



22 December 2016

Office of the General Manager

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

Dear Sir/Madam

SUBJECT Submission on proposed Medium Density Housing Code

Blue Mountains City Council welcomes the opportunity to comment on proposed changes to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) relating to medium density housing.

The proposed changes to the Codes SEPP were considered by the elected Council at its Meeting on 15 November 2016.

Blue Mountains City Council opposes the proposed changes to the Codes SEPP which have the potential to significantly increase densities, and the intensity of development in the Blue Mountains. This has the potential to impact upon the sensitive surrounding natural environment, and the highly valued built character of the local area, contrary to, and despite Council policy and current Metro and District planning.

Council acknowledges the work to address a number of the issues identified with the previously exhibited Discussion Paper on medium density complying development, particularly the reduction in the scope of the proposed Code to medium density development which have separate direct street access to all dwellings. However, the primary issue still remains. The proposed Medium Density Housing Code could expand the permissibility of particular types and intensity of development in a zone, rather than just offering an alternate approval pathway. This undermines the strategic planning framework and local assessment processes.

The efforts to address design quality through the introduction of the Medium Density Design Guide are supported. However, the design guide does not recognise that this is still a state wide proposal based primarily on metro Sydney housing design. In particular, the proposed Medium Density Housing Code development standards and design guidelines do not recognise the differences between the highly urbanised areas of metro Sydney, and other regions of the state where issues such as site coverage and the management of stormwater runoff are critical.

Blue Mountains City Council raises issues with the proposed Medium Density Housing Code detailed in this submission with respect to the following areas:

- Relationship to strategic planning framework

- Complication rather than simplification of the planning system
- Permissibility of proposed development types
- Application of development standards
- Consideration of local context and the appropriateness of design controls and guidelines
- Continued use of the misleading term 'missing middle'

Relationship to strategic planning framework

- The current District Planning process has been driven with a strong focus on collaboration between agencies, individual Councils, and different levels of government, and has attempted to make the metro and district planning of Sydney more meaningful and strategic. The energy and commitment Councils have invested in this process is undermined when, at the same time that the draft district plans are released, proposed changes to the Code SEPP are exhibited which seek to set State wide development standards without regard for local context, or the Metro, District, and local strategic planning framework.
- By increasing the density and intensity of development through blanket changes to minimum lot size (MLS) and floor space ratio (FSR) controls, it undermines strategic planning undertaken to focus and incentivise increased densities in strategic locations.
- The proposed Medium Density Housing Code seeks to apply a State wide standard for medium density housing types, without regard for local context or placed based planning approaches which many Councils have undertaken in preparing their LEPs and planning for increased densities in their LGAs.

Complication rather than simplification of the planning system

- Council opposes the continued ad hoc approach to planning reform through rolling amendments to the Standard Instrument (SI) LEP and Codes SEPP.
- The addition of new land use terms, particularly when they are essentially sub-types of existing land uses, and the introduction of development standards that contradict existing controls does not simplify the planning system, particularly where they only apply to the complying development approval pathway and not the development assessment approval pathway
- In this instance, the proposed Medium Density Housing Code contradicts the approach mandated by the SI to map FSRs and Heights for a site, and instead proposes them based on development type. Introducing non mapped, development type specific development standards is contrary to the SI approach. There is also the potential for there to be issues where existing LEPs do not make specific reference to the proposed development types.
- Medium density housing, unlike single dwellings, is generally undertaken by developers. The proposed changes would appear to benefit those developers who want to be able to roll out the same designs across Sydney and the state without regard for local context or constraints. Conversely, this potentially penalises those developers who seek to produce a good design outcome with regard to local context. For the most part, this approach will not improve the quality or diversity of medium density housing design, but encourage similar designs that achieve a lower common standard.
- Consideration could instead be given to the review of the SI and how the definition of multi dwelling housing could be made more flexible for the design of different development types without affecting where they can occur, respecting existing Council planning policy.

Recommendation 1

That future changes to the planning system proposed by the Department firstly consider the operation of the SI and how it could be changed to improve outcomes, rather than proposing to override existing planning instruments with the introduction of new ones and ad hoc changes to the Codes SEPP.

Permissibility

- The Explanation of Intended Effects provides more clarity than the previously exhibited discussion paper with regard to where particular development types would be permissible and how the Codes SEPP would relate to permissibility in LEPs.
- Dual occupancies and multi dwelling house are currently defined in the planning system and planned for in terms of their permissibility, and the proposal makes it clear that multi dwelling housing (terraces) are a type of multi dwelling housing
- What is not clear is whether manor houses are also proposed to be considered as an alternate type of multi dwelling housing (albeit one which allows units above one another), or as larger attached dual occupancy (allowing four rather than two dwellings).
- It is also not clear from the Explanation of Intended Effects where manor houses would be mandated, if at all, in the standard instrument. It is considered appropriate for them to occur where multi dwelling housing can currently occur. However the concern is that they will also be mandated where dual occupancies can currently occur.
- Manor houses are much larger in scale and have a much greater impact on the streetscape and character of an area than a dual occupancy, primarily because of the need for four vehicle access points and four garages. They should only be permitted where multi dwelling housing is currently permitted, not where dual occupancies are permitted.
- Whilst some of the proposed development types are proposed to be required to meet LEP minimum lot size requirements, there is still concern about the minimum lot size controls proposed for manor houses which are not currently referenced in minimum lot size clauses in the SI LEP.
- If they are treated like dual occupancies than this would effectively allow 4 dwellings on a lot as a manor house which currently only permits 2 dwellings as a dual occupancy.
- As discussed further in this submission, by potentially increasing the permissibility of manor houses and Multi Dwelling Housing (terraces), through a lack of MLS control, they could become the dominant form of new medium density in areas where they may not be the most appropriate design response to increasing densities

