

# Bayside Council

Serving Our Community

21 December 2016

Our Ref: 16/147057

Contact: Josh Ford, 9562 1634

Lynne Sheridan  
Director, Codes and Approval Pathways  
NSW Department of Planning and Environment  
GPO Box 39  
Sydney, NSW 2001

Dear Ms Sheridan,

**Re: Bayside Council Submission – Draft Medium Density Design Guide and Housing Code**

Thank you for the opportunity to respond to the Department of Planning and Environment's (DP&E) exhibition of the Medium Density Design Guide (*draft MDDG*).

Council has reviewed the *draft MDDG*, as well as the accompanying information, and has prepared a submission on a number of issues that require further consideration by the DP&E.

In principle, Council supports the DP&E initiative to provide a consistent guideline for medium density development across NSW. However, Council has raised a number of issues that may have some unintended consequences on Council's ability to influence better amenity outcomes for residents.

If you have any queries regarding this submission do not hesitate to contact Council's Urban Planner, Josh Ford, on 9562 1634 or at [josh.ford@bayside.nsw.gov.au](mailto:josh.ford@bayside.nsw.gov.au).

Yours Faithfully

Cathy McMahon  
**Manager Strategic Planning**

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## **BAYSIDE COUNCIL**

### **Comments on Draft Medium Density Design Guide and Housing Code**

#### **Housing Diversity and Affordability**

A clear intent of the *draft MDDG* is to provide a time efficient way of delivering a broad type of housing types and at varying price points. This is supported by Bayside Council. However, Council believes the DP&E is missing an opportunity to deliver truly diverse and affordable housing.

Housing diversity should not be defined primarily by the size and type of house being delivered. Rather, it should focus on the ability to accommodate a diverse range of occupants, from those with a disability to those with no need for a car because of their proximity to public transport. It is also evident, particularly in the Sydney region, that supply alone will not affect the current housing affordability crisis. While approvals, housing completions and construction activity are at record highs, so are house prices.

Tackling these issue requires a multi-faceted policy approach. The *draft MDDG* represents this opportunity where truly diverse and affordable housing is delivered in a more orderly and consistent manner.

The DP&E is encouraged to consider the incorporation of standards for adaptable housing and liveable housing (ie housing that allows for ageing in place), as well as the provision of affordable housing, particularly for multi dwelling housing and manor homes.

#### **Standardised Approach**

A standardised approach to smaller scale residential development can lead to assessment and delivery efficiencies. However, when dealing with larger scale development, such as what is being proposed in the *draft MDDG*, compatibility within the local context is much more difficult to achieve.

The *draft MDDG* proposes very prescriptive development standards. This can be viewed as a positive approach as it will only apply to development that could meet the controls. However, such an approach is likely to produce a 'cookie cutter' development response that will deliver buildings that are disengaged from the streetscape character. This will cause a sterile built environment purely in the name of expediting residential development.

Current development standards contained within Bayside Council's Rockdale Local Environmental Plan (Rockdale LEP) 2011 and Botany Bay Local Environmental Plan (Botany Bay LEP) 2013 and the respective Development Control Plans (DCP) controls have been developed with the current and future character of an area in mind. In many cases, the *draft MDDG* standards for lot size, Floor Space Ratio (FSR), overshadowing, privacy, solar access, private open space and fencing are considerably different. The significance in these differences are likely to deliver outcomes that have significantly reduced amenity in comparison to the surrounding developments that have had to proceed through the development assessment (DA) process.

As such, the *draft MDDG* should acknowledge best practice and commonly used development standards and controls in establishing general provisions.



## **Design Verification Statement**

The use of a Design Verification Statement (the Statement) as a 'check' that a development meets the objectives and standards of the *draft MDDG* is a positive approach to ensuring compliance. It is also welcomed that the responsibility for its preparation is with the designer of the building and that the Statement would need to consider the building within its surrounding context. However, it is unclear what role certifiers will have in ensuring that the plans, and subsequent building, meet the *draft MDDG*.

It is important that it is made clear that, while the designer is responsible for the preparation of the Statement, the certifier will be responsible for assessing the validity of the Statement. Given that the *draft MDDG* is a complex document dealing with complex issues, additional training for certifiers is critical and necessary. This should include training that would give certifiers the knowledge of how to assess a buildings 'fit' within the existing context and any strategic planning implications.

