

Our Reference: TRIM 1127 KC:CS

Codes and Approval Pathways  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

19 December 2016

Dear Sir/Madam,

**EXHIBITION ON DRAFT MEDIUM DENSITY DESIGN GUIDE**

Thank you for the consultation opportunity on the Draft Medium Density Design Guide which provides guidelines for an approval for certain medium density development as either complying development or by development consent.

Council previously provided a submission in March 2016 on the proposed expansion of complying development to include medium density housing. Council still considers that Many of the concerns raised in that submission still apply and are reiterated below:

*The proposed medium density housing that can be carried out as complying development under the State Environmental Planning Policy (Exempt and Complying Codes) 2008 is not supported on the following grounds:*

- *the proposed top-down planning controls will weaken the ability for local authorities and their communities to determine the shape of the places where they live, work and play.*
- *a one-size-fits all approach is not a strong basis for good design.*
- *they are likely to burden Wollondilly with the costs of providing additional infrastructure to service development which would currently be picked up by the developer through the development application process.*
- *they are not appropriate in peri-urban areas.*

*Although Wollondilly forms part of the Sydney's Metropolitan Rural Area it is better described as a peri-urban area. Peri-urban areas are unique and complex locations which need to be considered differently to metro, rural and regional areas in terms of policy.*

*Some of the characteristics of Wollondilly as a peri-urban area which limit the suitability of residential areas for medium density development as complying development in the manner proposed are that:*

- *Public and alternate transport arrangements are poor, with limited bus services and diesel train services that terminate at Campbelltown,*
- *The accessibility of areas is further constrained by a slowly developing cycleway and footpath network;*
- *Limited sewerage capacity to enable future growth;*
- *Lower levels of services and soft infrastructure; such as health,*
- *Constrained hard infrastructure; street lighting, drainage, roads*
- *Environmental and physical land constraints to development in urban areas; slope, flooding, land stability, mine subsidence, bushfire.*

*In many cases, land in Wollondilly zoned for R2 Low Density Residential are unsuitable for medium density development because they are unserviced in terms reticulated sewerage and water supply and/or the historical development of the Shire where lots were created at a time (some as late as the 1800s) when no consideration was given to topographical features, infrastructure provision or the like.*

Additionally the proposed Medium Density Design Guide will result in a significant additional workload for Council given our 19 discrete and unique urban environments. This workload needs to occur after the preparation of a housing strategy as forecast in the Draft District Plans.

More detail is provided on this position is provided at Attachment 1 which forms part of Council's submission.

Should you require any further information on the submission please contact Kitty Carter from Council's Strategic Planning team on (02) 4677 9551, or by email at [kitty.carter@wollondilly.nsw.gov.au](mailto:kitty.carter@wollondilly.nsw.gov.au).

Yours faithfully



Chris Stewart  
**Director**  
**PLANNING**

## ATTACHMENT 1:

### Detailed comments on the Draft Medium Density Design Guide (Draft Design Guide)

#### Better Design

- There is recognition in the Draft Design Guide of Council's role in strategic planning to determine the type, scale and built form of medium density housing, although it is unclear as to how this would change complying requirements. There should be an option for Council's in peri-urban areas to opt out of the SEPP Exempt and Complying Code - Medium Density section until after they have completed a strategic plan for such development as suggested in the Draft Design Guide.
- The Draft Design Guide does incorporate comprehensive and well intentioned guidelines for consideration with good diagrammatic representations. These guidelines would be a valuable tool for application by Council when preparing overall design strategies. The concern is that it is likely that most developers would simply apply the development controls and private certifiers may not necessarily feel compelled to genuinely consider the guidelines. As stated previously *"Design should 'ground' development to their location and this goes beyond the unthinking application of standard solutions as proposed."*
- The proposed Design Verification Statement is supported but there is little detail as to who would be monitoring the statement to ensure the design guidelines have been achieved
- Council has the option of adopting the Draft Design Guide alongside their Development Control Plan but some of the provisions are lower than those currently applicable, for example:-