Recommendation 2

The new development types should only be mandated in those SI zones where multi dwelling housing is currently mandated (zone R1 General Residential and zone R3 Medium Density Residential). No changes should be made to the mandated uses in the R2 Low Density Residential zone.

Application of development standards

- When considering where particular developments can occur, it is not just whether a land use is permissible on a particular lot, but also what size or scale of development would be permissible under the applicable development controls.
- The application of development standards for FSR and landscaped area within the proposed Medium Density Housing Code means that it may permit larger or more intense development than would otherwise be permitted in certain areas.
- There are inconsistencies between the proposed Medium Density Housing Code and local planning controls which arise because the design criteria or

development standards in the Medium Density Housing Code are applied to particular development types.

- Under the SI template Councils are required to apply, through mapping, development standards such as FSR to a site or area which apply irrespective of the development type.
- This is problematic when the Medium Density Housing Code sets standards which are not as strict as local planning controls, particularly when there is strong planning merit for the stricter controls such as the need to reduce urban stormwater runoff in environmentally sensitive areas.
- At a local level, development standards are often applied in a location specific way. Medium density zones across an LGA may have different FSRs and associated development standards based on the desired density and outcome for different areas. The proposed Medium Density Housing Code disregards any place based planning approach that Councils may have adopted.
- This means that particular types of development under the Medium Density Housing Code could be built with a greater FSR and site coverage than would be permitted under the local planning framework.
- The approach in the Medium Density Housing Code to apply development standards by development type is contrary to the approach of the SI LEP which does not allow Councils the same flexibility.
- As example the following table is a comparison between the proposed Medium Density Housing Code FSRs and those mapped in Blue Mountains LEP 2015.

	Medium Density Housing Code	LEP 2015
Multi Dwelling Housing (terraces)	0.7:1 - 0.8:1	R3 zone: 0.4:1 - 0.6:1 (typically 0.5:1)
Manor homes	0.4:1 - 0.6:1	R3 zone: 0.4:1 - 0.6:1 (typically 0.5:1) R2 zone: 0.35:1

Recommendation 3

That the Medium Density Housing Code use the FSR which applies to a site under an LEP, rather than applying FSRs by development type and lot area. A FSR should only be set in the Medium Density Housing Code for sites where no FSR applies under the applicable LEP.

Consideration of local context and the appropriateness of design controls and guidelines

- Medium density housing is occurring across the State and the form it takes differs between the highly urbanised areas of Sydney and regional, coastal and rural areas. However the proposed Medium Density Housing Code and Design Guide appears to have only concentrated on the types and form of development occurring in metro Sydney.
- The Blue Mountains has design controls which respond to the City's unique context, being a string of towns and villages on a ridge in the middle of a World Heritage National Park. The management of urban stormwater runoff is critical in the Blue Mountains, and this is done firstly through strong controls on the extent of site coverage and landscaped area in the City's planning framework.
- The proposed Medium Density Housing Code would permit development with greater site coverage and less landscaped area than is currently permitted in medium density areas of the City. For example, the proposed landscaped area requirement for Multi Dwelling Housing (terraces) is between 20-35% depending on site area, compared to a minimum of 40% in DCP 2015.

- Further to development controls, in recognition of the unique character of the Blue Mountains and its significant environmental constraints, much of the City's medium density zoned land also has precinct specific objectives in LEP 2015 and precinct specific development controls in DCP 2015. There is no avenue for consideration of these place based objectives in the proposed Medium Density Housing Code. This has the potential to significantly change the character of many of the areas around the towns and villages of the Blue Mountains.
- Manor houses and multi dwelling housing (terraces) will be new types of built form in the Blue Mountains. Both are very urban building types with large floor areas relative to site area and result in building forms that are very predominant in the streetscape. In more suburban areas these types of buildings would look out of place compared to other medium density building types. Townhouses for example, compared to terraces, provide landscaping between buildings rather than presenting a continuous street wall.
- There are some traditional terraces in the Blue Mountains. However, because these developments pre-date private motor vehicle use, they are very different types of terraces to modern day developments in regard to their relationship to the street given current vehicle access and parking requirements. There are also some townhouses in the Blue Mountains which address the street similar to traditional terraces with carparking provided internally within the site from a single vehicle access point.
- Modern terrace type developments, where there is no rear lane for vehicle access, have street facades dominated by garages and driveways where there would traditionally have been front yards. Multi dwelling housing (terraces) would have a much greater impact in terms of increasing vehicle crossings and reducing street tree planting opportunities than the more common townhouse medium density forms which currently occur in the Blue Mountains.
- These proposed building types are completely appropriate in the more urban areas of Sydney where there is already greater site coverage of buildings, more hard surfaces and less landscaping, and typically narrower lot widths with more frequent vehicle access points to the street. If the Medium Density Housing Code and Design Guidelines appear to consider design outcomes appropriate for metro Sydney, then they should only apply to those areas.

