

Attachment one



**Submission in response to the draft Medium Density Design Guide
and an Explanation of Intended Effect for a Medium Density
Housing Code**

December 2016

Executive Summary

This submission is provided on behalf of the Northern Beaches Council in response to the draft Medium Density Design Guide (MDDG) and Explanation of Intended Effect (EIE) for a Medium Density Housing Code (draft Code). Comments are provided with respect to local planning controls for the three former Local Government Areas (LGAs) of Manly, Warringah and Pittwater, including: the Manly Local Environmental Plan 2013 (MLEP 2013) and Manly Development Control Plan 2013 (MDCP 2013); Warringah Local Environmental Plan 2011 (WLEP 2011), Warringah Local Environmental Plan 2000 (WLEP 2000) and Warringah Development Control Plan 2011 (WDCP 2011); and, the Pittwater Local Environmental Plan 2014 (PLEP 2014) and Pittwater 21 Development Control Plan (PDCP).

Proposed Development Controls: The principal controls in the draft Code are significantly less stringent than the local planning provisions of the former LGAs with respect to parking, landscape areas, setbacks, and private open space. Greater floor space ratios would be permitted compared with the MLEP 2013 and PLEP 2014, and increased building heights compared with the MDCP 2013. Thus implementation of the draft Code would result in an increased pressure on street parking, stormwater infrastructure, and an increase in building bulk and scale when compared with two storey developments requiring a development application under the local planning provisions. Council is therefore not satisfied the draft Code establishes a sufficiently strict set of controls to offset significant additional development scale/potential and likely resulting adverse impacts. It is therefore recommended to allow Council to set its own principal standards for complying development to cater to local conditions. This would ensure future medium density developments are in keeping with the character of established neighbourhoods.

Residential Densities: The implementation of the draft Code will result in ad-hoc, unplanned development that may affect Council's ability to meet current and future housing targets and their ability to deliver the required level of infrastructure. Of particular concern is the likely increase in density that would result in the former Manly and Pittwater LGAs, which permit dual occupancies within low density residential zones, subject to strict local density requirements. This increased density will result in significant adverse outcomes for our communities, particularly in terms of residential amenity and streetscape/ neighbourhood character. A decrease in dwelling yields may also result in some medium density areas (e.g under the WLEP 2011 and in Warriewood Valley). It is therefore vital that Section 94 plans can be reviewed prior to the implementation of the Code, and that Warriewood Valley and the Ingleside Land Release area are excluded. Further clarification is also sought from the Department as to how local density provisions will be taken into account.

Private Certification: The proposed expansion of complying development is not supported until issues with the transparency and accountability of the existing private building certification system are addressed. It is also not clear whether issues such as traffic impacts and stormwater design are proposed for private certification. An appropriate system of monitoring is essential to support the certification system, especially if the proposed design verification process is to proceed.

Other Issues: The attached Submission raises a number of other issues including: potential impacts on European and Aboriginal Heritage, absence of requirements for accessible housing, and technical matters such as stormwater and water management, subdivision, excavation, bushland and waste management. Recommendations are made to address Council's concerns.

In summary, the Northern Beaches Council has a number of concerns with the proposed draft Code in its current form, and requests that its commencement be delayed until these issues are resolved.

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Part A – General Comments

1. Permissibility

It is our understanding that the draft Code will permit the the development of dual occupancies (attached and detached), multi-dwelling housing, and manor homes (Proposed Medium Density Development) as complying development only where it is first permitted by Council within Zones R1, R2, R3 and RU5¹. Council supports this approach, as well as the proposal to restrict manor houses to zones permitting multi-dwelling housing and residential flat buildings².

Council submits that the application of the draft Code in any other zones or lands would result in inappropriate and unsuitable development, particularly in relation to the Northern Beaches' Rural and Environmental zones³. It is therefore important that these zones are excluded from any future amendments to the draft Code.

For the Northern Beaches Council area, the draft Code would apply to zones R1 General Residential (R1), R2 Low Density Residential (R2) and R3 Medium Density Residential (R3). There are no RU5 zones in the Northern Beaches Council area. The permissibility of Proposed Medium Density Development in relevant Local Environmental Plans is shown in Table 1 and Figure 1, as well as the permissibility of Residential Flat Buildings to demonstrate the development potential of these areas.

For the Northern Beaches Council area, the draft Code would apply to all residential zones in the MLEP 2013 (R1, R2 and R3) and within zones R2 and R3 in the PLEP 2014. Within the former Warringah LGA, the draft Code would apply only in the R3 zone under WLEP 2011⁴.

Table 1 – Permissibility of Proposed Medium Density Development across the Northern Beaches Council Area*.

LEP	R1	R2	R3
MLEP 2013	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes	Dual occupancies Multi dwelling housing Manor homes	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes
WLEP 2011	No R1 Zone	None of the Proposed Medium Density Development is permissible within R2	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes
PLEP 2014	No R1 Zone	Dual occupancies	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes

***Although 'Manor homes' are not currently permissible in the PLEP 2014, WLEP 2011 and MLEP 2013, the draft Code proposes to permit these developments in zones permitting 'multi-dwelling houses' and 'residential flat buildings'.**

¹ Statement of Intended Effect, pg 16

² Statement of Intended Effect, pg 37, note 10

³ Presently, attached dual occupancies are permitted within Pittwater Local Environmental Plan 2014 (PLEP 2014) R5 Large Lot Residential and RU2 Rural Landscape zones, and both attached dual occupancies and multi-dwelling housing are permitted in the Manly Local Environmental Plan 2013 (MLEP 2013) E4 Environmental Living zone

⁴ Land to which WLEP 2000 currently applies is taken to be in Zone E3 Environmental Management under the Codes SEPP and is therefore excluded from the current proposals.

Recommendation 1 - That the Department confirms the draft Code will permit the the development of dual occupancies (attached and detached), multi-dwelling housing, and manor homes as complying development only where it is first permitted by Council within Zones R1, R2, R3 and RU5

Recommendation 2 – That the Department commit that future amendment to the draft Code will not include Rural or Environmental land zonings

2. Minimum lot sizes and subdivision

The MDDG outlines that the first step in preparing complying development certificate applications is to check the land zoning (discussed above) as well as the minimum lot size⁵. Specifically, reference is made to the minimum lot size in outlined in clause 4.1B of the Standard Instrument⁶.

In the EIE however, the requirement to comply with the minimum lot size in an LEP is only provided in the draft development standards for ‘Two dwellings side by side’⁷. It is therefore unclear as to whether LEP minimum lot sizes apply for ‘Multi-dwelling housing (terraces)’, ‘Manor houses’ and ‘Dual occupancies’.

It is also unclear as to whether clause 4.1 in the LEP, which refers to minimum subdivision lot sizes, applies to the Proposed Medium Density Development (see Figure 2 - Map showing minimum subdivision lot sizes in areas subject to the draft Code across the Northern Beaches Council Area).

Allowing the Proposed Medium Density Development as complying development which exceeds local density provisions is likely to result in significant adverse outcomes for our communities, particularly in terms of residential amenity and streetscape/ neighbourhood character.

Presently, only PLEP 2014 contains clause 4.1B, which refers to a minimum lot size for dual occupancies. However, the subdivision of dual occupancies is specifically prohibited. In Manly, MLEP 2013 contains important provisions for restricting medium density development under clause 4.1.