## **Earthworks**

The scale of earthworks and drainage for medium density developments that is being considered as complying development is of significant concern. There are many areas within Bayside Council that are affected by constraints such as a high water table, which requires complex and costly solutions.

Council is of the view that earthworks for basement car parks should be regarded as significant works compared to those permitted for single dwelling houses in the current Codes SEPP. There are no clear details about how the appropriateness or impact of basement parking will be assessed nor are there any formal requirements for additional technical information to be supplied.

Council believes that basement car parking should be reviewed for its appropriateness to be included as Complying Development.

## **General Inconsistency and Permissibility**

Throughout the *draft MDDG* and accompanying documentation, there are inconsistent references to certain types of development. These inconsistencies are also apparent between the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP), and the Standard Instrument (Local Environmental Plan) Order 2006 (Standard Instrument). Below are a number of examples of inconsistencies that have been identified and include:

1. "Two Dwellings Side by Side" is not defined in the dictionary of the Standard Instrument or Codes SEPP, yet it is used to describe a development type.
2. Within the *Explanation of Intended Effects* "Multi-Dwelling Housing (terraces)" have been identified as a Complying Development. However, within the *Draft MDDG* "Multi-Dwelling Housing" are referred to as townhouses or villas in Part 3.3 and cannot be carried out as Complying Development.

While this may seem a minor issue, inconsistencies such as those highlighted above can cause significant confusion, potentially jeopardising the DP&E's goal to grow the use of the complying development process.

## Permissibility

The *draft MDDG* and accompanying documentation does not clearly detail how the provisions of certain types of development will be applied via the Codes SEPP. There are a number of terms that will either need to be updated or added to the Standard Instrument. It is unclear if the relevant land use planning terms in the Standard Instrument are going to be mandated as permissible in each of the relevant zones.

For instance, the term "manor houses" will be added as a new term in the Standard Instrument. However, the documentation is not clear whether "manor houses" will be a separate development or if it will fall under an existing development type such as "multi-dwelling housing". If it is the former, uncertainty about its application remains and Council is concerned that it will be imposed in areas where it is not appropriate.

## Complying Development Design Criteria Comments

It should be noted that the MDDG has been reviewed through a comparison with the *Botany Bay Local Environmental Plan 2013 (BBLEP 2013)*, *Rockdale Local Environmental Plan 2011 (RLEP 2011)*, *Botany Bay Development Control Plan 2013 (BBDCP 2013)* and *Rockdale Development Control Plan 2011 (RDCP 2011)*.

### Two Dwellings Side by Side

- Height and FSR controls should be restricted to those mapped in the LEP, as opposed to a blanket figure for all "two dwellings side by side" across all R1, R2, R3 and RU5 zones in all LGAs.
- **3.1A Building Envelopes** – Minimum Lot Size for Two Dwellings Side by Side (current equivalent definition - Dual Occupancy) under the *RLEP 2011* is 350m<sup>2</sup>, which is significantly higher than the 200m<sup>2</sup> development standard proposed in the MDDG.
- **3.1A Building Envelopes** – Development standards proposed for achieving side and rear setbacks appear to be complex for Complying Development. A prescriptive minimum setback distance for both side and rear setback would be far simpler than a performance-based approach.
- **3.1B Floor Space Ratio** – The FSR of 0.75:1 is far higher than the current FSR permitted in the R2 Low Density Residential (0.5:1) and R3 Medium Density Residential (0.6:1) zones under the *RLEP 2011*. In many cases, Council's FSR is based on the locality and prevalent development pattern. A blanket control is unable to respond to the individual character of each locality.
- **3.1C Landscaped Area** – The minimum landscaped area for each allotment size is at least 5% lower than that required by the *BBDCP 2013*.
- **3.1E Public Domain Interface** – Permitting fencing up to 2.1m at the front boundary facing classified roads is deemed to be too generous under Complying Development. Streetscape presentation should be evaluated at a case-by-case basis, instead of



applying a blanket control. Fences above 1.8m should require a DA. Front fences above 1.2m should require a DA.