Recommendation 4

That the Medium Density Housing Code only apply to areas within the metro urban area of Sydney or other areas where Councils opt in to the Medium Density Housing Code.

Continued use of the misleading term 'missing middle'

- Council wishes to express disappointment that the Department persists with using the term 'missing middle' to describe a type of development which is already widespread, and which is facilitated and encouraged by local planning policy across Sydney and the State, and is in no way currently 'missing'.
- To ostensibly claim that the proposed Medium Density Housing Code is addressing a policy deficit is misleading.
- The proposed code should only be adding another layer to existing planning policy to provide an alternate approval pathway for particular development types which can and do already occur under the existing planning framework. Council takes issue with the use of the term 'missing middle' to justify expanding the scope of a complying development code, beyond just providing an alternate approval pathway, to increase the permissibility of certain development types and increase the density and intensity of development outside of local planning and development assessment processes.

Recommendation 5

That the Department recognise that the use of the term 'the missing middle' is misleading, and commit to avoiding this descriptor in communication of the purpose and objectives of proposed policy amendments in the future.

Conclusion

Blue Mountains Council supports the aim to simplify development assessment pathways and recognises the work done to address issues raised with the previously exhibited discussion paper on medium density complying development.

However, the underlying issue remains that the proposed Medium Density Housing Code is a State wide standard which does not recognise the differences between metro Sydney and regional areas, and which could expand the permissibility of particular types and intensities of development, rather than just offering an alternate approval pathway.

Blue Mountains Council makes the following recommendations

- R1 That future changes to the planning system proposed by the Department firstly consider the operation of the SI and how it could be changed to improve outcomes, rather than proposing to override existing planning instruments with the introduction of new ones and ad hoc changes to the Codes SEPP.*
- R2 The new development types should only be mandated in those SI zones where multi dwelling housing is currently mandated (zone R1 General Residential and zone R3 Medium Density Residential). No changes should be made to the mandated uses in the R2 Low Density Residential zone.*
- R3 That the Medium Density Housing Code use the FSR which applies to a site under an LEP, rather than applying FSRs by development type and lot area. A FSR should only be set in the Medium Density Housing Code for sites where no FSR applies under the applicable LEP.*
- R4 That the Medium Density Housing Code only apply to areas within the metro urban area of Sydney or other areas where Councils opt in to the Medium Density Housing Code.*
- R5 That the Department recognise that the use of the term 'the missing middle' is misleading, and commit to avoiding this descriptor in communication of the purpose and objectives of proposed policy amendments in the future.*

Exemption

If the State government proceeds with the proposed Medium Density Housing Code, Blue Mountains City Council strongly asserts that the Blue Mountains LGA must be made exempt from those provisions.

The Government has only recently explicitly recognised the unique factors applying to the Blue Mountains in its announcement of the gazettal of Blue Mountains LEP 2015, noting such factors as the constraints affecting the Blue Mountains, the very high value of its urban and natural landscapes and its location within the World Heritage National Park. The proposed Codes SEPP changes are not compatible with the aims and objectives of LEP 2015, and would significantly increase densities and the intensity of development in areas impacting on the World Heritage National Park as well as the highly valued existing character of the towns and villages of the Blue Mountains.

Blue Mountains City Council is currently preparing a Local Housing Strategy to investigate opportunities to continue to meet the housing needs of the Blue Mountains community. This strategy will include investigation into areas suitable for increased densities where there is good access to services and public transport, and where the impact of increased densities such as the management of urban stormwater runoff can be minimised.

Planning for housing diversity and density should be the responsibility of local Councils in consultation with local communities to align with Metro and District planning. This is particularly critical for sensitive areas such as the Blue Mountains.

For this reason, if the Department proceeds with the proposed changes to the Codes SEPP then Blue Mountains City Council seeks an exemption so that strategic planning work on local housing which has been done to date, and which is currently being undertaken, can continue without being threatened by densities imposed from outside of the established strategic planning framework.

Next steps

Council wishes to continue to be involved in discussions with the Department on these proposed legislative changes, particularly in relation to seeking an exemption if necessary.

To discuss this submission further, and the case for exemption, please contact Will Langevad, Director Development and Customer Services on (02) 4780 5616.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Greenwood', with a stylized flourish extending to the right.

ROBERT GREENWOOD
General Manager