1, R2, R3 and R5, and a dual occupancy or multi dwelling housing is permissible on the land, and
(b) a single complying development certificate is issued for the concurrent subdivision under this division and erection of two or more dwellings under the Medium Density Housing Code
(c) at the completion of the development there is only one dwelling house on each lot.

The creation of any street, road or lane or lot for any other purpose other than a dwelling house is not development specified for this Code."

Apart from having some inherent problems, the proposed wording is confusing. The first paragraph lists the specified development as development for the purposes of "*the Torrens title subdivision of land for the purpose of a dwelling house, attached dwelling or semi-detached dwelling".* The last paragraph contradicts that statement by limiting the specified development to exclude "*the creation of* any…… *lot for any other purpose other than a dwelling house".* Under the proposed wording development for the purposes of the Torrens title subdivision of land for the purpose of an attached dwelling or semi-detached dwelling would not be "*development specified for this Code*".

Secondly if the concurrent Torrens title subdivision of land for the purpose of a dwelling house, attached dwelling or semi-detached dwelling is to be specified as complying development under the Codes SEPP it is illogical that one of the prerequisites is that development for the purposes of a "*dual occupancy or multi dwelling housing is permissible on the land".*(part (a)).

If the concurrent Torrens title subdivision of land for the purpose of a dwelling house, attached dwelling or semi-detached dwelling is to be specified as complying development one of the prerequisites should be that development on that land for the purpose of a dwelling house, attached dwelling or semi-detached dwelling is permissible with consent on that land under the environmental planning instrument that applies to the land.

It should also be noted that, as discussed previously, only 7 of the environmental planning instruments that apply to land in the Sydney Metropolitan area permit "*multi-dwelling housing*" in the R2 Low Density Residential zone and a number of instruments (9) prohibit all

forms of dual occupancy development in the R2 Low Density Residential zone whilst some instruments (6) only permit "*dual occupancy (attached)"* in the zone.

Consequently under the parameters set in prerequisite (a) the Torrens title subdivision of land in the R2 Low Density Residential zone would not be possible to be carried out as complying development in many LGAs as a result of the environmental planning instrument applying to that land in those LGAs.

The proposed Part (b) prerequisite requirement reads as follows:

(b) a single complying development certificate is issued for the concurrent subdivision under this division and erection of two or more dwellings under the Medium Density Housing Code

The above requirement has some other inherent problems. Firstly to be complying development for all the medium density housing development types in "Division 2 – Two Dwellings Side by Side" and "Division 3 – Multi- Dwelling Housing (Terraces)" in the Explanation of Intended Effects one of the proposed requirements is that:

"(c) each strata lot must have an area less than 200m2."

(NB As discussed previously it is recommended that the above requirement be deleted and replaced with a minimum site area requirement.)

Secondly the proposed Specified Development provisions relate (in part) to the *"Torrens title subdivision of land for the purpose of a dwelling house"*. If that is to be permitted to be carried out as complying development the "*concurrent subdivision*" control for dwelling houses should only apply to the erection of dwelling houses under the General Housing Code.

However for the reasons detailed in this submission including permissibility related issues, the concurrent Torrens title subdivision of land for the purpose of a dwelling house, attached dwelling or semi-detached dwelling should not be made a type of development that can be carried out as complying development.

Conclusion

The Inner West Council acknowledges that there is merit in increasing the scope of complying development and reducing the demands on the Council assessment process for relatively straightforward developments and is supportive of efforts to streamline the approvals process for low impact developments.

However for the various reasons detailed throughout this submission, the Medium Density Housing Code, as presently proposed, does not satisfy the prerequisites for those low rise medium density housing types to be "*a type of development considered appropriate for approval through the complying development pathway*".

Permitting certain medium density housing forms to be carried out as complying development under the suite of development standards, design standards and controls proposed, with essentially "one size fits all" controls, would result in significant changes to

the residential character of areas in which they are carried out. Based on past experience this will lead to considerable community dissatisfaction.

The development in the residential zones in each local government area (LGA) is unique with respect to such matters as context and neighbourhood character, built form and scale, density, subdivision pattern (lot size and width), landscape setting, the provision of infrastructure, public facilities and services. This is particularly the case of development in R2 Low Density Residential zones where the residential character of such areas varies significantly. The character of the low density residential areas within inner city areas is significantly different to those areas within the middle ring and the outer city areas. The low density residential inner city areas are generally characterised by fine grain development on small allotments whilst the low density residential development outside the inner city areas are generally characterised by buildings in landscaped settings on larger allotments with larger setbacks. There are also significant character variations between the residential areas located within each LGA.

Each LGA is unique in respect to such matters as context and neighbourhood character, built form and scale, density, subdivision pattern. Within most LGAs there are also significant context, character, built form and scale variations. Each Council's planning controls are different. Those planning controls were developed to ensure that future development responds to the desired scale and character of the street and local area within that Council's LGA. It should also be noted that the planning controls contained within a Council's LEP and DCP have gone through an extensive community consultation process.

The "one size fits all approach" would not result in good planning outcomes. Different residential zones have different urban characters and it is considered not appropriate to have the "one size fits all approach" for each medium residential development type across the range of zones within which the development type is permitted.

The suite of proposed controls would provide some certainty of built form outcomes, but that is not really the issue. The real issue is whether compliance with the suite of controls proposed, would provide built form outcomes that are compatible with the character of the local area in which those developments take place.

If a development satisfied all of the complying development design standards criteria set for that type of development, the development, would in effect be deemed compatible with the character of the local area, irrespective of what the character of that area was.

Whether the design of a development is compatible with the character of the local area is a matter that is best considered as part of a development application process, including appropriate community consultation.

As detailed in this submission, there are considerable variations between the suite of controls proposed and those contained within the planning controls of councils for the respective forms of medium density housing. Permitting certain medium density housing forms to be carried out as complying development under the suite of controls proposed would result in different built form outcomes to those achieved under the planning controls of councils. It would also undermine the integrity of Council's planning controls relating to those medium density housing forms.

As discussed in this submission, changes to planning policy need to be carried out in a holistic manner. From a planning perspective it would not be a good practice to introduce

new forms of complying development into the Codes SEPP until the principal development standards prepared by Councils have been incorporated into their respective environmental planning instrument(s), especially considering that some of the requirements that need to be met for a development to be complying development relate to standards contained within those environmental planning instruments.

It is also noted that the upcoming District Plans are expected to require Council's to prepare new/revised residential housing strategies. This would appear to be the most efficient and effective way to progress "*The Missing Middle*".