

Beth Morris
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Director Codes and Approvals Pathways
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

Draft Medium Density Design Guide

[In response, please quote File Ref: 2016/257428]

Thank you for the opportunity to comment on the Draft Medium Density Design Guide (MDDG) and subsequent changes to SEPP Complying Development. Sutherland Shire Council has, for many years, supported complying development and has taken an active role in enabling minor forms of low impact development. Council values the role of complying development in meeting resident's needs to carry out routine development in a way that has minimal impact on neighbours and preserves the landscape qualities of Sutherland Shire. The established tree cover and natural bushland character of Sutherland Shire creates a strong and unique sense of place that is valued by residents. Community consultation for successive Community Strategic Plans and for the preparation of Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) and its predecessor, Sutherland Shire Local Environmental Plan 2006, consistently demonstrates that the maintenance of the Shire's landscape character is a key community priority.

It is each Council's role to balance its community's priorities within the planning framework. Best practice local planning should be collaborative and reflect community priorities. However, the proposed changes to complying development will permit more intensive development in low density neighbourhoods than that which is permitted by the primary environmental planning instrument. The result will be the further erosion of Sutherland Shire's landscape character with exacerbated impacts on neighbours.

The protection and enhancement of tree cover and remanent bushland is a legitimate local planning objective which has been strengthened by the release of the Draft South District Plan. Key sustainability priorities of the South District Plan are to enhance the South District in its landscape; to protect, enhance and extend the urban tree canopy; to improve the protection of ridgelines and scenic areas; and to avoid and minimise impacts on biodiversity. The proposed introduction of "one size fits all" medium density infill provisions are at odds with these district planning priorities, ignoring each communities sense of place and local character.

There appears to be an increasing disconnect between recent messages given by the Department and the Greater Sydney Commission and the reality being imposed by complying development. Both State bodies acknowledge the importance of community led planning, design led planning and place based planning. For example the recent DPE consultation for "Beauty in My Backyard: Exploring New Ways to Engage the Community"; the Local Character and Context section of the Draft Medium Density Design Code; and Greater Sydney's Liveability Framework with its focus on design-led planning, all support collaboration with the community to lead place based planning outcomes. Yet at the same time the proposed expansion of Complying Development over rides this foundation of best practice with disregard for community input.

The Codes SEPP was intended to cater for low impact development that does not require merit assessment – minor forms of development compatible with character, streetscape and landscape qualities of the locality and with minimal impacts on neighbourhood amenity. However, the Code SEPP is now proposed to allow infill medium density development at densities greater than currently permitted by SSLEP2015. The increased density will have adverse impacts on the qualities of the Shire residents most value, undermining its landscape quality, increasing visual intrusion from bulk and scale with resultant impacts on privacy.

Not only will these outcomes undermine the landscape character of the low density zones, it creates a two tier system. Proposals requiring a development application are subject to rigorous merit assessment and more restrictive development standards, yet complying development, which will allow greater density with more significant impacts on its immediate context, can proceed without assessment. This anomaly makes a mockery of statutory development standards and the extensive community consultation that was undertaken to inform the LEP.

The "Steps for Complying Development " shown on page 8 of the Draft Medium Density Design Guide give the first step as "Check the land zoning and minimum lot size". At the very least, the Code should require all proposals to comply with all statutory development standards applying to the land. In the case of SSLEP2015 there are development standards for height, floor space ratio and landscaped area. It is this mix of standards that set local character and there is no reason why complying development should not respect the statutory framework.

The Design Code appears to be based upon an assumption that all LEPs have minimum lot sizes. This is not the case. SSLEP2015 does not set minimum lot sizes. If this is to be the only determining development standard, Sutherland Council specifically requests that it be given an opportunity to make amendments to its LEP before the implementation of the SEPP.

The complying development controls appear to be motivated by an attempt to unlock the "missing middle". However, SSLEP2015 has facilitated record numbers of both dual occupancies and infill multi dwelling developments. Since the commencement of SSLEP2015 in June 2015, 279 multi unit dwellings and 346 dual occupancy developments were approved or are currently under consideration. Whilst the Design Guide has merit, there is no justification for compulsorily implementing these changes that will have significant impacts on residents in low density neighbourhoods. Council

has sufficiently untapped the “missing middle” which is evident in substantial uptake. There is already community concern about the extent of change. Dual occupancy at 0.55:1 struggles to fit comfortably in most established streetscapes which are largely 0.45:1. To further increase the density of infill development up to 0.7:1 risks broad community rejection of initiatives to deliver infill housing.