Recommendation 3 – That the Department clarifies which of the Proposed Medium Density Developments are required to comply with the LEP minimum lot sizes and of those, which clause of the LEP applies (e.g. 4.1 Minimum Subdivision Lot Size or 4.1B Minimum Lot Sizes or both)

Recommendation 4 - That subdivisions are only permitted in accordance with the minimum lot sizes outlined in clause 4.1 in LEPs, or if relevant, allow time for Councils to review and amend their LEP to implement a clause 4.1B minimum lots sizes for specific developments

3. Concurrent consent for dwelling and subdivision

Clarification is sought on the intent and wording of the proposed new clause 4.1C, (3)(b) (i) and (ii)⁸. The EIE suggests that many Councils have LEP provisions allowing subdivision where the minimum

⁵ Medium Density Design Guide, pg 8, 80, 98, 136

⁶ Medium Density Design Guide, pg 8

⁷ Statement of Intended Effect, pg 32, specified development

⁸ Statement of Intended Effect, pg 19

lot size does not equal the standard for subdivision alone. These instances have not occurred in any of the former Manly, Warringah and Pittwater Local Government Areas; therefore further information is required regarding the intention of this clause.

Recommendation 5 – That the Department provides more detail to explain the meaning and intent of the proposed new clause 4.1C for concurrent consent for development and subdivision

4. Impacts on Dwelling Yields and Section 94/94A Contributions

It is noted that the implementation of the Code may result in a decrease in dwelling yields in some medium density zones. For example, within R3 zones permitting an 11m height under WLEP 2011, a property owner may choose to develop a two storey dual occupancy or manor home on an existing small lot as complying development rather than seek to consolidate the land with adjoining properties to build a three storey residential flat building(s).

It may also result in a significant, rapid increase in dwelling yields in other areas (e.g. under the MLEP 2013 and PLEP 2014), with unexpected population growth that will lead to shortfalls in funding for appropriate services. For example, the Warriewood Valley's Section 94 Plan is based on an assumed potential future dwelling number and demand, such as demand for open space that cannot be readily provided within the valley.

Thus the implementation of the draft Code may result in ad-hoc, unplanned development that may affect:

- Council's ability to meet current and future housing targets
- Section 94/94A Contributions and therefore Council's ability to deliver the required level of infrastructure.

It is therefore vital that Section 94 plans can be reviewed prior to the implementation of the Code.

5. The Design Verification Process

It is not clear from the draft Code what reliance, if any, the accredited building certifier can place on a Design Verification Statement prepared by the designer. It is imperative that the accredited building certifier is held ultimately responsible for compliance with the Design Criteria as they are trained and accredited and may be disciplined for non-compliance. Alternatively, a system could be implemented whereby the accredited building certifier obtains a Compliance Certificate issued by an accredited building designer for the Design Criteria. In this model, designers must be accredited by the Building Professionals Board or another body that is capable of disciplining the designer, and if necessary removing their accreditation.

Recommendation 6 – That the Department clarifies that accredited building designers are held ultimately responsible for compliance of proposals with the Design Criteria despite obtaining a Design Verification Statement from the designer.

Recommendation 7 – That as an alternative, designers be accredited by the Building Professionals Board or like body to issue Compliance Certificates under the EP&A Act for Design Criteria under the draft Code.

6. Non-merit based assessments

The proposed development controls are less stringent than those in the Northern Beaches LEPs and DCPs (see Part B). As stated in the EIE, complying development must result in predictable outcomes with predictable impacts and have minimal scope for impact on adjoining properties⁹. The criteria for complying development should be more onerous than LEP or DCP requirements because they are not subject to the same merit assessment or consideration of local circumstances that would otherwise be afforded in development assessment.

Medium density residential development is not considered simple and straightforward development. It yields greater residential densities and generates more impacts including impacts on views, privacy, sunlight access, visual bulk and scale. These matters are often the subject of neighbour objections and the lack of detailed merit assessment may contribute to poorer design and amenity outcomes.

An example of where complying development has led to poorer outcomes has been in the implementation of the housing provisions of the Codes SEPP. Many properties in the Northern Beaches Council area enjoy views to the water or bushland. Local provisions encourage the sharing of these views however the Codes SEPP has permitted development resulting in extensive loss of views from neighbouring properties. Where a merit assessment and community engagement would encourage a compromise to achieve view sharing between dwellings, the complying development process does not.

Council is therefore not satisfied the draft Code establishes a sufficiently strict set of controls to offset significant additional development scale/potential and likely resulting adverse impacts. To address these concerns, it is recommended that Council be permitted to set its own principal standards for complying development to cater to local conditions.

Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code

7. The certification process and (lack of) community consultation

As per our previous submissions, there are widely acknowledged concerns with the existing building certification system in NSW. The Department of Planning & Environment's discussion paper, released in May 2015, on the review of the Building Professionals Act 2005 highlights the need for reform of the building regulation and certification process. The lack of transparency, accountability, monitoring by the state government and auditing of work by certifiers needs to be addressed prior to the expansion of complying development.

Issues with the certification system often become a burden on Council, as Council is contacted with complaints and in some cases has stepped in to certify developments where certifiers have gone out of business. In the Northern Beaches, there have also been cases where certifiers have approved developments in violation of the codes.

⁹ Explanation of Intended Effects, pg 7

Council also questions whether private certifiers are willing or equipped to deal with the expansion of complying development, or to adequately consider the proposed design criteria, some of which are subjective.

The complying development process does not provide for community engagement, as the owner or Certifier is not required to consider any submissions. The expansion of complying development to include medium density development without the establishment of appropriate and strictly enforced controls on certifiers has the potential to undermine the community's faith in the planning system.

Recommendation 9 – That the certification of medium density development as complying development by private building certifiers is delayed until measures are taken to improve the audit and discipline of private certifiers.

Recommendation 10 - That the Department allows Councils to charge a fee for enforcement of complying development

8. Medium Density Design Guide

Council welcomes the addition of the Medium Density Design Guideline (MDDG) to provide guidance on good quality design outcomes. Clarification is required however as to how the MDDG will work with Council controls.

Recommendation 11 – That the Department clarifies the meaning of the statement “Where Council does adopt the MDDG it will still need to prepare the principle development standards that include height, floor space ratio, landscape area and setbacks” (EIE, pg 8). Does this statement refer to Council’s existing standards, or is there a requirement for Council to provide additional standards for Medium Density Developments?

Recommendation 12 – That the Department clarifies the meaning of the statement “Council will use the design guidelines to establish precinct plans and principal controls” (EIE, pg 5). Does this statement mean that Council must undertake a separate process?

9. European and Aboriginal heritage

The Codes SEPP does not currently require consideration of the impact of proposed development on heritage items in the vicinity of a site. In some cases this has resulted in significant impacts on heritage items. These impacts will increase as the scale and scope of development permitted as complying development increases. This will further undermine the protection of both European and Aboriginal heritage, especially in relation to curtilage, location such as setting, and views and the surrounding streetscape.

Aboriginal heritage is even more difficult to conserve and protect due to sensitive cultural needs of the Aboriginal community and the existing management system. The NSW Office of Environment and Heritage (NSW OEH) manages and regulates Aboriginal cultural heritage, and access to detailed and accurate information is difficult due to historical listing procedures and precedents in which ground truthing of data was not undertaken. As a consequence, Private Certifiers will not be aware of the process required to identify registered sites, the limitations and inaccuracies with existing listings, or the on-site investigations that are required to be undertaken to ensure compliance with the *National Parks and Wildlife Act, 1974*.

Recommendation 13 – That requirements are included in the Site Analysis to ensure the development takes into consideration any impacts on heritage items in the vicinity of a development site

Recommendation 14 – That accredited certifiers are required to check the registers held by the NSW Office of Environment and Heritage (NSW OEH) for Aboriginal Heritage and undertake appropriate site inspections to determine whether Aboriginal objects are located on the site prior to the issue of a complying development certificate.