- **3.1E Public Domain Interface** – The provisions relating to retaining walls should be clearer by stating a maximum height above the 0.6m stated.
- **3.1F Internal Streets – Pedestrian & Vehicle Access** – Developments involving battle-axe driveways and basement carparking should not be permitted under Complying Development, as these are more complex developments that require detailed planning assessment beyond the nature of CDCs.
- **3.1G Orientation & Siting** – The MDDG identifies up to 3m of excavation being permissible 1m from a boundary. This is a considerable depth to be permitted under Complying Development for residential purposes.
- **3.1M Private Open Space** – POS area of 16m<sup>2</sup> is considered far less than what should be provided for a dwelling. The *RDCP 2011* requires a Dual Occupancy to provide 60m<sup>2</sup> up to 125m<sup>2</sup> GFA or 80m<sup>2</sup> above a GFA of 125m<sup>2</sup>. The *BBDCP 2013* requires an unimpeded dimension of 6m x 4m.
- **3.1Q Acoustic Privacy** – Including a maximum acoustic affectation standard is considered problematic for Complying Development. This will require an acoustic assessment to support the CDC, in order to demonstrate compliance. This is considered an issue more appropriate for consideration as part of a DA, not Complying Development.
- **3.1R Noise & Pollution** - The matters outlined under this section are deemed to be more appropriate for consideration as part of a DA, not Complying Development.
- **3.1W Pools & Ancillary Development** – The provisions for outbuildings, particularly maximum height, are considered to be too generous for Complying Development and provide zero consideration for streetscape presentation or neighbouring amenity.

### **Terrace Houses**

- Height and FSR controls should be restricted to those mapped in the LEP, as opposed to a blanket figure for all “terrace houses” across all R1, R2, R3 and RU5 zones in all LGAs.
- **3.2A Building Envelopes** – Minimum Lot Size for Terrace Houses (current equivalent definition – Attached Dwellings) under the *RLEP 2011* is 350m<sup>2</sup>, which is significantly higher than the 200m<sup>2</sup> development standard proposed in the MDDG.
- **3.2A Building Envelopes** – Development standards proposed for achieving side and rear setbacks appear to be complex for Complying Development. A prescriptive minimum setback distance for both side and rear setback would be far simpler than a performance-based approach.

- **3.2B Floor Space Ratio** – The FSR of 0.75:1 is far higher than the current FSR permitted in the R2 Low Density Residential (0.5:1) and R3 Medium Density Residential (0.6:1) zones under the *RLEP 2011*. In many cases, Council's FSR is based on the locality and prevalent development pattern. A blanket control is unable to respond to the individual character of each locality.
- **3.2C Landscaped Area** – The minimum landscaped area for each allotment size is at least 5% lower than that required by the *BBDCP 2013*.
- **3.2E Public Domain Interface** – Permitting fencing up to 2.1m at the front boundary facing classified roads is deemed to be too generous under Complying Development. Streetscape presentation should be evaluated at a case-by-case basis, instead of applying a blanket control. Fences above 1.8m should require a DA. Front fences above 1.2m should require a DA.
- **3.2E Public Domain Interface** – The provisions relating to retaining walls should be clearer by stating a maximum height above the 0.6m stated.
- **3.2F Internal Streets – Pedestrian & Vehicle Access** – Developments involving basement carparking should not be permitted under Complying Development, as these are more complex developments that require detailed planning assessment beyond the nature of Complying Development.
- **3.2G Orientation & Siting** – The MDDG identifies up to 3m of excavation being permissible 1m from a boundary. This is a considerable depth to be permitted under Complying Development for residential purposes.
- **3.2H Building Separation** – Separation distance of just 3m between rows of terraces more than 45m long is considered too minimal. It is recommended that a minimum separation distance of 6m be provided, which could not only provide separation between buildings, but also reduce site bulk and scale, and assist vehicle access and internal road layout by allowing two way traffic flow between buildings.
- **3.2L Dwelling Size and Layout** – The Design Criteria does not address housing diversity. A dwelling mix control should be implemented. In 2014, a dwelling mix study was conducted for the former Botany Bay LGA and identified the need to limit the ratio of studio and 1 bedroom development to a maximum of 25% to ensure housing diversity and the provision for more family friendly dwellings.
- **3.2M Private Open Space** – POS area of 16m<sup>2</sup> is considered far less than what should be provided for a dwelling. The *RDCP 2011* requires an Attached Dwelling to provide 60m<sup>2</sup> up to 125m<sup>2</sup> GFA or 80m<sup>2</sup> above a GFA of 125m<sup>2</sup>. The *BBDCP 2013* requires an unimpeded dimension of 6m x 4m.
- **3.2N Storage** – A minimum dimension should be specified for the storage space to ensure the storage is of easy accessibility and usability. The *BBLEP 2013* requires storage spaces to have a minimum height of 1.5m.