Complying development controls should be designed to accommodate the lowest common denominator – so that the proposals from the least skilled designers are acceptable forms of development. Complying development should not require merit assessment. It should ‘comply’ with the quantitative development standards. Hence good complying outcomes rely on appropriate standards that recognise local character and context. ‘Pushing the envelope’ to higher density multi dwelling development should be subject to merit assessment – development applications.

In conclusion Sutherland Shire Council’s key concerns are that the mandated Code amendments:

- Do not recognise the individual local character of low density residential neighbourhoods across Sydney,
- Limit the ability of Council to implement tailored controls to protect local character and amenity,
- Will result in a uniform ‘cookie cutter’ approach to planning and development across Sydney that undermines the importance of preserving a neighbourhood’s sense of place,
- Will result in development with densities significantly greater than the maximum floor space ratio and landscaped area standards set by SSLEP2015,
- Will result in development that leaves little space for canopy trees jeopardising the landscaped character of Sutherland Shire,

Council welcomes further opportunities to work with the Department on improving standards for complying development. Council officers attended briefings at the Department and made submissions to both the ‘Simplified Housing Code’ and the discussion paper on the ‘Missing Middle where many of the same issues were raised.

Attached to this letter are more detailed comments on the Draft Medium Density Design Guide (MDDG). Please note that this is an interim submission by Council officers. It has not been endorsed by Council given the deadline for submissions and Council’s meeting schedule. Consideration by Council will occur in the New Year and the submission may subsequently be amended.

Should you require any further information, please contact Mark Carlon, Manager Strategic Planning on 9710 0523.

Yours sincerely



Mark Carlon
Manager Strategic Planning

Sutherland Shire Council:
Attachment to Submission: Draft Medium Density Design Guide

This document provides more detail in relation to the issues raised in Sutherland Shire Council's submission to the draft Medium Density Design Guide. Please note that these are officers' views and are yet to be endorsed by Council. This will occur early in the New Year and modification to the submission may be required.

Relationship of Design Guide to DCPs

Part 1 states that "*where council has adopted this guide, this document is intended to sit alongside the DCP applying to the site*". However, it is unclear what weight this would have in the determination of a development application. The EPA Act does not specify what role such a document would have. It cannot be adopted as a DCP by Council because a council may only have one DCP applying to land (section 74C (2)).

The closest example to the code is the Apartment Design Code. However, in that case Clause 28 (2) of SEPP 65 specifically gives weight to the Code. This is not the case with the Medium Density Design Guide. Should Council wish to adopt the provisions, it is currently unclear how this could be implemented. Is the intention for councils to adopt the Guide as a chapter of their DCP?

Failings of the Design Criteria

Compliance with the Design Criteria is mandated through the Codes SEPP. Hence the development standards for side by side dual occupancy, terrace houses and manor houses as complying development, are set by the Design Criteria and not by either the local environmental plan or the development control plan.

The R2 low density residential zone in Sutherland Shire limits development to a maximum FSR of 0.55:1. Development under the proposed Code, on average sized lots in R2 zone in the Shire (550m²-700m²), will achieve densities up to 0.65:1 for dual occupancy and up to 0.7:1 for terrace houses. As such, development under the Code will be 10% to 45% larger than development permitted by SSLEP2015 (see attached FSR table).

It should be noted that Council has only recently increased the FSR in the R2 zone as part of SSLEP2015, from a FSR of 0.45:1 to 0.55:1. As a result the established scale of low density neighbourhoods is generally lower than 0.45:1. Consequently the impacts of development under the Code will be even more evident in its immediate neighbourhood.

Larger, bulkier development inherently exacerbates adverse impacts upon adjoining development. As FSR increases, the potential for impacts on privacy, overshadowing, and visual intrusion also increase. These impacts are compounded when ground floors are not located at natural ground level, leading to greater impacts on privacy and from building bulk and scale. More dense development will have far fewer opportunities for landscaping to offset overlooking and visual intrusion. There will also be less space to accommodate canopy trees. Together these outcomes will result in

development that is out of character with surrounding development. There is already growing community objection to the scale of infill development in the Low Density zones facilitated by SSLEP2015. In many cases dual occupancy and multiunit dwellings struggle to achieve design outcomes that make them sit comfortable in their local context. To permit even greater density without any merit assessment, or the potential to mitigate impacts through negotiation and conditions of consent, risks widespread community backlash to infill development.