10. Accessible housing

The MDDG contains no requirements for the provision of adaptable or accessible dwellings, unlike the State Environmental Planning Policy - 65 Design, Quality of Residential Apartment Development and most Council development control plans. These standards are required to provide certainty that medium density residential developments will cater for people at all stages of life or ability, especially older residents or people with disabilities.

Recommendation 15 - That the Department includes requirements for a proportion of all multi-dwelling housing to be adaptable or accessible housing

11. Comments on proposed development controls

The MDDG and EIE appear to contain certain inconsistencies, contradictions and omissions. The following clarifications are therefore recommended:

- Minimum lot width:
 - It is not always clear in the draft Code as to whether the sizes are applicable before or after subdivision. For example, the control for the minimum lot width of 12m for 'two dwellings side by side'¹⁰ is assumed to be the minimum lot width required before subdivision and development of a dual occupancy. This should be clarified where required.
- Attics are permissible for all development types, however there are no provisions to restrict their size and address potential privacy issues. It is recommended to include provisions to address these concerns (e.g. attic to be no more than 50% of floor area below, no windows on the side of the buildings).
- For landscaped areas, it is recommended to provide:
 - A minimum soil depth of 1m
 - Requirements to use locally indigenous species
 - A minimum 2m width to enable planting that can enhance privacy between dwellings and ensure the establishment of low lying shrubs, medium high shrubs, deep soil planting, canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- For landscaped areas forward of the building line:
 - The controls in the draft Code are inconsistent with the MDDG

¹⁰ Explanation of Intended Effects, pg 32

- For consistency in streetscapes, it is recommended to specify the front boundary setback to be free of any structures, basements, car parking or site facilities other than driveways, letter boxes, garbage storage areas and fences.
- For side setbacks:
 - The controls for 'side setbacks' and 'side boundary envelopes' should be separated for ease of interpretation
 - The controls in the draft Code and MDDG are difficult to interpret as they stand, for example:
 - The controls imply there will be no side boundary envelope for the first 15 metres of the lot. If so, concerns are raised regarding building bulk, articulation and building separation.
 - For two dwellings side by side and multi-dwelling housing, it is not clear whether the side setback of 1.2m applies to the entire site (the controls read as though there is no side setback for the rear of the lot >15m).
 - For dual occupancies and manor homes, the draft Code proposes a side setback of just 0.9m which contradicts the MDDG which states a 1.5m side setback (3.4A)
- For Multi-Dwelling Housing, the draft Code refers only to the size of strata lots (i.e. not Torrens lots)¹¹
- For rear setbacks
 - For multi-dwelling housing, the setbacks in the Code differ to those in the MDDG 3.2A which are more detailed depending on the size of the lot. Clarification is required as to which controls apply.
- For building separation between rear "lane" development and dwelling house, clarification is required as to whether this control means 'land' (EIE pg 36) or 'lane' separation (EIE pg 38)
- For subdivision, this sentence is incomplete "It is proposed to expand this part (Subdivision Code) to include Torrens title subdivision – but only when.." ¹².

Recommendation 16 – That the Department addresses the omissions, inconsistencies and contradictions in the draft Code and MDDG identified Part 11 of this submission

¹¹ Explanation of Intended Effect, pg 35

¹² Explanation of Intended Effect, pg 40

Part B – Comments specific to the Planning Controls of the former Local Government Areas of Manly, Warringah and Pittwater

12. Manly LEP 2013 and DCP 2013

Principal Controls

The principal controls in the draft Code are significantly less stringent than controls in MLEP 2013 and MDCP 2013 with respect to residential densities, floor space ratio (FSR), landscape areas, rear setbacks, side setbacks and building heights. Complying development certificates under the draft Code would therefore result in a significant increase in density and built forms compared with development requiring a Development Application (DA) under the local planning provisions.

Of particular note in the Manly Plans is the Residential Density Controls which are long established and tested within a suite of planning tools used to manage residential types, density and scale. Requirements for a minimum site area per dwelling are used alongside FSR, building height, open space and setbacks to guide suitable outcomes relating to the context and desired future character of certain areas and managing impacts on surrounding development. This local assessment and structure is likely to be compromised by the draft Code.

Dual Occupancies in Zone R2

The MLEP 2013 does not contain a clause 4.1B which enables Councils to nominate a minimum lot size for dual occupancies. However, detailed provisions for minimum subdivision lot sizes are provided within the MLEP 2013 clause 4.1, and a minimum site area per dwelling provided with the MDCP 2013 (paragraph 4.1.1 and Map A – Residential Density Areas)

Planning controls for the Manly R2 Zone require residential densities of at least 500sqm of site area per dwelling compared to the draft Code which requires only 200sqm per dwelling (i.e. total minimum lot size of 400sqm for a dual occupancy under the Code compared with 1000sqm for a development application).

On more environmentally sensitive sites sloping towards the foreshore, local density controls require significantly larger sites for dual occupancies compared to the draft Code (750sqm to 1150sqm of site area per dwelling). A DA in these areas would also be subject to a FSR of 0.4:1 to 0.45:1 whereas the draft Code proposes a FSR of 0.5:1 to 0.6:1.

Manor Homes in Zone R1

Under the MLEP 2013 R1 Zone (in Balgowlah, Fairlight and Manly), a 4 dwelling Manor House would require a 1000-1200sqm site (i.e. 250-300sqm site area per dwelling). However, the draft Code permits such development as complying on a site of only 600sqm.

Development types generally in Zone R2 in relation to height

The MDCP 2013 contains special height provisions for certain mapped land on steeply sloping sites of Seaforth, Clontarf, Balgowlah Heights and Manly (Bower St only). These are supported with planning controls for wall height and number of storeys. Any complying development that does not adhere to these special height provisions would result in significant adverse impacts on neighboring properties and views.

Development types generally in Zone R2 in relation to setback

A side setback of a standard 2 storey building, as assessed under the MDCP 2013, would be typically at least 2.7m (depending on wall height and slope). However, the draft Code proposes a side setback of just 1.2m.

Relationship of Minimum Lot Size to FSR

In the MLEP 2013, land with a minimum lot size of 600sqm for manor homes generally equates to a maximum 0.45:1 FSR whereas the draft Code proposes minimum lot size of 600-700sqm to a maximum 0.6:1 FSR (Multi-dwelling Housing).

In the MLEP 2013, land with a minimum lot size of 250sqm for all other dwelling types generally equates to a maximum 0.6:1 FSR whereas the draft Code proposes a maximum 0.8:1 FSR (Multi-dwelling Housing) or 0.75:1 FSR (2 Side by Side Dwellings) for dwellings with a minimum lot size of 200-300sqm.

The following recommendations are repeated to address the above concerns:

Recommendation 4 - That subdivisions are only permitted in accordance with the minimum lot sizes outlined in clause 4.1 in LEPs, or if relevant, allow time for Councils to review and amend their LEP to implement a clause 4.1B minimum lots sizes for specific developments

Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code

13. Warringah LEP 2011 and DCP 2011

Principal Controls

The draft Code would apply only in the R3 medium density residential zone within the former Warringah LGA. For these areas, the principal controls in the draft Code vary significantly from those in WLEP 2011 and WDCP 2011 with respect to landscaped areas, side setbacks, side boundary envelopes, rear setbacks and private open space. Thus, complying development under the draft Code could result in a significant increase in building bulk and scale when compared with two storey developments requiring a DA under the local planning provisions.