Draft Medium Density Design Guide	Wollondilly Shire – LEP and DCP Provisions
- the minimum completed lot size of 200 sqm for dual occupancy.	-completed lot size – subdivision of 800 sqm (attached) and 975 (sqm) detached dual occupancy
- the minimum width of 12m for dual occupancies for dwellings side by side.	-minimum width of 24m for dual occupancies side by side.
- solar access of 2 hrs in mid winter.	- solar access of 3 hrs in mid winter
- a 3m minimum width for access to a battle-axe dual occupancy.	- a 5m minimum width for access to a battle-axe dual occupancy
- 16 sqm of open space	- 24sqm open space

#### Applicable Land Use Zones

- Council supports the requirement for medium density to be complying only if it is permissible within the relevant residential zone and in accordance with the minimum lot size. It is noted that this is one of the matters to be checked at the outset. The Design Code Appendix 5 Recommended Controls (for a future DCP) are that terrace houses should be on land zoned for low density. Currently multi-dwellings are not permissible in Wollondilly Shire in the R2 Low Density Residential Zone and are not considered appropriate in this zone.

- The proposal to not allow the proposed medium density housing forms as complying development in the R5 Large Lot Residential, Rural Zones and Environmental Protection Zones is supported.

### **Absence of Community Consultation**

#### **To reiterate as per Council's previous submission:**

- *An absence of community consultation and notification to adjoining landowners disempowers communities. This can lead to aggression which is often directed at Councils.*
- *Additional consultation should be undertaken with and targeted specifically at local communities (not Councils) to ascertain local support for the proposed measures.*
- *The proposal would mean that a larger portion of development could be approved/certified without local involvement in planning decisions.*

### **Traffic & Transportation**

#### **To reiterate as per Council's previous submission:**

- *Where vehicles are likely to increase vehicle movements a development application should be referred to Council. This issue relates to those developments which involve more than 3 dwellings.*
- *The cumulative impact of medium density housing can have detrimental impacts on the safe and efficient function of intersections and there is no ability to plan for the timing of traffic increase, proportion costs for intersection improvements or incorporate effectively into a contributions plan.*
- *Design Standards for complying development involving 3-10 dwellings should require the provision for footpaths/sharepath/cycleway connections to the nearest available network connection or at a minimum along the frontage of the site.*
- *Some areas within Wollondilly have inadequate or no street lighting, particularly in the older areas. New development involving more than 1 dwelling is often a trigger for requiring additional street lighting as part of the development consent.*
- *If the provision of much needed essential infrastructure such as footpaths, kerb and guttering and street lighting cannot be incorporated into the standards for medium density housing forms as complying development this will place an additional burden on already constrained Council budget to provide. One way of addressing this may be to create an 'infrastructure control lot' similar in principle to a 'flood control lot' to identify properties within the shire which potentially require additional infrastructure if density was increased. Complying development for medium density housing forms would not be permitted on an "infrastructure control lot"*

### **Stormwater & Drainage**

- Stormwater management guidelines relate to water sensitive urban design rather than the wider stormwater network.

#### **To reiterate the following concerns still apply:**

- *There are residentially zoned areas in Wollondilly where the property frontage is not kerbed or guttered and there is minimal or no drainage infrastructure. New development is often the trigger for the provision of this infrastructure with the developer contributing to this cost. Complying Development for the proposed medium density housing forms should not be permitted on lots where there is no kerb and gutter, particularly as this has the potential to place an additional burden on already constrained Council budgets to provide.*

*One way of dealing with this may be to limit complying development to lots which have been subdivided in the last 10 years as these would have drainage infrastructure in place.*

*Alternatively, infrastructure constrained lots could be identified as an 'infrastructure control lot' similar in principle to a 'flood control lot' to identify properties within the shire which potentially require additional infrastructure if density was increased. Complying development for medium density housing forms would not be permitted on an "infrastructure control lot"*

- *Council should have a say in any development that drains to or connects to Council maintained infrastructure.*
- *There are sizeable areas within Wollondilly Shire that are flood prone but have not been mapped as such at present. Council relies heavily on the local knowledge of staff when considering development applications. We also have some areas that are so flat that adequate stormwater drainage has not been achievable.*
- *Drainage issues associated with subdivision of 3 – 10 dwellings are significantly more complex.*
- *Wollondilly Shire contains three of Sydney's major catchments; the Wollondilly River catchment, Upper Nepean River catchment and the Upper Georges River catchment. There is no mention in the Discussion Paper on how it complying development will ensure no detrimental impact on water quality.*