Reliance on Minimum Lot Sizes

The steps for preparing a Complying Development Certificate only require the proposal to be permissible and meet the minimum lot size set by the LEP applying to the land. This approach ignores any other statutory development standards applying to the land. In the case of SSLEP2015 statutory development standards apply for FSR, Height and Minimum Landscaped Area. There is no demonstrated reason why these development standards should not also apply to Complying Development.

Further, the proposed approach assumes that all LEPs have minimum lot sizes. Minimum lot sizes for development are not a mandatory Standard Instrument provision and do not form part of SSLEP2015. If minimum lot size is to be the sole criteria, Councils should be given an opportunity to make amendments to their LEP's before the implementation of the SEPP.

Design Principles of the Guidelines are Overridden by Design Criteria for Complying Development

The 9 Design Principles detailed in the Introduction address the foundations of good urban planning. They stress the importance of design responding to context and neighbourhood character; recognising that together landscape and buildings operate as an integrated and sustainable system – specifically stating that *“landscape design enhances a development’s performance by retaining natural and cultural features which contribute to local content ... micro-climate, tree canopy, habitat values and preserving green networks”*. Similarly the Design Guide emphasizes that development should consider local character stating (pg 26) *“Context is the character and setting of the area within which a scheme will sit. This character and setting is influenced by environmental/physical, economic and social factors”* and *“A well-designed scheme will respond to the context appropriately and sensitively and form a positive contribution to the predominant character of the existing area.”*

Despite these noble principles, the planning "tools" which largely set the local character (FSR, landscaping, setbacks) are set in the Design Criteria and mandated as standards for complying development. The Design Criteria make no allowance for outcomes to respond to local character, context or to preserve green networks. As such the Complying Development facilitated by the exhibited material will be at odds with the Design Principles on which the strategy is meant to be based. In Sutherland Shire the built outcomes will have significantly less potential for future landscaping, result in greater tree removal to accommodate the higher FSR and produce buildings of a bulk and scale that disregard local character and context.

The Guide is also somewhat contradictory – it states (pg 174) - *The recommended principal controls may not be appropriate for every context. For example areas where it is desired to have buildings set within a landscaped setting the development standards may require greater landscaped area and larger side setbacks.* Following this there is a range of recommended 'Principal Controls' for different types of development in different contexts. Yet these suggested controls are overridden by the Code complying development provisions.

Weakness of the Design Verification Statement

The Codes SEPP was initially intended to cater for low impact development which does not require merit assessment. It was designed as a mechanism for minor forms of development which can be expected to be compatible with existing development. However, it now proposed to expand the Code to medium density infill development at densities greater than those currently permitted by Sutherland Shire's Local Environmental Plan (SSLEP2015).

It is Council's view that medium density needs to be carefully designed to fit into neighbourhoods without unreasonable impacts on local character on neighbour amenity. However, as Complying Development there will be no opportunity for negotiation and tailored conditions of consent which Council uses to mitigate impacts and get better outcomes for infill development. Instead Complying Development will only require a 'Design verification statement' by a designer outlining that the proposal complies with the Design Quality Principles and the Design Criteria in the Code. However, there appears to be no professional criteria mandated by the provisions.

Council's experience of Private Certification is that it often falls short even when clear numerical standards are at issue. In this case however, the Code will simply require the designer to state that the Design Quality Principles are achieved. This is too low a bar to set for such an important issue. Certifiers are paid by the proponent. There is no reason why they would issue a Design Verification Statement that their client could not rely upon. Words can be spun in any direction. Every development application is accompanied by a Statement of Environmental Effects regardless of how poorly it is in conceived. The same will occur under the proposed framework. Designers will pay lip service to the principles of the Guide and development will ultimately be built with poor local outcomes.

The certification process relies on the neighbours to raise concerns about certifiers. Most residents do not understand the complying development rules, let alone the rights available to them if they believe the proposal does not comply. It is likely that many 'complying' developments actually do not comply with the statutory provisions, than is evident by Building Professionals Board prosecutions. What auditing procedures are in place?

