



# Ku-ring-gai Council Submission

## ***Draft Explanation of Intended Effects Proposed Medium Density Housing Code***

**And**

## ***Draft Medium Density Design Guide***

Department of Planning and Environment  
November 2016

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## EXECUTIVE SUMMARY

Ku-ring-gai Council is generally supportive of the Department's initiative to promote the "missing middle" in that the medium density typology (smaller houses with smaller gardens) is in short supply across Sydney, and its provision would enable more housing choice. Ku-ring-gai Council supports enabling more of this type of housing, including the new medium density housing types. However, the method of delivery through complying development is not supported.

Ku-ring-gai Council has undertaken a detailed analysis of the exhibited documents. The analysis has been tabulated and attached to this document. In light of the findings, this Council does not support the proposed medium density housing as Complying Development, nor does it support the Medium Density Design Guide (MDDG) in its current form.

The key issues and recommendations are summarised in this document and comprise concerns regarding the following:

- A. Probity and transparency of process and delivery
- B. Consistency with State and Federal Planning Directions
- C. Mechanism for delivery of medium density housing
- D. Burden placed on local Councils
- E. Torrens Title subdivision
- F. Ambiguity, inconsistencies, lack of clarity
- G. Development standards

Medium density housing must not be delivered through complying development as the proposed pathway combined with the exhibited standards will result in outcomes that have less amenity than that delivered through SEPP 65 and ADG for Residential Flat Buildings.

A one size fits all cannot deliver good outcomes to every locality across NSW, and definitely will be detrimental in the context of established high quality urban areas. Medium density development must defer to the local development standards and merit assessment through the Council's development assessment process. This will ensure rigour of assessment, integration in delivery, and transparency in decision making.

Ku-ring-gai Council has in place a coordinated suite of planning documents that ensure the effective delivery of dwelling numbers as required, and importantly, that the delivery is considerate of both short and long term environmental, social and economic consequences. These documents

- have been tested before adoption;
- are successfully delivering State and Federal Government's strategic policies and current housing targets;
- are achieving high quality outcomes that respond to the existing and desired future urban character of Ku-ring-gai;
- are aligned with State and Federal Government policies on climate change and sustainable cities.

The **key recommendations** arising from this paper are as follows:

- Do not proceed with the inclusion of medium density development in the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing.
- The role, document structure and function of the MDDG must be the same as SEPP 65 and the ADG to respect local character by deferring to local planning instruments.
- Retain local Council as the consent authority as medium density development is better suited to the development application pathway with transparent and considered expert assessment.
- Should the State Government proceed to amend the Codes SEPP, provision should be made for Councils to seek exemption where they can demonstrate that their local planning documents are consistent with the requirements of the District Plan and consistent with the design intent of the MDDG.

Ku-ring-gai Council would be happy to meet with the Department to clarify and discuss the concerns raised in this submission.

## List of Additional Recommendations

1. Do not proceed with the inclusion of all medium density complying development types in the Codes SEPP.
2. Defer all medium density development to the development application process and retain Council as the independent, transparent and accountable assessor.
3. Defer all medium density development for assessment by Council to ensure thorough, in depth assessment on the short, medium and long term outcomes of development and ensure the integration of development into the local urban fabric.
4. Provide Council with a mechanism to receive fees for attending to all issues arising from complying development, including legal costs resulting from pursuing non-compliance.
5. Should the State Government proceed to amend the Codes SEPP to include medium density development, provision must be made for Councils to seek exemption where they can demonstrate that their local planning documents are consistent with the requirements of the District Plan and consistent with the design intent of the MDDG.
6. Develop a new *SEPP Design Quality for Medium Density Housing* with accompanying *MDDG* that integrates with local controls and has the same document structure, function and operations as SEPP 65 and ADG.
7. The outcomes of the objectives, design criteria, and design guidance of the MDDG must be equal to or better than under the ADG.
8. Release the full draft of the *SEPP Medium Density Housing* and a corrected version with improved standards, content and clarity of the MDDG for public comment.
9. Require a registered architect and qualified, regulated professionals for other disciplines to be independently verified by a design review panel, for all medium density development design.
10. Limit the role of unqualified private certifiers to minor/very small development where there is no doubt regarding its impact, and that does not require the rigour of academic training to perform expert analyses, merit assessment, or integration of systems, or consideration of short and long term environmental, social and economic impacts of development.
11. Address the existing and on-going serious weaknesses associated with private certifiers, demonstrating changes are effective, and defer any further expansion of their role until the system is reformed and able to deliver better outcomes in the existing complying development categories.
12. Council must retain control of the current minimum lot size for any multi-dwelling development site (1200sqm for Kuring-gai) to avoid local 'piecemeal' development.
13. Remove all Torrens Title subdivision from the Codes SEPP. Council must retain control of subdivision pattern for strategic public infrastructure such as new roads, public open space and land use intensification.
14. All medium density housing development must operate under Community or Strata Title.
15. No medium density complying development is to be permitted adjacent to a Heritage Item or within a Heritage Conservation Area.
16. Increased clarity must be made regarding definitions. In particular, the definition of 'dwelling house' must be clarified to align with the SI LEP definition; 'streets' must be clarified with all references to streets/roads/lanes being changed to read '**public**' streets/roads/lanes; deep-soil landscaping and frontage must be defined.

