

NSW Department of Planning  
Director, Codes & Approval Pathways  
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SYDNEY NSW 2001

Email: codes@planning.nsw.gov.au

Dear Ms Kinkade

### **Submission – Proposed Medium Density Housing Code and Draft Design Guide**

Thank you for the opportunity to comment on the proposed Medium Density Housing Code (proposed Code) and draft Design Guide. We commend the NSW Government effort to develop planning policy that responds to the need for a medium density component to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). Further, we support the aspiration to improve liveability, encourage housing mix/choice and we welcome the opportunity to provide further comment on this matter.

Council's Development Committee resolved (under delegation) on 6 December 2016:

*That Council make a submission to the NSW Department of Planning & Environment on the proposed Medium Density Housing Code and draft Design Guide based on Attachment 1 prior to the deadline of 12 December 2016.*

This submission is broken into two parts: general matters and section specific matters for consideration.

#### **1. General matters for consideration**

- What safeguards are in place to ensure some form of quality control particularly given some of the matters raised in this submission (e.g. private certifiers)? This is an issue of concern that requires consideration.
- Current draft amendments to the Codes SEPP include an Inland Code to simplify the development standards for single dwelling housing in regional local government areas west of the Great Dividing Range. There would be merit in providing greater flexibility to the proposed Medium Density Code by enabling regional variation. A number of provisions in the proposed Code and the draft Design Guide would work well in a metropolitan context, however are not as appropriate in a regional context (e.g. parking, private open space, waste servicing). The objectives and design criteria in the Design Guide should reflect differences in context, both spatially and in terms of built form expectations.
- The draft Design Guide details that the net density proposed under the proposed Code is 24-45 dwellings per hectare. Shoalhaven has a number of urban release areas under Part 6 of Shoalhaven Local Environmental Plan (LEP) 2014, and even the areas that are expected to have the highest yield would only result in 15-20 dwellings per hectare. Whilst Council supports an increase in medium density development, the yield suggested in the proposed Code is concerning.

- The Government Architect of NSW has recently released the draft Better Placed Policy (draft Policy). It is indicated that the draft Policy and its future Design Guideline should “influence the development of new [State Environmental Planning Policies]”. There are a number of excellent design principles within the draft Policy that would enhance the proposed Code and draft Design Guide, particularly in relation to the public realm and built form generally. Although these design principles are mostly metro-centric in nature, there would be benefit in considering these in the finalisation of the proposed Code and draft Design Guide.
- Council is generally concerned with the minimal community consultation associated with complying development, with no notification given to the community until approval is granted and the complying development certificate issued. This removes any opportunity for the community to comment on possible increased densities in low density areas.
- It is noted that the NSW Department of Planning and Environment (DP&E) recently ran a workshop on the ‘Beauty-In-My-Back-Yard’ (BIMBY) tool. If the State Government decides to adopt this tool, will it be considered when assessing the future character of the streetscape in the design verification statement? It would be unfortunate if this was the only avenue for community involvement in the complying development process (see above point).
- Has the work behind ‘Plan Melbourne Refresh’ been taken into consideration during the preparation of the proposed Code? ‘Plan Melbourne Refresh’ seeks to include a similar ‘missing middle’ approval code at a State level and it may be useful to review this approach in finalising NSW’s policy.
- There needs to be greater clarity around what happens with post approval compliance for complying development and also modifications to complying development certificates. Is a design verification statement required for the modification and does the design verification statement need to be prepared by the same designer?
- It is noted that the land use term ‘manor house’ will be added to the Standard LEP Instrument. It is important that this land use is not a mandatory inclusion in the R1 or R2 zone as Councils should have the discretion on where such developments are permissible, especially in a regional context.
- Should Council choose not to adopt the Design Guide in its entirety for development applications, is there scope for Council to adopt isolated provisions for integration in our own DCP or reference back to certain elements of the Design Guide? Clarification would be appreciated in this regard.
- Should Council choose to adopt the Design Guide in its entirety for development applications:
  - It is assumed from the Explanation of Intended Effects that the Design Guide would be treated like the Apartment Design Guide - a standalone document that is just referenced in our DC. From an operational perspective it is important to understand what ‘referenced’ actually means.
  - If a gap in the Design Guide provisions is identified, can additional provisions be included in the DCP as long as no conflicts arise? Clarification would be appreciated.
- Medium density development is a more complex development form than a standard dwelling house.

The skill and ability of a private certifier to assess complying development applications of this nature is a concern. Further, the question of conflict of interest continues to be of concern, especially if a developer has the ability to appoint their own certifier - is the private certifier acting in the best interest of the community or their client?