Draft Medium Density Design Guide

Generally, the draft Medium Density Design Guide will help to achieve better design outcomes for low rise medium density housing. It is a well considered document that addressed the key elements that affect design quality.

Improving the standard of medium density dwellings is well over due. The introduction of SEPP65: Quality of Residential Apartment Development and the Apartment Design Guideline (ADG) have fundamentally improved the standard of residential flat buildings and the amenity for residents. However, there does not appear to be any intention to make the Guide a mandatory consideration. This outcome appears to be inconsistent with the recommendations of the Discussion Paper which supported a framework that replicated the ADG. Instead the Design Guide only applies to a DA where the Guide has been adopted by Council. However, Council must adopt it in its entirety. This may pose problems for Council where there is either a lack of controls for a local issue or where specific controls are at odds with maintaining local character.

There also appears to be a drafting issue in some sections of the plan and as a result parts lack clarity as to whether they apply to each dwelling or the development as a whole (e.g. garage widths). There are also a number of drafting anomalies and inconsistencies throughout the document that should be addressed before the Code is made (e.g. 3.10-3 (63) pg 92).

Specific Comments on Design Criteria

Rear Setback

Neighbours' greatest concern in the low density areas is the scale of infill development and the resultant adverse impacts on privacy from overlooking into backyards and pools which have been private spaces. Two storey development within rear yards has proved to be particularly problematic.

Shire residents value the "backyard" and opportunities for building separation, trees and privacy these spaces afford. The front and rear setback is where there is the greatest opportunity for canopy planting. Hence, a greater rear building setback than that proposed (3m (<4.5m high) on lots 200-600sq.m. and 6m (<4.5m high) on lots 600-1500sq.m. and 10m (>4.5m high)), is considered appropriate in Sutherland Shire to maintain local character and amenity.

The minimum lot size in the R2 zone is 550sq.m. – a 3m rear setback on these lots will have a significant adverse impact on landscape quality, visual intrusion, and privacy. The reduced rear setbacks coupled with the limited extent of landscaping in the front setback (25%) will have result in an overall reduction in landscaping and canopy trees, jeopardising a significant characteristic of the Shire that makes a strong contribution to its sense of place.

Side setback

The Code sets complex side setback calculations for development beyond the 15m lot depth for dual occupancy development. It is considered that these would be better replaced with a standardised setback of 900mm for the first storey and 1.5m for upper storeys. It is Council's view that this should be coupled with a limitation on the extent of two storey development as a proportion of site depth. Council has found placing that placing a limit on two storey development so that it is confined to the front 60% of

site's depth produces good outcomes. It allows density to be accommodated without excessive overlooking of the private space in neighbours rear gardens.

Street Setbacks

Council supports the Design Criteria's approach to sets street setbacks on the average existing front setback. However, in newly released areas the first houses have no neighbours and therefore an average cannot be used. In these cases the Code proposes front setbacks of 3 metres for lots sized 200-300m² with lots 300-900m² having a 4.5m setback. This will have dramatic impacts in newly subdivided areas, such as R2 land at West Menai. Council normally requires a 7.5m front setback. Development under the Code will have 4.5 metre setbacks, resulting in limited opportunity for trees of scale. As a result these newer estates will be out of character for development in the Shire and limit opportunities to maintain its landscaped character.

The Code requires garaging to be setback a further 1m from the building line (ie an 8.5m setback). While this would reduce the dominance of garages, this is likely to have design implications. Most R2 lots in the Shire are only 15m wide. This will result in a 2.8m wide x 7.5m long space - more than enough for an entrance – but not enough for an entrance and a decent sized room. Council has found that streetscape outcomes are far superior when front elevations contain more than just an entrance and a garage.

A secondary street setback of 2m is inconsistent with Council's requirement for 3m. This setback is working well and is consistently achieved. A reduced setback will have adverse impacts on streetscape and again, limit the opportunities for meaningful landscaping.

Basements

Council has found basements to have inherent problems and require careful design. Basements that extend beyond the footprint typically results in elevated courtyards towards boundaries, resulting in loss of privacy for neighbouring dwellings. The design criteria allow complying development basements up to 1m above ground level, as of right, and ground floors may be up to 1.3m above natural ground. This renders a 1.8m dividing fence useless in providing any privacy between adjoining properties.