## **Subdivision**

### **To reiterate our previous concerns:**

- *Council does not support a subdivision certificate being issued for Torrens title subdivision as it is considered essential to have input from environmental, planning and engineering experts.*
- *If subdivision is to be permitted as complying development a requirement needs to be included to ensure any relevant Section 94 Contributions are included on the certificate and received by the relevant local authority before a subdivision certificate is issued.*
- *Wollondilly contains a number of designated Urban Release Areas which are not located within Growth Centres. Consideration needs to be given to whether complying development for medium density housing forms which has a component of Torrens title subdivision should be permitted within any area mapped as Urban Release Areas (URA) under a Local Environmental Plan. Special Infrastructure Contributions may be required in these areas and already apply to standard subdivision.*
- *It is proposed that registration of the title occurs after issuing of the occupation certificate which would require monitoring by the Land Title's office. Currently an*

occupation certificate is issued before the subdivision certificate to ensure that all requirements have been met and this process should not be changed.

### **Minimum Lot Size**

- The minimum completed lot size of 200 sqm is considered too small in terms of the current character and streetscape in most residential areas in the Wollondilly Shire. The Design Code requires that the minimum lot size for subdivision should comply with the Wollondilly LEP Clause 4.1A minimum lot size which for a Torrens Title is 800 sqm for attached dual occupancy and 975 sqm for detached dual occupancy (prior to subdivision) but this may not preclude strata subdivision on smaller lots.
- The exclusion of certain types of medium density development from the complying code is supported.

#### **To reiterate previous concerns:**

- *Has the potential to enable development which would be out of character with many areas in Wollondilly.*
- *would enable overdevelopment in the Wollondilly area which contains a mix of rural villages and towns;*
- *it doesn't take into consideration the character of towns and villages outside Sydney's more dense urban areas and will change the character of peri-urban and rural areas;*
- *has the potential to enable development which would be out of character with many areas in Wollondilly.*
- *it would undermine local planning controls based on consultation with the community, for example the location of R2 and R3 zoned land have been carefully planned on the basis of land capability.*

### **Adequate Essential Services – disposal and management of sewage**

#### **To reiterate previous concerns:**

- *There are residentially zoned areas within Wollondilly which are not connected to reticulated sewerage systems and or have no town water, only tanks. Complying Development for the proposed medium density housing forms should not be permitted on unsewered land or land without reticulated water supply because these sites are constrained and are unlikely to be able to sustainably manage the disposal of waste and development could result in quite severe environmental health risks and harm to the environment.*
- *Generally speaking, the SEPP (Exempt and Complying Development Codes) assumes that there is capacity to service additional dwellings where the land is sewered. However, this is not always the case. Land which is serviced by a private sewer scheme may have limited capacity to service additional dwellings such as medium density housing forms. In some cases the schemes were designed to service a capacity of 1 dwelling per lot. There is a potential risk that development could be issued with a Complying Development Certificate when there is insufficient sewer capacity to service the additional dwelling.*

*Wollondilly Shire Council includes a number of housing estates which contain private sewer schemes and is concerned that the existing provisions for complying development will compromise areas from being developed in a manner consistent with their original masterplan. While it is acknowledged that an approval under the Local Government Act is also required, there is nothing*

*that requires this to be obtained prior to land owners expending funds on plans and complying development approvals.*

*Where land is connected to a private sewer scheme, a mechanism is required within the legislation to ensure that:*

- the private sewer scheme has spare capacity for an additional dwelling; and also*
  - servicing an additional dwelling would not compromise the development of a dwelling on each of the lots.*
- *It is noted that clause 1.18(1)(d) of the SEPP (Exempt and Complying Development Codes) indirectly prevents complying development on unsewered land because an on-site effluent disposal system could not be approved under the Local Government Act 1993 without an approval for the development. However, the SEPP (Exempt and Complying Development Codes) should be more direct and preclude complying development for medium density housing forms.*
  - *Many urban areas within Wollondilly have limited sewerage capacity to enable future growth.*