- It is understood that the proposed Code and draft Design Guide predominantly relate to design, however there seems to be no consideration of related matters such as developer contributions (s94).
- It is presumed that the complying development conditions of consent will be included as a Schedule to the Codes SEPP and modelled on those already contained within. Council would appreciate the opportunity to view and comment on the proposed conditions of consent when drafted, prior to their finalisation.
- The NSW Government is congratulated on establishing the Missing Middle Design Competition to assist in regard to the proposed changes. This will be a great opportunity to highlight built form and design elements that will also be appropriate to a regional or rural context. Considering pathway housing types only from a metropolitan context would be a missed opportunity.
- A typographical error has been identified in the proposed standard instrument clause 4.1C. In subclause 3; 'grated' should be granted.

## **2. Medium Density Code Development standards:**

- It is acknowledged that the intent of the proposed Code is to encourage medium density development at a similar scale to that of a dwelling house under the Codes SEPP General Housing Code. The development is to have a frontage to the street, front and rear setback and private open space at ground level. The standards currently do not provide for 'built to boundary' provisions and it is critical for Shoalhaven that this approach is retained. This will assist with blending complying medium density development with most existing streetscapes.
- A maximum height of 8.5 metres/9 metres conflicts somewhat with Shoalhaven LEP 2014 heights in a number of areas throughout Shoalhaven (e.g. 7.5 metres for foreshore areas). The maximum prescribed height in the proposed Code should not override any height of buildings set in a Council LEP at a lower height – the Shoalhaven LEP 2014 heights should be maintained, to ensure community confidence. This is an area where regional flexibility would be of benefit.
- The minimum Torrens subdivision size of 200m<sup>2</sup> is concerning. Again there needs to be scope for regional variation. The smallest Torrens lot size available under Shoalhaven LEP 2014 is currently 350m<sup>2</sup> and is for dual occupancy and multi dwelling housing in certain areas of the city. This lot size has the potential to have an impact on the character of Shoalhaven's smaller towns and villages and also encourage increased densities in isolated settlements that have limited or no services and are at high risk from natural hazards e.g. bushfire and flooding.
- If Shoalhaven LEP 2014 is to conform with the model clause 'minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings', the clause should be drafted in a way to enable flexibility so that locality specific controls can be retained (e.g. 4.1A of Shoalhaven LEP 2014).

- Dual occupancies should not be permitted as complying development in R3 Medium Density zones as these areas should essentially be retained for higher forms of density. Council's current policy is to only allow dual occupancies in the R3 zone where a lot is smaller than 800m<sup>2</sup> and it is not feasible to amalgamate the lot with adjoining R3 zoned land to create a suitable sized parcel for multi dwelling housing.
- The minimum front setback proposed is 3.5 metres - 10 metres (depending on the size of the lot), or the average of the setback of adjoining properties. The 3.5 metres minimum setback is too small. The front setback should be related to the height of the building and the width of the street, not just the size of the lot.
- The bulk and scale of a manor house undertaken as complying development is a concern. The Explanation of Intended Effects identifies that the intent is for a manor house to look similar to a dwelling house in terms of bulk and scale. Due to the characteristics of a manor house, it is unlikely that this will be the case. Further, the layout of a manor house means that not all dwellings will have direct access from the street which seems to conflict with the intent of the proposed Code.
- In Section 2.1 Design Principles in the Explanation of Intended Effects, it is noted that the following design principle has been used to guide the development of the standards: "ensuring that car parking does not dominate the streetscape". However a minimum of 1 car space per dwelling is not adequate in a local government area like Shoalhaven, which is heavily car dependant and this minimum requirement would result in cars parking on the street. This will dominate the streetscape, cause congestion and is contrary to the above design principle.

### **3. Design Guide**

- The Explanation of Intended Effects document indicates that "proposed development can comply with the design criteria or use an alternative solution that satisfies the objective". This appears to imply that if the alternative solution is achieved, the objective has been satisfied. Some clarification is required on whether meeting the design criteria automatically means that the objective has been met. The relationship between the design criteria and the objectives need to be explicit. This is important particularly in circumstances where a poorly designed development satisfies the design criteria but not necessarily the objectives e.g. where certifiers may approve poorly considered developments based on a development satisfying minimum design criteria standards.
- It is concerning that the design verification statement is to be prepared by the person who designed the development. The process needs to be strengthened to allow more accountability particularly for complying development. At a minimum, the design verification statement should be provided by a qualified designer or planner.
- Whilst there is merit in the design principles in the draft Design Guide and it is noted that the design verification statement must articulate how the proposal responds to these principles, it is unclear how the assessment will be quality-controlled when the assessment is undertaken by a private certifier. A good example of this is ensuring that the desired future character element of 2D Local Character and Context is adequately considered.
- The minimum standards particularly in the Amenity Section of the Design Guide should be increased. A higher minimum design criteria requirement allows for a considered design rather than a design which satisfies the minimum requirements

but results in poor amenity for occupants. Essentially, if the design criteria requires a higher minimum requirement it provides Councils with a tool to improve design standards. The minimum standards in the draft Design Guide do not give Councils a mechanism to respond to a development where minimum requirements are satisfied but it is clear that there are concerns with the design of the proposal. Higher minimum requirements gives Councils (and the applicant) scope to question any concerns and the applicant to justify the alternative solution for not satisfying the higher minimum design criteria.