Zone R2

The draft Code does not apply to any land zoned R2 Low Density Residential in the WLEP 2011, as none of the Proposed Medium Density Developments are permissible in this zone (i.e. two dwellings side by side, dual occupancies, multi-dwelling housing, and manor homes).

Zone R3

All of the Proposed Medium Density Developments are permissible within land zoned R3 Medium Density Residential in WLEP 2011. Residential Flat Buildings are also permissible within R3.

Subdivision under WLEP 2011

WLEP 2011 does not contain clause 4.1B which enables Councils to nominate a minimum lot size for certain development. WLEP 2011 does not specify a minimum lot size for the Proposed Medium Density Development within the R3 medium density residential zones (Figure 2). There are therefore no conflicts between the minimum lot sizes between the WLEP 2011 and the draft Code.

Two-dwellings side by side in Zone R3

These types of developments generally comprise semi-detached and detached dwellings. In Zone R3, there is no minimum lot size for these types of dwellings, thus any developments under the draft Code would result in dwellings with a minimum lot size of 200m² per dwelling. These types of developments will most likely be taken up in medium density areas with a current 8.5m height restriction (e.g. Belrose, Brookvale, Beacon Hill and Narrabeen - Figure 3), where development of an existing lot under complying development may be easier than consolidating lots to create higher density developments or residential flat buildings.

Under the code, these lots could be developed with far less landscaped area (i.e. up to 35% instead of 50%), smaller side setbacks (1.2m instead of 4.5m), larger side boundary envelopes (none for the first 15m, 3m and 45 degrees for the rear, instead of 4 or 5m and 45 degrees), fewer parking spaces (1 per dwelling instead of 2) and less private open space (16m² instead of 35-60m²). These developments would therefore result in increased stormwater runoff, potential noise and privacy issues from adjoining properties, increased building bulk and an increased demand for on-street parking. In addition, residents would have less private open space, increasing demand for, and pressure on, public open spaces.

Multi-dwelling housing in Zone R3

These types of developments generally comprise terrace housing. Only developments which front a road are permissible as complying development under the Code, with master planned housing requiring a DA. These developments propose the same principle standards as above, thus the same issues will result. Only, in addition to the above, rear setbacks for these developments are far less than those allowed in Zone R3 (3m instead of 6m).

It is likely these developments will result in excavation of basement car parks as complying development. It is important that the design of these car parks address impacts of localised flooding and potential damage to Council's unmapped stormwater infrastructure. This is discussed further under section 20 Excavation.

Manor House and Dual Occupancies

These types of developments generally refer to buildings in which dwellings are located above other dwellings. They are Class 2 developments under the National Construction Code.

The Codes SEPP will permit these developments on lots with a minimum area of 600m² with a minimum frontage of 15m. These developments will be subject to similar principle standards to those for two dwellings side by side, but with a reduced requirement for private open space which is more in keeping with the WDCP 2011 (8-12sqm compared with 10sqm).

The following recommendations are repeated to address the above concerns:

Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code

14. Pittwater LEP 2014 and PDCP 2014

Principal Controls

The principal controls in the draft Code vary significantly from the PLEP 2014 and PDCP 2014 with respect to FSR, landscape areas, rear setbacks, side setbacks and private open space. Thus,

complying development under the draft Code would result in a significant increase in density and scale of development compared to development requiring a DA under the local planning provisions.

Dual occupancies in Zone R2

The PLEP 2014 currently permits dual occupancy development within the R2 zone. However, dual occupancies are restricted to a minimum lot size of 800sqm and cannot be subdivided. The Code proposes to allow subdivision for the 'two dwellings side by side' option however the resultant outcome is development that is more akin to semi-detached dwellings which are not permitted within the R2 zone under the PLEP. Effectively the outcome is development of a higher density than is prohibited in the low density zone. This does meet the approach of allowing the development to proceed under complying development if the relevant zone allows it. Concern is also raised that under this option the development is required to meet the minimum lot size specified in the LEP for a dual occupancy while under the 'Manor House and Dual Occ' option it is only required to meet a minimum of 600sqm before a dual occupancy can be built and then subdivided.

The subdivision of dual occupancies is not permitted in the PLEP 2014 to allow for affordable rental housing. However, the draft Code allows dual occupancies to be subdivided which would result in the creation of lots that are significantly below the minimum subdivision lot size standard (being 550sqm or 700sqm). This approach is not supported.

Thus the draft Code would result in a rapid increase in dwelling yields and population growth within the R2 zone. This will lead to shortfalls in funding for appropriate services.

Manor Houses in Zone R3

Under the Code, Manor Houses will be allowed on lots with a minimum area of 600sqm. In the PLEP 2014, Clause 4.5A sets the density controls for 'medium density type' uses in the R3 zone, being a maximum of 1 dwelling per 200sqm. The density standard in the draft Code will allow an increased density of 1 dwelling per 150sqm. This requirement should be amended to 200sqm per dwelling for Manor Homes to bring it into line with the remainder of the code.

Multi dwelling housing in Warriewood Valley

The Warriewood Valley Land Release project is a joint project between Council and the Department of Planning and Environment. The development of the project is heavily constrained by a number of issues which has been recognised by the Department and thus is subject to specific bespoke planning controls. The proposal for medium density housing as complying development will ignore these issues and may result in substantial development above and beyond what is catered for with substantial negative impacts.

Warriewood Valley was reviewed in 2012 with a dwelling cap set for the entire Release Area. This number was agreed to by Council and the Department based on issues such as water run-off and flooding, traffic, transport and environmental outcomes. The set dwelling yields take into account the cumulative impacts of development so as to not overload the development, and prevent issues such as flooding downstream of the valley and overwhelming safe evacuation routes. The release project also has a detailed water management specification which is based on a certain level of hard space and landscaping which will not be catered for under the code. The dwelling numbers were also agreed to by the Secretary of Department and have been confirmed by the Land and Environment Court to be prohibitions and not standards to be varied.

However the draft code may effectively overload the release project with unsustainable development that exceeds the expected outcomes in terms of dwellings, flooding and traffic impacts. This will undermine the entire release project. Instead of an expected dwelling yield in the range of 32 dwelling per hectare, the code could more than double the amount of dwellings. This does not represent the orderly and economic development of land, and will prevent Warriewood from achieving the goals of the land release project.

Ingleside Land Release Area

The Ingleside Land Release Area is a joint program between Council and the Department of Planning and Environment. The project is the subject of years of detailed investigation and studies. The project is within a sensitive environment and the project's vision for a sustainable and functional community, including GreenStar certification, relies on a range of outcomes being met. The proposal to extend complying development to medium density is of concern (similar to Warriewood Valley) as development in Ingleside is considered to be complex due to the wide spread of environmental, social and economic issues that need to be addressed.

The vision for Ingleside is a community that achieves the best in sustainability. This includes the goal of reaching a 4 Star GreenStar rating of Australian Best Practice. This requires detailed and thorough assessment of development from rezoning of the precinct through to development assessment and building performance. This requires development standards and controls that are above and beyond base levels. This includes targeted lower water and energy usage, building material recycling and reduced greenhouse gas emissions. There are also a range of other issues that need to be considered such as the need for 0% run off due to the limited ability of the shallow soils to absorb water and the potential impact of downstream flooding through Mona Vale, Warriewood and North Narrabeen. Complying Development is not required to address these issues to the required detail as it is intended for straightforward development. Allowing complying development to proceed in Ingleside will undermine the ability of the project to meet the goals agreed to by Council and the Department.