- **3.2O Car & Bicycle Parking** – Given the number of dwellings in large developments, the *BBDCP 2013* makes provisions for Medium Rigid Vehicle's (MRV) parking for 20 or more dwellings. The Complying Development criterion for only a Small Rigid Vehicle (SRV) for 40 or more dwellings is insufficient to service the large number of dwellings.
- **3.2Q Acoustic Privacy** - Including a maximum acoustic affectation standard is considered problematic for Complying Development. This will require an acoustic assessment to support the CDC, in order to demonstrate compliance. This is considered an issue more appropriate for consideration as part of a DA, not Complying Development.
- **3.2R Noise & Pollution** – The matters outlined under this section are deemed to be more appropriate for consideration as part of a DA, not Complying Development.
- **3.2W Pools & Ancillary Development** – The provisions for outbuildings, particularly maximum height, are considered to be too generous for Complying Development and provide zero consideration for streetscape presentation or neighbouring amenity.

### **Multi Dwelling Houses & Master Planned Communities**

The *draft MDDG* states that development standards applying to these types of land use shall be as per the prevailing LEP. Council supports this approach in the *draft MDDG*, given the significant densities and complex planning issues associated with these types of land uses.

However, the Design Criteria for this development type should be removed and adapted as guidelines since it cannot be carried out as Complying Development.

All Design Criteria have been reviewed in the scenario that Multi Dwelling Housing may become permissible as Complying Development in the future.

- **3.3E Public Domain Interface** - Permitting fencing up to 2.1m at the front boundary facing classified roads is deemed to be too generous under Complying Development. Streetscape presentation should be evaluated at a case-by-case basis, instead of applying a blanket control. Fences above 1.8m should require a DA. Front fences above 1.2m should require a DA.
- **3.3E Public Domain Interface** – The provisions relating to retaining walls should be clearer by stating a maximum height above the 0.6m stated.
- **3.3G Orientation & Siting** - The *MDDG* identifies up to 3m of excavation being permissible 1m from a boundary. This is a considerable depth to be permitted under Complying Development for residential purposes.
- **3.3H Building Separation** – Separation distance of just 3m between dwellings more than 45m long is considered too minimal. It is recommended that the minimum separation distance for wall heights 7.5m or greater be the adopted standard for all Multi Dwelling Housing, even where walls are less than 7.5m. This will not only provide separation between buildings, but also reduce site bulk and scale, and provide

opportunities for vehicle access and internal road layout by allowing two way traffic flow between buildings.

- **3.3I Solar & Daylight Access** – The minimum 2 hours direct sunlight access at the winter solstice is a downgrade from the 3 hours as required by the Apartment Design Guide (ADG). As these are both DP&E documents, this control should be amended to match the ADG as to not reduce the amenity of multi-dwelling houses in comparison to apartment buildings.
- **3.3L Dwelling Size and Layout** – The Design Criteria does not address housing diversity. A dwelling mix control should be implemented. In 2014, a dwelling mix study was conducted for the former Botany Bay LGA and identified the need to limit the ratio of studio and 1 bedroom development to a maximum of 25% to ensure housing diversity and the provision for more family friendly dwellings.
- **3.3M Private Open Space** – POS area of 16m<sup>2</sup> is considered far less than what should be provided for a dwelling. The *BBDCP 2013* requires an unimpeded dimension of 6m x 4m. The *RDCP 2011* outlines the following minimum POS areas for Multi Dwelling Housing:
  - 1 bedroom 30m<sup>2</sup>
  - 2 bedrooms 40m<sup>2</sup>
  - 3 or more bedrooms 50m<sup>2</sup>
- **3.3N Storage** – A minimum dimension should be specified for the storage space to ensure the storage is of easy accessibility and usability. The *BBLEP 2013* requires storage spaces to have a minimum height of 1.5m.
- **3.3Q Acoustic Privacy** – Including a maximum acoustic affectation standard is considered problematic for Complying Development. This will require an acoustic assessment to support the CDC, in order to demonstrate compliance. This is considered an issue more appropriate for consideration as part of a DA, not Complying Development.
- **3.3R Noise & Pollution** – The matters outlined under this section are deemed to be more appropriate for consideration as part of a DA, not Complying Development.
- **3.3T Communal Areas & Open Space** – The minimum 5% of area dedicated to communal open space is considered to be insufficient. Communal open space should be allocated in proportion to the floor space ratio or the development. The *BBDCP 2013* outlines the following minimum requirement:
  - Up to 0.5:1 FSR – 10% site area
  - 0.5:1 to 1:1 FSR – 15% site area
  - 1:1 FSR and over – 20% site area
- **3.3W Pools & Ancillary Development** – The provisions for outbuildings, particularly maximum height, are considered to be too generous for Complying Development and provide zero consideration for streetscape presentation or neighbouring amenity.