- Page 15 – the draft Design Guide outlines that the principal controls on land use, height of buildings, floor space ratio (FSR) and landscaped area are to be contained within the local environmental plan. Shoalhaven LEP 2014 only currently contains land use, height of buildings and FSR for a limited number of sites. FSR provisions (for the majority of sites in Shoalhaven) and provisions for landscaped area are located in Shoalhaven DCP 2014. Council requests clarification on whether or not there will be a future expectation that Council include FSR mapping and landscaping provisions in Shoalhaven LEP 2014 (or LEP (Jerberra Estate) 2014) – this preferred approach is not favoured by Council.
- Although it is acknowledged that the gross floor area and bulk/scale of multi dwelling terraces (for example) is comparable to a dwelling house permissible under the Codes SEPP, the overall bulk and scale of the development is greater and not necessarily comparable to the existing streetscape or subdivision pattern in Shoalhaven. This is an important issue in Shoalhaven where the housing stock is predominantly detached dwelling houses on large lots. Whilst Council is supportive of medium density options, consideration of the bulk and scale should be paramount. Allowing the assessment to be handed to a private certifier, especially the consideration of what is appropriate bulk and scale for Medium Density development, is concerning.
- C - Landscaped Area:
  - Landscape plans – will there be requirements on who is considered suitable to prepare the plan (e.g. Landscape Architect or Landscape Designer)? This is a key area of concern as landscape plans prepared by people who are not suitably qualified often result in poor design and streetscape outcomes, for what is a higher impact form of development.
  - Ongoing maintenance plan – how will this be enforced?
- D - Local Character and Context:
  - Whilst it is important that development contributes to the character of the local area, the wording of the objective and design criteria is misleading. Further, how will a consistent approach be taken during the assessment of complying development applications, especially when undertaken by individual private certifiers?
- E - Public Domain Interface:
  - Design Criteria 7 –private courtyards should generally not be located within the front setback and forward of the front building line at all. Consideration should be given to the amenity of the courtyard, not just the fencing component.

- F – Internal Streets – Pedestrian and Vehicle Access:
  - Gun barrel type development and dual occupancy in cul-de-sacs should be avoided. This type of development creates parking and waste serving issues due to the increased demand for on street parking and the reduced (or lack of) kerbside area available for bin kerbside presentation.
  - The maximum height of 2.7 metres for the façade opening for a carpark entry is not high enough to accommodate a waste vehicle should onsite (basement) collection be proposed.
  - Laneways should be between 8-10 metres in width to safely accommodate side-lift kerbside collection or front-lift vehicles. There needs to be sufficient space for turning into and exiting the site.
- H - Building Separation:
  - No consideration has been given to bin storage areas.
- I - Solar and Daylight Access:
  - The standard requiring a minimum of 2 hours daylight between 9am -3pm to living rooms and private open space for all medium density development should be increased for developments that are less intensive such as two dwellings side by side. Complying development approvals with low minimum requirements may result in substandard developments.
  - Living rooms and private open space that do not face north should primarily be required to achieve adequate daylight whilst north-facing living rooms and private open space should have an emphasis on attaining adequate solar access.
- M - Private Open Space:
  - The minimum area of private open space to be provided for ground floor dwellings (16m<sup>2</sup>) is a concern. Shoalhaven DCP 2014 currently requires 50m<sup>2</sup> per dwelling for a dual occupancy and 35m<sup>2</sup> per dwelling for multi dwelling housing and attached dwellings. There is a significant difference in the proposed state and current local requirements. This difference will potentially increase pressure on the provision and embellishment of public parks in walking distance to new dwellings. The reduction in private open space will lead to increased demands on public open space, and the provision of usable open space will potentially shift from developers to local government. Again, this is another provision that would benefit from a regional variation.
- O - Car and Bicycle Parking:
  - For complying development, 1 car parking space per dwelling is not considered appropriate in most instances. Shoalhaven DCP 2014 currently requires the following parking rates which are considered appropriate for our regional context.