As well as targeted environmental outcomes, GreenStar requires a range of social and economic targets to be met. This includes a mixture of dwellings sizes and typology to cater for people at all stages of life as well the provision of affordable housing for key workers. The Codes once again are not capable of catering for these issues. The Northern Beaches already suffers from a lack of affordable and appropriate housing and Ingleside will go some of the way to addressing the issue through having specific standards contained within its environmental planning instrument. However concern is raised that extending complying development to medium density will undermine Council's ability to set controls to address these local issues.

Recommendation 17 – That the subdivision of dual occupancies be prohibited where a Council LEP currently prohibits such subdivision

Recommendation 18 – That the development and subdivision of 'two dwellings side by side' only be permitted if semi-detached dwellings are permitted

Recommendation 19 – That Warriewood Valley is excluded from the Codes due to the sensitive technical design issues and the dwelling cap agreed to by Council and the Department of Planning and Environment

Recommendation 20 – That Ingleside is excluded from the Codes due to the extremely sensitive nature and the goal of achieving a 4 star GreenStar rating

Recommendation 21 – That Manor Homes require a minimum of 200 sqm per dwelling, or alternatively, that the draft Code requires compliance with clause 4.5A ‘Density controls for certain residential accommodation’.

Part C – Technical Matters

15. Sloping land

Council is concerned there are no provisions to restrict complying development on sloping land, where poor design can lead to negative outcomes in relation to overshadowing, privacy and view loss. There is also a high potential for severe consequences for neighbouring properties, especially in landslip areas.

Having regard to the additional likely impacts for steeply sloping sites (geotechnical, visual etc.) it is recommended that complying development should not be carried out on sites of greater than 15 degrees. This would allow a merit-based assessment for steeply sloping sites.

Recommendation 22 – That sloping sites of greater than 15 degrees are excluded from the Codes SEPP

16. Stormwater drainage

The landscaped open space requirements in the draft Code are generally less than required under local provisions, meaning that Proposed Medium Density Development will generate increased stormwater runoff and additional demand on Council's stormwater drainage system (e.g. kerb and gutters and drainage pipelines). This may increase the risk and severity of flooding downstream of the development sites.

Stormwater Certification is therefore a vital component of the draft Code. Council notes that neither the EIE nor the MDDG refer to the proposed means of stormwater certification for complying development. In previous responses to the Discussion Paper, the former Councils proposed certification for On-site Stormwater Detention (OSD) either by:

- Council, subject to the collection of appropriate fee, or
- Qualified specialists, provided they were Accredited Certifiers in Civil Works (drainage works) with the Building Professionals Board and Registered Chartered Engineering Professionals with Engineers Australia.

If external certification is proposed, the State Government would need to guarantee sufficient oversight of specialists, for example, through audits of work.

It is vital that stormwater drainage systems are designed in strict accordance with Council's policies as stormwater runoff may require extensions or modifications of Council's stormwater drainage infrastructure. Given the recent Council merger, Council would require time to consolidate its policies and standards for use by external certifiers. The Department may also wish to provide guidelines for all Councils to ensure consistent external certification processes and the incorporation of water sensitive urban design principles.

Recommendation 23 – That the Department clarifies the means and mechanisms for stormwater certification

Recommendation 24 – That, if external stormwater certification is proposed, a system is implemented to ensure practitioners are accredited and regularly audited, and Councils are given time to adopt new stormwater policy to allow consistent certification

17. Water management

The Northern Beaches Council area is bounded by Sydney Harbour, Pittwater and the Tasman Sea and contains numerous estuaries, lagoons and creeks. In addition, many localities have a high water table. Due to these factors, a large majority of developments require specialist impact assessments by qualified individuals as well as referrals to the NSW Office of Water to ensure proper management of water reserves and the environment.

Neither the EIE nor the MDDG outline requirements for referrals to the NSW Office of Water under the *Water Management Act 2000* or the need to engage specialist advice. For example, referrals are required where development involves the pumping of water or drainage works, or where buildings or works are proposed within 40 metres of a creek, river, lake or lagoon.

Regarding the provisions in the MDDG for Water Management and Conservation (3.1Y; 3.2Y and 3.4Y), the following comments are provided:

- Council does not support the disposal of stormwater runoff by means of a charged system. Charged systems have the potential to direct stormwater flow to a different catchment and can cause problems for the properties in this Catchment.
- Clarify the requirements to obtain:
 - Geotechnical investigations for any proposed onsite absorption systems to ensure that the land has a suitable absorption capacity
 - Easements over downstream properties for any inter-allotment drainage systems
- The Proposed Medium Density Development should only apply in areas which are serviced by a sewer network. Onsite wastewater systems are not considered feasible for this type of development due to the lack of available space for effluent irrigation.
- In the MDDG, the inclusion of Water Sensitive Urban Design in the principles on Page 78 is positive, however is not represented in the Objectives and Design Criteria on Page 115, 134, 153.

Recommendation 25 – That developments requiring referrals under the *Water Management Act 2000* are excluded from the draft Code. Alternatively, requirements are included for the designer to seek specialist advice relating to water management and undertake the necessary referrals to the NSW Office of Water for applicable development as required under the *Water Management Act 2000*.

Recommendation 26 – That the MDDG is updated to clarify the requirements to obtain Geotechnical investigations and Easements for stormwater systems where required

Recommendation 27 – That the Proposed Medium Density Development should only apply in areas serviced by a sewer network

Recommendation 28 – That the Objectives and Design Criteria in the MDDG are updated to reflect the inclusion of Water Sensitive Urban Design principles

18. Torrens title subdivision and basement car parks

The draft Code proposes to allow Torrens title subdivision of multi-dwelling developments with basement car parking, with the use of easements for smaller developments. Council objects to

Torrens title subdivision of properties with basement car parks because these structures are contiguous and require maintenance. Whilst an easement may outline responsibilities, without a governing body such as a body corporate or community title, there is no one party responsible for enforcing them. As well, there is no mechanism to collect funds for maintenance. In instances where maintenance is required or flooding eventuates, property owners contact Council to assist in a resolution. Often there is nothing Council can do to assist with this issue and property owners are subject to ongoing disputes.

Recommendation 29 – That Torrens title subdivision of developments with basement car parks is excluded as complying development

19. Traffic and parking

The Northern Beaches suffer from a relative lack of public transport options. This is particularly the case in outer suburban areas. Although the draft Code proposes parking rates in accordance with the Guide to Traffic Generating Development, these provisions are less than required under the relevant DCP in the Northern Beaches Council area. Furthermore, there are no provisions for onsite visitor parking spaces for multi-dwelling housing. This will result in a shift from developments being self-sufficient in parking to having Council's limited on street parking being used. This is particularly a concern for popular tourist areas such as Manly and Palm Beach.

It is noted the MDDG refers to AS2980.1 for parking spaces and circulation¹³ and it is assumed this means compliance with AS2890.1. As per our previous submissions, detailed traffic assessment is required for medium density developments as the type of road frontage provision impacts on vehicular access to development sites, and the grades of driveways are often overlooked (e.g. too steep or not wide enough).

Further, certain medium density developments would require changes to traffic control facilities, requiring approval under the Roads Act and Council's Local Traffic Committee.

There is also concern where consecutive approvals result in cumulative impacts of extra dwellings and associated traffic on local and state road networks.

