

Our ref: A12/0147

9 December 2016

The Director
Codes and Approval Pathways
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Re: Submission on the Draft Medium Density Design Guide (State Environmental Planning Policy - Exempt and Complying Development)

Dear Sir / Madam

We wish to thank the Department of Planning and Environment (DPE) for providing an opportunity for Waverley Council (Waverley) to make a submission on the Draft Medium Density Design Guide (MDDG) that will form part of the State Environmental Planning Policy Exempt and Complying Development (Codes SEPP). This submission is the opinion of Council Officers and not that of the elected Council.

Overview

As DPE may be aware, Waverley is one of Sydney's most densely populated local government areas. In principle we support the encouragement of medium density housing, however, would like to raise the following comments in regards to the MDDG. This submission forms three parts:

1. Relevance of the MDDG to Waverley;
2. The effectiveness of the MDDG's ability to increase housing supply in NSW; and
3. Offers assistance to DPE by making general comments on the Medium Density Design Guide.

Relevance of the MDDG to Waverley

As mentioned above, Waverley is one of the most densely populated local government areas in Sydney. Less than 20% of residents live in detached houses, around 20% live in housing such as terraces and duplexes, and the remaining 60% live in flats, units or apartments (ABS 2016). Waverley's diverse range of medium to high density housing ranges from single story terrace

houses to high rise residential flat buildings. In fact, the proposed “Manor Home” housing type (which is intended to be inserted as a new term into the dictionary of the Standard Instrument Principal Local Environmental Plan) is already a common form of housing in Waverley.

The MDDG will achieve little of its intended effect (to increase the supply of medium density housing) in the Waverley Local Government Area. The MDDG may assist in increasing medium density housing in other areas, however, for the following reasons the MDDG will have a limited effect on Waverley:

1. The MDDG only applies to the R3 Zone. Most of our R3 Zone already contains existing medium density housing as well as provisions in our Local Environment Plan (LEP) for residential flat buildings.
2. The MDDG requires terraces and duplexes to be 6 metres wide. Side set back requirements in the MDDG are 1.2 metres. Most of the lots in Waverley contain traditional 40 foot frontages (12 metres). This means the majority of our lots are too narrow for the MDDG to apply, unless lots are amalgamated. The likelihood of high land value lots (such as those in Waverley) being amalgamated to construct dwellings with low yields (such as those in the MDDG) is unlikely.
3. There are a number of restrictions on R3 zoned land in Waverley. For instance, 39% of R3 zoned land is located within heritage conservation areas or contains heritage items. The MDDG does not allow an approval under the Codes SEPP to occur in these areas.
4. When taking into account constraints in the MDDG / Codes SEPP and likely redevelopment scenarios, modelling suggests approximately 100 – 200 lots might have medium density developments approved by a certifier. These lots already allow medium density development, and in most instances actually allow for greater density than is permitted in the MDDG.

As a consequence, at this stage it is unlikely that Waverley Council would adopt the MDDG into our DCP.

The Effectiveness of the Medium Density Design Guide’s ability to Increase Housing Supply in NSW

Concern is raised regarding the Medium Density Design Guide’s ability to increase housing supply in NSW. The fact the Medium Density Design Guide only applies to R3 zones, which already allow medium density development, means it does little to increase density and therefore in real terms, it does not increase housing supply.

There is a belief that ‘codes’ approvals are faster than the standard Council Development Assessment (DA) process. However, the slight increase in the time it takes to approve development via the much more appropriate, flexible and merit based DA process is not of

such a significance that it is causing housing supply issues. The development assessment process only forms a small fraction of the entire development process timeframe (from design through to occupation).

Waverley supports the aims of the MDDG (to improve design outcomes for medium density housing). Support is also given to the introduction of a Design Verification Statement to be required by the building's designer. However, it should be noted that this procedure will add additional time to the overall development process timeline (mostly at the design stage which is pre DA / CDC).

General Comments on the Medium Density Design Guide to Assist the Department of Planning and Environment

The below comments on the MDDG are general and not specific to the Waverley Local Government Area:

1. Design guides for all types of development (not just Medium Density) that can be approved under the Codes SEPP should be updated to ensure consistency.
2. Waverley supports the clear referencing of the Principle Controls (Part 2, A B C) in Part 3 as it ensures certifiers can clearly see the requirements needed for a development to be approved under the Codes SEPP.
3. Waverley understands that the subjective elements of the MDDG (Part 2) are to be evaluated with a Design Verification Statement (DVS) provided by the "designer of the building". The non-subjective elements of the MDDG (Part 3) are to be evaluated via a certifier's interpretation. Certifiers are registered professionals and misinterpretation or falsely approved certificates can result in deregistration. Building designers are not always registered professionals meaning there is no recourse if a false or misleading DVS is signed off. This raises two serious questions. Firstly, are certifiers responsible for ensuring the accuracy of Design Verification Statements? Secondly, if this is the Certifiers' responsibility, there could be serious issues regarding their ability to assess matters like urban design (of which they are not qualified).
4. Waverley supports the concept of a Design Verification Statement in improving urban design outcomes for medium density dwellings that are approved under the Codes SEPP, however, concern is raised regarding the lack of clarity on who will be providing these statements to Certifiers. Only registered Architects should be able to prepare such statements, or at least sign off on them in collaboration with the building's designer. This opinion is based on the following;
 - a) The registration of Architects is governed by NSW Law under the *Architects Act 2003 No 89*. Part 3 of this Act sets out rigorous controls related to the registration process of Architects. Part 3 also links this piece of legislation to other Acts which further

embeds the Architectural registration process in NSW law. Architecture is one of the few Professions that has such a rigorous registration process enshrined by law;

- b) Despite other professions having the qualifications to interpret design they are not legally registered in the same way and therefore their statements have no legal weighting, essentially delegating their Design Verification Statements to subjective promises of good design with no ramifications for illegal or poorly written statements. The objectives of the *Architects Act 2003 No 89* are listed under Part 1 Section 3:

“The objects of this Act are: (a) to ensure that architects provide services to the public in a professional and competent manner, and (b) to provide mechanisms to discipline architects who are found to have acted unprofessionally or incompetently, and (c) to ensure that the public is appropriately informed about the qualifications and competence of individuals or organisations holding themselves out as architects, and (d) to promote a better understanding of architectural issues in the community”.

Objectives A and B (above) ensure that Design Verification Statements prepared by Registered Architects will be competent and carry legal weighting, as they do for the Apartment Design Guide (SEPP65).

- c) If only registered Architects are able to prepare Design Verification Statements then the Medium Density Design Guide (in the Codes SEPP) will have similar requirements to those in the Apartment Design Guideline (in SEPP65) making it easier for developers to understand the process.

If the Department allows other professionals to prepare Design Verification Statements then they should be registered in the same way and limited to professionals with qualifications in Architecture, Urban Design or Urban Planning. As a bare minimum, Design Verification Statements should be limited to a Registered Architect if a development consists of ‘five or more dwellings’ (manor homes and terraces cannot be built in groupings of more than four dwellings) to ensure a high quality built form in housing estates / new release areas where consecutive dwellings can be approved under a single Complying Development Certificate.

The above points raise serious questions regarding the lack of enforceable regulation to prevent poor urban design outcomes if Design Verification Statements are allowed to be created by unregistered / unqualified individuals.

- 5. As DPE may be aware many Councils, including Waverley, continue to have ongoing issues where certifiers have illegally issued construction certificates for low density developments approved under the Codes SEPP. The impact of illegally issued construction certificates for medium density developments approved under the proposed changes to the Codes SEPP would be far more substantial. The implications of an illegally issued construction certificate for a medium density development further strengthens the argument that only Registered Architects should be able to sign off on Design Verification Statements.

6. There are several inconsistencies between the MDDG and controls in the Waverley Development Control Plan (WDGP) for similar dwellings. One key inconsistency worth raising is the fact that Waverley uses the predominant building line (the average of the whole street) rather than an average of only the adjacent neighbours (as per the MDDG) to determine the front set back of proposed buildings. We believe using the predominant building line to determine front setbacks provides greater consistency of built form on the street frontage.
7. Duplexes, Terraces and Manor Homes could be permitted in the R2 zone in the Standard Instrument LEP to encourage medium density development, but be subject to a DA assessment only. This would significantly increase the opportunity for and diversity of housing choice for a greater proportion of home owners and respond to the changing demographics and challenges of housing affordability.
8. The MDDG allows for front garages to be permitted if they are a “recessive element on the street” (p 50, *Medium Density Design Guide*). Garages at the front of dwellings are often poorly designed and create a highly undesirable and unsafe streetscape. Front gardens with deep soil and open space have many benefits including water infiltration, adequate sightlines for casual surveillance and pedestrian safety. Allowing front garages will result in poor urban design outcomes. There are more practical solutions to front garages when rear lanes cannot be provided (see point 9 as well as diagrams 1 and 2).
9. To create a healthy and sustainable city, Sydney’s streets should be designed to promote active travel and public transport. Design guidelines that promote car dependency are not best practice for our city. The minimum requirement of one car space per dwelling, as per the MDDG is not supported. There is ample opportunity for zero minimum car spaces to be provided in the following circumstances that could be easily codified;

“(a) when a dwelling is within an 800 metre radius of a train station and/or (b) when a car park plan shows adequate on-street space in front (or within 30 metres) of the dwelling for 1 vehicle and 0.2 visitor vehicles (but only where a secondary laneway does not exist or cannot be built) to provide secondary laneway garage access”.