Land Use	Existing SDCP 2014 parking rate
Dual Occupancy	<ul style="list-style-type: none"> <li>A minimum of one on-site car parking space shall be provided behind the building line for each dwelling having a gross floor area of 125m<sup>2</sup> or less, except where the dwelling contains three bedrooms or rooms capable of use as a bedroom, where two car spaces shall be provided behind the building line.</li> <li>A minimum of two on-site car parking spaces shall be provided behind the building line for each dwelling having a gross floor area exceeding 125m<sup>2</sup>.</li> </ul>
Multi dwelling housing Attached dwellings	<ul style="list-style-type: none"> <li>1 space per small dwelling (under 55m<sup>2</sup>)</li> <li>1.5 spaces per medium dwelling (56-85m<sup>2</sup>)</li> <li>2 spaces per dwelling of 86m<sup>2</sup> or greater</li> </ul>

The following is an example of the differences that would result from developments being approved under the two approval paths:

Development examples	Shoalhaven DCP 2014 requirement	Proposed Code - parking provisions
6 x 2 bedroom multi dwelling housing development	9 Spaces	6 Spaces
4 x 3 bedroom multi dwelling housing development	8 Spaces	4 Spaces

As demonstrated above, there is a significant variation between the parking requirements. Using the Guide to Traffic Generating Developments may be suitable in metropolitan areas where public transport is available, however, it is generally not appropriate in regional areas where residents rely on cars and therefore have greater car parking requirements. Not providing enough parking will cause congestion on public roads and have associated impacts such as waste servicing difficulties. Allowing some form of regional variation in relation to the provision of parking would result in a better outcome.

- The minimum setback from the primary/secondary frontage to a garage, car space, carport could be anywhere between 4.5 metres to 5.5 metres. This additional setback element will add articulation, however practically it will also be used for parking a vehicle. A setback of between 4.5 metres and 5.5 metres can cause circulation issues (both within and in front of the development site) and may result in the vehicle overhanging the verge. This is considered to be a practical issue and one which should be considered, especially in a regional context where that area will be used for car parking.

- Z - Waste Management:
  - Sufficient bin storage for commercial services or kerbside collection must be provided.
  - The draft Design Guide does not consider the design of collection points for onsite servicing including road infrastructure, width, turning and manoeuvring. Paving materials need to be considered if truck access to the site is required for waste collection. Infrastructure needs to be able to support the size and weight of trucks.
  - The size of trucks must be considered when designing a medium density development, especially in relation to basements, rear lanes, and larger mews/masterplan communities. Waste servicing vehicles in regional areas are not necessarily as narrow as waste servicing vehicles in metropolitan areas. Waste trucks must be able to manoeuvre safely.
  - For larger developments:
    - There is concern that the potential kerb space will not be adequate to enable presentation of bins at the kerbside. There needs to be a requirement that if adequate kerbside space is not provided, the development will provide a layout that will enable a waste contractor to enter the property to provide a Council collection service.
    - There needs to be a bin storage area dedicated for this purpose (not in conjunction with bicycle storage etc.).
  - The Design Guide should include a requirement for a Council approved Waste Management Plan.
  - Council does not run currently a regular green waste collection service. It is unclear how “Communal compost and green waste facilities” are to be managed or what they should look like.
- Off-Site Amenity Impacts:
  - Whilst it is acknowledged that the existing and future character of the area is considered, the draft Design Guide is light-on in terms of consideration of amenity impacts on existing dwellings. Whilst there is some consideration of overshadowing existing living room windows, consideration should also be given to the private open space of existing dwellings and ensuring solar access to these areas is maintained to a reasonable standard. Consideration should also be given to the protection of existing north facing habitable room windows. These matters are of ongoing concern to the communities of Shoalhaven.
- The Site Analysis checklist should include provision for bin collection and traffic/truck movement.



#### 4. Summary

Thank you again for the opportunity to comment on the proposed Code and draft Design Guide. It is hoped that DP&E will fully consider the comments raised in this submission and amend the proposed Code and draft Design Guide accordingly.

Council has a number of significant concerns with the draft Design Guide (e.g. waste, private open space, solar access) which will likely result in significant long term liveability and practical servicing issues if not considered. Unless these matters can be addressed in the draft Design Guide, it could be difficult for Council to ultimately adopt the Design Guide for development applications.

We would welcome the opportunity to review the Code and Design Guide before finalisation and to discuss the opportunity for regional variation with you further.

Should you require further information about this matter, please contact Jenna Tague, Planning and Development Services Group, on (02) 4429 3553. Please quote Council's reference D16/348302 (31157e) in any correspondence.

Yours faithfully

A handwritten signature in black ink that reads "Gordon Clark". The signature is written in a cursive, flowing style.

**Gordon Clark**  
**Strategic Planning Manager**

9 December 2016