### **Manor Houses & Dual Occupancies**



- Height and FSR controls should be restricted to those mapped in the LEP, as opposed to a blanket figure for all “manor houses and dual occupancies” across all R1, R2, R3 and RU5 zones in all LGAs.
- **3.4A Building Envelopes** – Minimum Lot Size for Dual Occupancies under the *RLEP 2011* is 700m<sup>2</sup>, which is higher than the 600m<sup>2</sup> development standard proposed in the MDDG.
- **3.4A Building Envelopes** – Development standards proposed for achieving side and rear setbacks appear to be complex for Complying Development. A prescriptive minimum setback distance for both side and rear setback would be far simpler than a performance-based approach.
- **3.4B Floor Space Ratio** – The FSR of 0.75:1 is far higher than the current FSR permitted in the R2 Low Density Residential (0.5:1) and R3 Medium Density Residential (0.6:1) zones under the *RLEP 2011*. In many cases, Council’s FSR is based on the locality and prevalent development pattern. A blanket control is unable to respond to the individual character of each locality.
- **3.4E Public Domain Interface** – Permitting fencing up to 2.1m at the front boundary facing classified roads is deemed to be too generous under Complying Development. Streetscape presentation should be evaluated at a case-by-case basis, instead of applying a blanket control. Fences above 1.8m should require a DA. Front fences above 1.2m should require a DA.
- **3.4E Public Domain Interface** – The provisions relating to retaining walls should be clearer by stating a maximum height above the 0.6m stated.
- **3.4F Internal Streets – Pedestrian & Vehicle Access** – Developments involving battle-axe driveways and basement carparking should not be permitted under Complying Development, as these are more complex developments that require detailed planning assessment beyond the nature of Complying Development.
- **3.4G Orientation & Siting** – The MDDG identifies up to 3m of excavation being permissible 1m from a boundary. This is a considerable depth to be permitted under Complying Development for residential purposes.
- **3.4L Dwelling Size and Layout** – The Design Criteria does not address housing diversity. A dwelling mix control should be implemented. In 2014, a dwelling mix study was conducted for the former Botany Bay LGA and identified the need to limit the ratio of studio and 1 bedroom development to a maximum of 25% to ensure housing diversity and the provision for more family friendly dwellings.
- **3.4M Private Open Space** - POS areas of 8-16m<sup>2</sup> with minimum width of 2m are considered far less than what should be provided for a dwelling. The *RDCP 2011* requires a Dual Occupancy to provide 60m<sup>2</sup> up to 125m<sup>2</sup> GFA or 80m<sup>2</sup> above a GFA of 125m<sup>2</sup>. The *BBDGP 2013* requires an unimpeded dimension of 6m x 4m.

- **3.4N Storage** – A minimum dimension should be specified for the storage space to ensure the storage is of easy accessibility and usability. The *BBLEP 2013* requires storage spaces to have a minimum height of 1.5m.
- **3.4Q Acoustic Privacy** – Including a maximum acoustic affectation standard is considered problematic for Complying Development. This will require an acoustic assessment to support the CDC, in order to demonstrate compliance. This is considered an issue more appropriate for consideration as part of a DA, not Complying Development.
- **3.4R Noise & Pollution** – The matters outlined under this section are deemed to be more appropriate for consideration as part of a DA, not Complying Development.
- **3.4W Pools & Ancillary Development** – The provisions for outbuildings, particularly maximum height, are considered to be too generous for Complying Development and provide zero consideration for streetscape presentation or neighbouring amenity.