There are four justifications behind our above parking recommendations:

- a) Research shows that households who live in apartments and medium density houses own less cars than those dictated by most Development Control Plans. Two thirds of households in semi-detached, row or terrace house, townhouse, etc. own one or less cars (ABS 2011). Households who live in denser housing (such as flats, units or apartments) are even less likely to own a car. In outer ring suburban areas (where the MDDG is likely to be applied) 85-89% (Blacktown 89%, Penrith 88%, Campbelltown 88%, Camden 86% and Liverpool 85%) of households, who live in this type of housing, own one or less cars (P 8, Dean Brodie and Tom Longworth 2016).

- b) It is difficult to provide parking to terraces and this limits their viability in an environment where this development is being encouraged.
- c) Research shows that people are driving less (BITRE 2015) and autonomous vehicles may maximise efficiency of both road space and parking space in the future (OECD 2016).
- d) Finally and most importantly, driveways at the front (where an alternative secondary laneway does not exist or cannot be built) sterilises the opportunity for guest parking and in real terms reduces the number of overall spaces that would otherwise be available due to the width of the driveway and the fact it is illegal to block a driveway or footpath (see Diagrams 1 and 2 below).

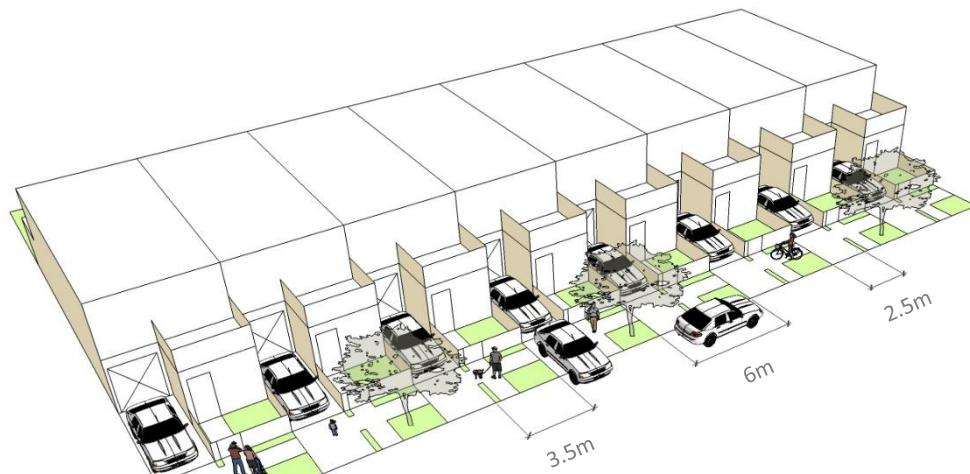


Diagram 1 (above)

The standard width of a driveway, the standard width of the MDDG's proposed terrace housing and the required set back of garages creates a streetscape dominated by cars. This streetscape is unpleasant for pedestrians, encourages multiple car ownership and sterilises the street for on street parking. Note measurements in diagram.



Diagram 2 (above)

Developers should have an option to provide parking on streets in new release areas to encourage better pedestrian environments and allow for a greater number of flexible parking spaces overall.

The above considerations improve urban design outcomes (when compared to providing front garages), improve parking space efficiency, provide more parking (when compared to providing front garages) and considers forecast trends related to car ownership and use. The above recommendations give flexibility to the developer to make market driven choices.

10. Waverley, and other Local Government Areas, will need to update their LEPs and DCPs to contain provisions for the new dwelling type Manor Home which is proposed to be inserted into the dictionary of the Standard Instrument Principal Local Environmental Plan. Updating these plans and controls will take some time. Local Government Areas who choose not to adopt the MDDG "in its entirety" will take more time to update their DCP's as they will likely need to review their controls and seek approval by their respective Councillors.

Should you wish to discuss any of the matters in this submission, please contact Adrian Ellis (Strategic Planner) on (02) 9083 8057 during normal business hours.

Best regards,

A handwritten signature in black ink, appearing to be 'GB', followed by a horizontal line.

George Bramis
Executive Manager, Shaping Waverley

References:

Australian Bureau of Statistics Census Data 2016

Vehicle kilometre travelled (VKT) per person is decreasing:

BITRE Yearbook 2015

https://bitre.gov.au/publications/2015/files/BITRE_yearbook_2015_full_report.pdf

Autonomous vehicles will take up less road space:

OECD 2016, International Transport Forum: Shared Mobility: Innovation for Liveable Cities

<http://www.itf-oecd.org/shared-mobility-innovation-liveable-cities>