Recommendation 30 - That on-site car parking is required to be provided at the rate specified under the relevant Council DCP for all forms of proposed Medium Density Development

Recommendation 31 – That traffic assessments and parking designs for multi-dwelling housing are required to be referred to Council for approval prior to the issue of a complying development certificate

Recommendation 32 – That developers are required to provide traffic and parking statement, prepared by a qualified traffic planner or engineer, with applications for multi-dwelling housing

20. Excavation

As per previous submissions, Council does not consider it appropriate to permit excavation for basement car parking as complying development. A number of issues arising from basement car

¹³ Medium Density Design Guideline, 3.1F, 3.2F and 3.4F

parking require Council's assessment. Firstly, there is the potential for localised flooding when floodwater overtops the driveway and floods the basement car park (even when the development is not identified as flood affected on the planning certificate). Council may be liable for damages due to flood damage where floodwaters emanate from Council roads so it is imperative that localised flooding is considered at the design stage of a proposal

Secondly, separate approval may be required by the NSW Office of Water if temporary dewatering of the site is required. As discussed above, the decision to request the developer to obtain the approval is based on merit assessment, undertaken by Council (see 17 Water management).

Thirdly, there is the potential for the basement car park to be constructed too close to or over Council's stormwater drainage infrastructure. This may restrict access to Council's stormwater drainage infrastructure in the future for inspection and maintenance purposes.

Finally, excavation in close proximity to boundaries is a constant compliance issue, resulting in damage to adjoining properties. It is recommended that excavation near boundaries be subject to a mandatory dilapidation report being provided to adjoining land holders if excavation exceeds the maximum permitted as exempt development. In addition, any construction methodology that requires structural support to encroach onto adjoining properties should be subject to obtaining the consent of the owners of those properties.

Recommendation 33 - That basement car parks are excluded as complying development

Recommendation 34 – That, if basement car parks are permitted as complying development, a mandatory dilapidation report is provided to adjoining land holders where excavation exceeds the maximum permitted as exempt development

Recommendation 35 – That, if basement car parks are permitted as complying development, adjoining property owner's consent is obtained where structural support is proposed to encroach on their property

Recommendation 36 – That, if basement car parks are permitted as complying development, separate certification from an appropriately accredited or qualified person is required with respect to driveway design addressing localised flooding issues

21. Vegetation clearance in bushfire zones

As identified in the MDDG Part 2C – Landscaped Area, *'Significant landscape features should be protected'*. However, Council is concerned that permitting additional dwellings under complying development within bushfire prone areas could result in the additional clearing of native vegetation, trees and or threatened species under the Rural Fires Act 10/50 Code. The placement of a habitable development closer to the hazard within a property that is within the 10/50 vegetation clearing entitlement area means that vegetation and tree clearing may be extended further into natural areas. Such vegetation and tree clearing change the character of an area and reduce the local amenity that is afforded by tree cover.

Recommendation 37 – That the Proposed Medium Density Development is excluded as complying development from bushfire prone areas

22. Waste management

It is essential that waste management facilities are designed in accordance with Council's policies to ensure Council can continue to provide its waste collection service. The following changes are recommended to the Waste Management Provisions in the MDDG, the Exempt and Complying Development Codes 2008 (Codes SEPP) and standard conditions of complying development certificates to ensure Council can continue to provide its waste collection service:

Amendments to the Design Guidelines

- Page 76 Guidelines – 2Z – Waste Management, include the following sentence in second paragraph:

“A waste management plan should be prepared for all stages of the development including any demolition, site preparation and construction as well as the ongoing use of the building. Refer to Council Policies for local waste management practices, services and correct numbers and types of bins which need to be accommodated. “

(This also harmonises with the Waste Management Design Criteria in Part 3. For developments which are complying or by application, Council will be the waste services collection agency and should be consulted in the planning stages.)
- Page 77 – Design guidance table:
 - Include a new point 1: “Refer to Council Policies for local waste management practices and services and correct numbers and types of bins which need to be accommodated.”
 - Change point 6 to point 2
 - Point 7 is essentially a repeat of point 4 and could be omitted
 - Omit point 11. Many councils provide separate green waste collection for composting at large, dedicated facilities, so there is no need for composting on site. Additionally, onsite composting requires relatively high maintenance, especially where multiple premises are concerned and there is generally no ‘maintenance person’ to ensure correct management of the compost. Individual home owners can still compost if they so choose within their own premises/courtyard/balconies etc. from the wide variety of home composting systems commercially available.
- Appendix 1 – Pre-Development Application Checklist, under “Development Details”, include a dot point for “Number and mix of waste bins required”
- Appendix 2 – DA Documentation Checklist:
 - Include “Waste Management Plan for Demolition and Construction as well as ongoing use of the development.”
 - For “Floor Plans”, under Storage Areas, add “including waste storage area”
- Appendix 4 – Site Analysis Checklist, include a dot point for “Proposed waste management plan (demolition, construction and design for ongoing use)”

Amendments to the Codes SEPP

As the Principal Control for Complying Development, the Exempt and Complying Development Codes 2008 (Codes SEPP) needs to be reviewed in regard to waste management.

The Codes SEPP allows Councils and private certifiers to issue Complying Development Certificates (CDCs) for demolition and building works. CDCs have a mandated set of conditions which do not require sustainable management of waste during demolition and construction. The only reference in relation to waste requires that “demolition materials and waste materials must be disposed of at a waste management facility”. This places significant pressure on existing waste management facilities in NSW and does not ensure that waste is disposed of in a sustainable method.

Council requests that NSW Department of Planning and Environment amend the Codes SEPP to ensure the sustainable disposal of construction and demolition waste and to encourage the recycling and reuse of materials. Amending the conditions relating to Waste Management Plans, and relating to certification that plans have been implemented, would improve current practices.

Following is a set of proposed conditions for Complying Development Certificates. The conditions are not overly prescriptive but we believe this would be the first step towards better practice by both builders and certifiers. The conditions could be further enhanced following a trial period and review.

Proposed Amendments to Conditions for Complying Development Certificates

A. Condition for Waste Management Plan

The existing condition 3 from Schedule 8 and 9 has been amended as highlighted below.

Proposed amendments to the SEPP include:

Schedule 6 – insert condition X as a new clause.

Schedule 7 – insert condition X as a new clause.

Schedule 8 – replace Clause 3 Waste Management with new condition X

Schedule 9 – replace Clause 3 Waste Management with new condition X

Condition X Waste Management

(1) *A waste management plan for the work must be submitted to the principal certifying authority at least 2 days before work commences on the site.*

(a) *All bricks, tiles, timber, metals, glass and excavation material must be reused on site or recycled at a waste recycling outlet.*

(2) *The waste management plan must (in accordance with subclause (1) (a)):*

(a) *identify all waste (including excavation, demolition and construction waste material) that will be generated by the work on the site, and*

(b) *identify the quantity of waste material, in tonnes and cubic metres, to be:*

(i) *reused on-site, and*

(ii) *recycled on-site and off-site, and*

(iii) *disposed of off-site, and*

(c) *if waste material is to be reused or recycled on-site—specify how the waste material will be reused or recycled on-site, and*

(d) if waste material is to be disposed of or recycled off-site—specify the contractor who will be transporting the material and the waste facility or recycling outlet to which the material will be taken.

(3) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed.

(4) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.