This impact will be exacerbated when development is on sloping sites. There are no explicit controls on the extent of basements, or the width of street facing openings (dual occ/terraces).

Basements, as proposed, can extend to boundaries limiting opportunities for meaningful landscaping. The extent of basements should be limited to facilitate greater potential for trees and landscaping, particularly to provide privacy to adjoining neighbours. It is considered that more sensitive controls are required for basements, particularly if they are to be permitted as complying development.

Articulation

Building articulation zones, whilst important, should be limited to 25% of the zone for all forms of development (as per 3.4V Elements are to occupy not more than 25% of the area of the articulation zone).

Solar access

Resident living in lower density neighbourhoods have higher expectations of solar access. It is considered that the solar access requirements and for dual occupancy and terrace housing are substandard and inconsistent with the ADG which requires living rooms and private open spaces to receive solar access – not one or the other. Furthermore, given that these forms of development are at the densities less than ADG development, it would not be unreasonable to require 3 hours solar access, as per Council's DCP requirements. Similarly the controls should limit impacts on neighbouring properties to the same standard, maintaining 3 hours solar access. Concern is also raised as to the ability of designers to assess the solar access impacts as the Design Verification Statement does not require the author to have appropriate qualifications.

Private Open Space

The controls for Private Open Space (16sq.m. with a minimum dimension of 3m) are considerably less than Council's current standard (36sq.m. with 5m minimum dimension). The small size and 3m dimension will not provide an attractive and useable outdoor space. Space is needed to accommodate a table and chairs for outdoor dining, clothes drying space and BBQ. The space also needs to be wide enough to accommodate landscape buffer planting so that residents have an attractive green outlook, rather than simply facing a boundary fence. Boundary landscaping also provides screening to neighbours who may have multiple courtyards facing their private open space. Similarly, manor home balcony controls should be consistent with the ADG.

Space for Trees

Council's DCP allows any tree within 3m of a building to be removed on the basis of potential damage to buildings. Therefore the space needed to accommodate trees should be within landscaped beds that are more than 3 metres from the dwelling/basement. Space that is only 1.5 metres wider is inadequate to accommodate large trees to maturity. Similarly rear setbacks also need to be sized so that consideration is made of how best to accommodate shade trees. The extent of site coverage by basements also needs to be reviewed in terms of its impact of space for trees.

Extent of Fill

The extent of fill on a site will have significant impacts on privacy and overlooking, with impacts exacerbated on sloping sites. The Code permits fill up to 1m high over an entire site – up to 1m from boundaries. Fill results in adverse impacts on both neighbours privacy and the ability to retain existing vegetation on the site and on adjoining land. Dividing fences cannot ameliorate the privacy impacts associated with raising site levels. It is considered that fill should be limited to the building footprint as per the original Housing Code.

Voids

Increasingly, developments propose significant voids and undercroft areas. Technically however, these are not counted as floor space by definition, but they add significantly to the overall bulk and scale of development. This becomes critical when two dwellings are being built to the maximum permitted densities and are struggling to successfully deal with the floor space permissible. .

Liveable Housing

The Silver Level Liveable Housing Design has significant impacts on design, including the need to provide level access to dwellings. This is not usually possible with basement designs.

Contamination

Development should not be able to be undertaken on contaminated residential land and amendments to the SEPP are required.

Subdivision

The exhibition provides no details on the mechanism for subdivision, particularly dual occupancy subdivision. It has been Council's policy to require the construction of development prior to subdivision. Construction of the 'approved' dwellings allows development to be planned and the externalities of development to be limited. Creation of small vacant lots often results in expectations of greater development.

Each resultant lot must comply with the relevant development standards. However in this case it is not evident which standards will apply – do the LEP FSR standards or the Codes SEPP FSR apply to each lot? Where dual occupancy development is subdivided by Torrens Titled it will result in smaller lots again. However, these lots can then be further developed at even greater densities under the Housing Code, as higher densities are permitted on smaller lots. This will have further impacts on the local character of established neighbourhoods and the amenity of Shire residents. There is no mechanism in the Code to control this further development and hence this makes a mockery of the proposed Design Criteria controls as well as Council's LEP.

Consultation

More meaningful consultation would be facilitated if a summary of the results of earlier DPE consultation was provided, to identifying common issues raised across Sydney.