## **Mine Subsidence**

### **To reiterate previous concerns:**

- *Most residentially zoned areas within Wollondilly Shire are located within mine subsidence districts including land in Appin, Bargo, Buxton, Camden Park, Douglas Park, Menangle, Picton, Tahmoor and Wilton. Complying development for medium density housing forms on land within a mine subsidence district should have the prior approval of the Mine Subsidence Board.*
- *From Council's experience, development in mine subsidence districts is limited to 7.2m which is less than the maximum height limit of 8.5m proposed for medium density housing forms.*
- *Basement car parking is discouraged in Wollondilly, largely due to the constraints of mine subsidence.*
- *The need for an engineering report prepared by a suitably qualified professional for excavations exceeding 1m is supported.*

## **Waste Management**

**To reiterate previous concerns:** *Where waste is neglected at a design and planning phase it can result in developments which are difficult for Council (and its contractors) to service at an operational level. This can often lead to increases to broader operational costs as well as increased risks to operational staff and contractor health and safety.*

- *With regard to the above, the design guidance refers to the potential need to use smaller waste vehicles to reduce heights and space required for turning paths. This is considered to be economically unfeasible for a Local Government Area the size of Wollondilly Shire.*
- *The proposed controls for waste management within the SEPP (Exempt and Complying Development Codes) does address screening and concealment but*

does not ensure that residents are able to transport waste to the street without going through the house.

- The design guidance to prohibit waste storage forward of the front building alignment is supported.
- Promote waste planning considerations to occur early in the design phase of the development process.
- Require all developments to be supported by a well-considered waste management plan.
- Establish more specific and deliverable parameters in both Part 2 and Part 3 of the Draft Guidelines. These parameters need to establish deliverable and measureable requirements for Council staff and certifiers to meet regarding the provision of on-site waste management facilities for both waste storage and collection areas. This should include occupant amenity, sustainable design and ensuring safe access at an operational level to service the development.
- The Design Criteria needs to be significantly expanded to ensure design issues surrounding waste storage and waste collection areas are resolved.

### **Adaptable Housing**

- Universal Design in accordance with Liveable Housing Design provides that all dwellings would achieve a level of adaptability and this is supported. Accreditation of assessors requires certification within the Liveable Housing Design organisation's particular framework. Use of Universal Design is establishing a separate system of assessment to that under the the Australian Standards for adaptable housing and it should be clear that standards will not be reduced and that BCA requirements are being met.

### **Threatened and native vegetation**

- There is no consideration given to threatened species assessment.

#### **To reiterate previous concerns:**

- *The existing provisions within the SEPP (Exempt and Complying Development Codes) provide protection for trees but do not appear to protect understorey vegetation such as native shrubs and grassland, by preventing complying development on these sites which in Wollondilly can be zoned for residential development*

### **Other forms of supporting information that may be required**

#### **To reiterate previous concerns:**

- *Depending on the site context, there may be a need for noise/acoustic reports, rail vibration reports, flora and fauna reports where a site has not been cleared.*
- *A merit based assessment is required to determine when specialist studies are required to enable a robust assessment of the development. The complying development process does not allow for this. Because the complying development process ignores the knowledge and views of the community with no consultation requirements private certifiers will not develop the sensitivity to determine when specialist studies are required.*



## Competence of Accredited Certifiers and Certification Requirements

### **To reiterate previous concerns:**

- *Council understands that the Building Professionals Board regularly deal with complaints about accredited certifiers relating to relatively straightforward development types (such as single dwellings). It would seem likely that for more complex forms of development this will increase as will the risk and consequences of their decisions.*
- *There is currently an underlying issue with the quality and probity of private accredited certifiers assessment of complying development and also being lax with follow up inspection requirements.*
- *Council experiences ongoing issues managing infrastructure in response to development approved as complying development having no regard for the need for augmentation of infrastructure to meet increased development.*
- *Concern is raised with the capacity for Councils to assess applications for complying development because of the time lag between legislative changes and the onerous requirements with the accreditation scheme. There is also an additional burden on Councils who must provide accredited certifiers and the proposed changes to complying development will require further training.*
- *In addition it is noted that qualified planning professionals usually cannot meet the requirements of the accreditation scheme and are more suited for the assessment of medium density housing forms and subdivision proposals as complying development.*