B. Condition for the Management of Site

Proposed amendment to the standard condition headed *Maintenance of Site* to include:

Schedule 6 – amend Clause 9 (2) with new sub-clause 2

Schedule 7 – amend Clause 6 (2) with new sub-clause 2

Schedule 8 – amend Clause 10 (2) with new sub-clause 2

Schedule 9 – amend Clause 9 (2) with new sub-clause 2

Sub-condition

(2) Waste materials (including excavation, demolition and construction waste materials) must be managed ~~on the site and then disposed of at a waste management facility in accordance with the waste management plan.~~

Recommendation 38 - That the Department amend the MDDG and Codes SEPP as described in Part 22 of this submission to ensure the sustainable disposal of construction and demolition waste and encourage the recycling and reuse of materials

Maps of affected areas

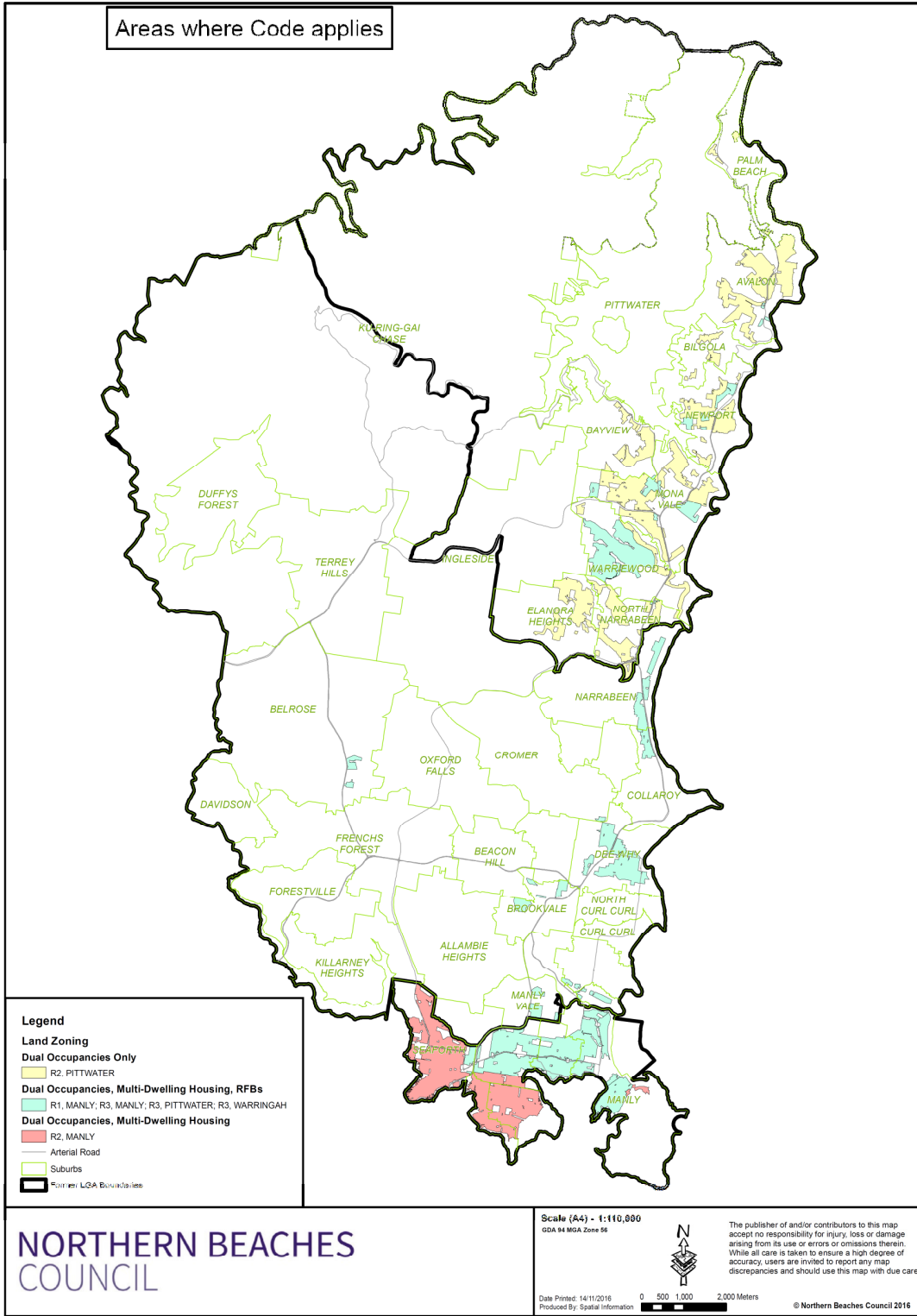


Figure 1 – Map showing permissibility of the Proposed Medium Density Development in areas subject to the draft Code across the Northern Beaches Council Area

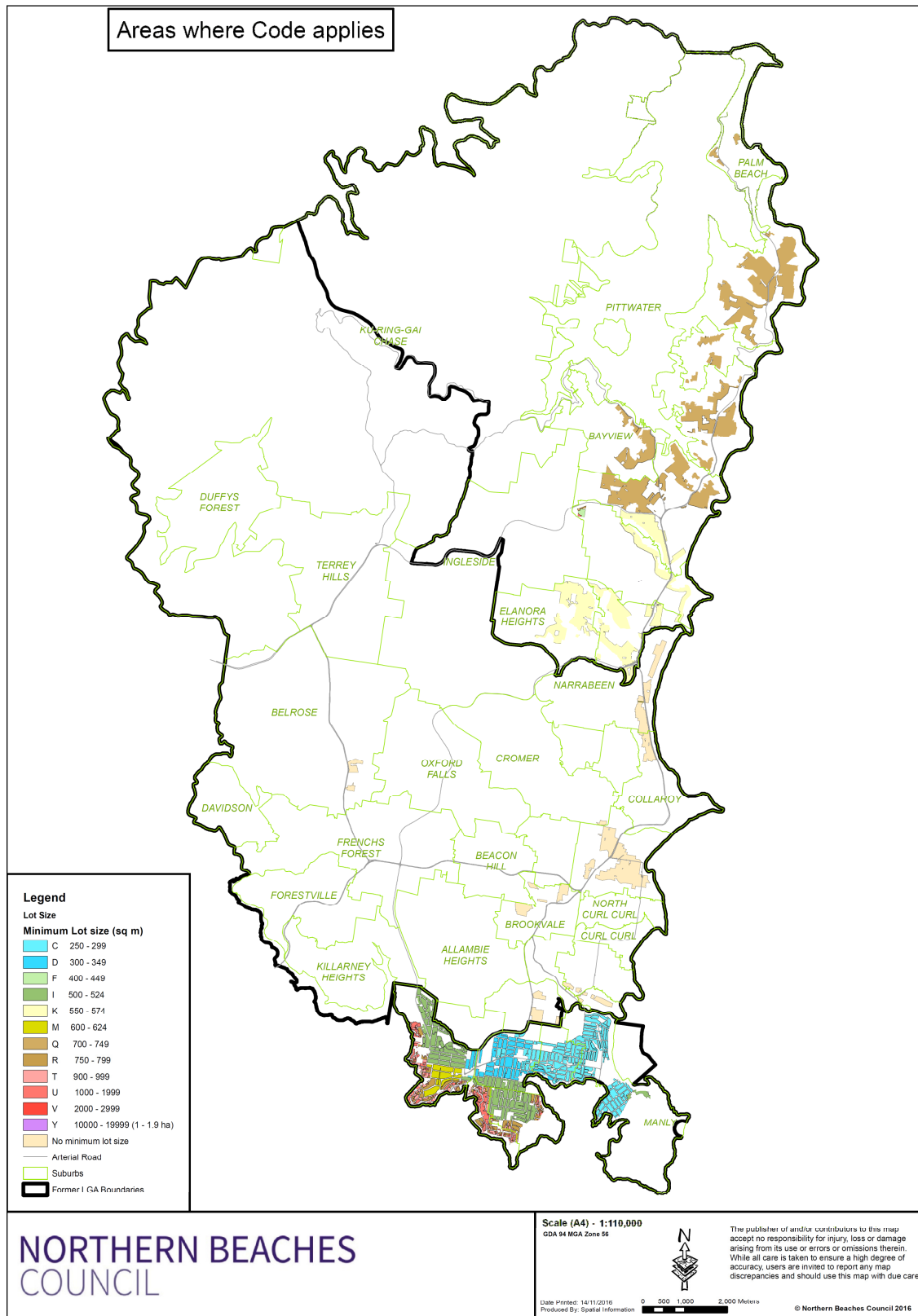


Figure 2 - Map showing minimum subdivision lot sizes in areas subject to the draft Code across the Northern Beaches Council Area

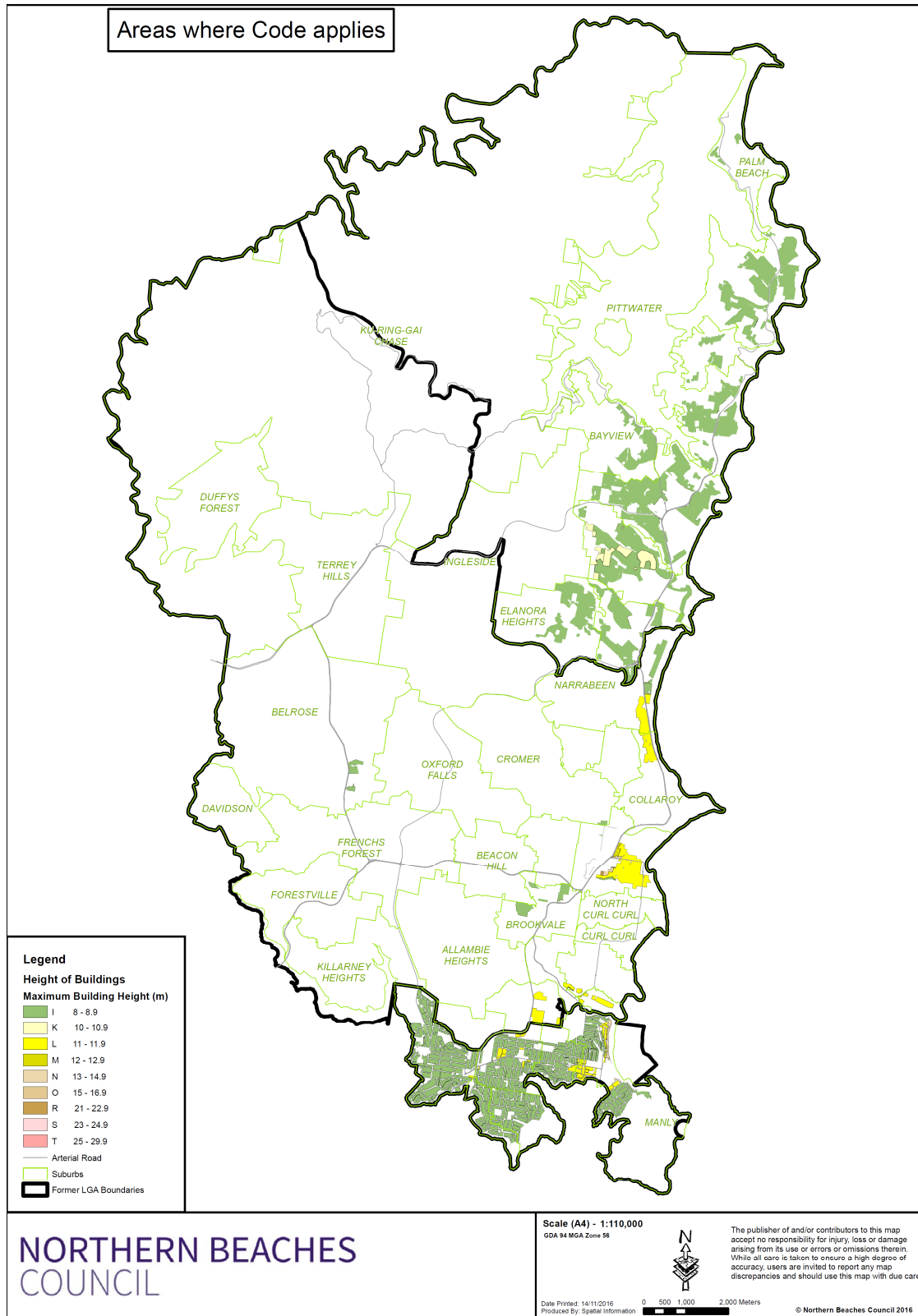


Figure 3 – Map showing permissible building heights in areas subject to the draft Code across the Northern Beaches Council Area

Table of Recommendations

Recommendation 1 - That the Department confirms the draft Code will permit the the development of dual occupancies (attached and detached), multi-dwelling housing, and manor homes as complying development only where it is first permitted by Council within Zones R1, R2, R3 and RU5

Recommendation 2 – That the Department commit that future amendment to the draft Code will not include Rural or Environmental land zonings

Recommendation 3 – That the Department clarifies which of the Proposed Medium Density Developments are required to comply with the LEP minimum lot sizes and of those, which clause of the LEP applies (e.g. 4.1 Minimum Subdivision Lot Size or 4.1B Minimum Lot Sizes or both)

Recommendation 4 - That subdivisions are only permitted in accordance with the minimum lot sizes outlined in clause 4.1 in LEPs, or if relevant, allow time for Councils to review and amend their LEP to implement a clause 4.1B minimum lots sizes for specific developments

Recommendation 5 – That the Department provides more detail to explain the meaning and intent of the proposed new clause 4.1C for concurrent consent for development and subdivision

Recommendation 6 – That the Department clarifies that accredited building designers are held ultimately responsible for compliance of proposals with the Design Criteria despite obtaining a Design Verification Statement from the designer.

Recommendation 7 – That as an alternative, designers be accredited by the Building Professionals Board or like body to issue Compliance Certificates under the EP&A Act for Design Criteria under the draft Code.

Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code

Recommendation 9 – That the certification of medium density development as complying development by private building certifiers is delayed until measures are taken to improve the audit and discipline of private certifiers.

Recommendation 10 - That the Department allows Councils to charge a fee for enforcement of complying development

Recommendation 11 – That the Department clarifies the meaning of the statement “Where Council does adopt the MDDG it will still need to prepare the principle development standards that include height, floor space ratio, landscape area and setbacks” (EIE, pg 8). Does this statement refer to Council’s existing standards, or is there a requirement for Council to provide additional standards for Medium Density Developments?

Recommendation 12 – That the Department clarifies the meaning of the statement “Council will use the design guidelines to establish precinct plans and principal controls” (EIE, pg 5). Does this statement mean that Council must undertake a separate process?

Recommendation 13 – That requirements are included in the Site Analysis to ensure the development takes into consideration any impacts on heritage items in the vicinity of a development site

Recommendation 14 – That accredited certifiers are required to check the registers held by the NSW Office of Environment and Heritage (NSW OEH) for Aboriginal Heritage and undertake appropriate site inspections to determine whether Aboriginal objects are located on the site prior to the issue of a complying development certificate.

Recommendation 15 - That the Department includes requirements for a proportion of all multi-dwelling housing to be adaptable or accessible housing

Recommendation 16 – That the Department addresses the omissions, inconsistencies and contradictions in the draft Code and MDDG identified Part 11 of this submission

Recommendation 17 – That the subdivision of dual occupancies be prohibited where a Council LEP currently prohibits such subdivision

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