### With regards to development standards:

17. Ensure all development standards at least deliver the same standards as SEPP 65 and the ADG.
18. Include requirements for all complying development typologies to have every dwelling address a **public** street/road.
19. Include the requirement for all terrace development to occur only where serviced by rear lanes or basement parking under the footprint of the building.
20. Remove attics from all complying development. Buildings with attics must go through a development assessment to ensure amenity is achieved and to avoid poor elevational outcomes of a typology with numerous dormers and skylights.
21. Delete dwelling types that propose multiple garages and vehicular cross-overs under complying development. This typology must go through a development application pathway.
22. Stipulate effective deep soil area requirements for all proposed medium density typologies, to occur within common areas of strata titled development to ensure their long term retention, maintenance and contribution to the shading and greening of the local environment.
23. Building separation must be the same that applies to SEPP 65 for visual and acoustic privacy for development up to 4 storeys.
24. Building separation must relate directly to the internal planning arrangements to allow for adequate private open space, landscape screening and amenity between dwellings without the heavy reliance on privacy screens.
25. Setbacks must be retained in Council's authority and the same as those that apply to SEPP 65 including consideration of internal planning layouts of dwellings.
26. Side setbacks must be increased to a minimum of 3m where basement car parking is proposed.

## A. PROBITY AND TRANSPARENCY OF PROCESS AND DELIVERY

**Concern is raised regarding the absence of consultation and lack of depth of analysis on impacts, and management of impacts, that the complying development mechanism will deliver to high quality established urban and landscaped areas.**

### 1. Evidential analysis

Ku-ring-gai Council has undertaken a detailed review of the exhibition documents anticipating the proposed changes would replicate the success of SEPP 65 and the Apartment Design Guide (ADG); however, it is of great concern to see that the inappropriate delivery pathway through complying development has not been reconsidered nor in any way justified.

The exhibition has not put forward any analysis or detailed evidence-based reasoning in response to the key concerns and issues raised across numerous submissions to the 2015 exhibition of the Department's *Discussion Paper* - namely that complying development is an inappropriate mechanism to deliver multiples of housing with the associated complexity of issues arising from cumulative development impacts. See Ku-ring-gai Council's original submission at **Appendix 3**.

Detailed analysis of the *Explanation of Intended Effects - Proposed Medium Density Housing Code* (MDH Codes SEPP) and the *Draft Medium Density Design Guide* (MDDG) have revealed numerous inconsistencies and confusion of standards. The documents in their current state will result in poor delivery outcomes across Sydney and NSW, particularly through the suggested complying development pathway. See detailed analysis tables at **Appendix 1** and **Appendix 2**.

#### **Justification by comparison with single dwelling complying development**

The current exhibited documents downplay the impacts that will result from the cumulative impacts of multiples of housing by relating the outcomes of medium density complying development types with the existing single dwelling complying development type. The relationship suggests the two typologies are similar based on the final outcomes of medium density complying development delivering individual dwellings each on a single 200sqm lot with height of 2-storey plus attic, as might be found in a single dwelling complying development.

This association is fundamentally flawed as there is no regard to the actual delivered outcomes of the two typologies. Single dwelling complying developments across Sydney occur on existing parent lots within (and not altering) local subdivision patterns, usually much larger than 200sqm lots in middle and outer ring Sydney suburbs such as Ku-ring-gai, whereas a medium density development would deliver multiples of dwellings on one parent lot to the maximum allowable number with each individual dwelling having a 200sqm minimum lot size.

For example, on an existing parent lot of say 900sqm:

- only one single dwelling could be constructed through complying development (Codes SEPP), and no sub division of this lot is possible via single dwelling complying development;
- however, four terrace dwellings could be constructed on that same lot through the proposed Codes SEPP, with complying subdivision splitting the parent lot into 4 lots of minimum 200sqm each.

As such, the two typologies cannot be associated as having any similarities regarding the delivered outcomes despite the lot size and height similarity per dwelling. The fact that the exhibited proposal enables multiples of housing on the one lot removes the relevance of the comparison.

An illustration of this is as below:



- *Complying development - single 1xdwelling on one parent lot – AND- Medium Density 3xdwellings on one (same size) parent lot.*
- *Illustrates the very different outcomes resulting from density and cumulative impact of multiples of housing.*
- *Therefore no comparison can be made to the outcomes of the 2 separate typologies under complying development.*

There is also the suggestion in the *Explanation of Intended Effects* document that medium density development has less impact than a residential flat building (RFB) because its height is comparable to a single dwelling (2 storey plus attic). Again, this is a flawed argument.

Whilst the intensification of medium density development is not vertical as for RFBs, density is delivered horizontally through multiples of housing and the impacts are cumulative. In fact, in most cases, the impacts are greater than that of RFBs due to medium density housing having a large site coverage/footprint per dwelling, compared to RFBs. This results in greater on the ground impact through the clearing and coverage of large parcels of land which has more far reaching impact per dwelling than an RFB; and, which has the ability to cause long-term negative impacts on the environment and local systems unless the design and assessment process is managed in a highly considered manner with a multi-disciplinary approach. The complying development pathway cannot deliver this consideration as there is no avenue for in depth consideration.

## 2. The Codes SEPP wording

The exhibition material has not included the full draft of the Medium Density Housing Code as it will appear in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP), instead providing an interpretation within the *Explanation of Intended Effects - Proposed Medium Density Housing Code* (MDH Codes SEPP). This is of concern as there is no way to fully assess impacts that may result from the legislation, particularly where the information in the exhibited document MDH Codes SEPP is inconsistent with the other exhibited document- *Draft Medium Density Design Guide* (MDDG) which in itself has inconsistencies across sections, as indicated at numerous places within the analyses tables at **Appendix 1** and **Appendix 2**.

The inconsistencies in the exhibited documents mean there is the potential for enabling clauses that may intentionally/unintentionally permit medium density housing development on land that many Councils do not permit medium density development, or enable additional housing types beyond those currently permissible; or, result in medium density development that is incongruent with local and state strategic approaches, all of which would further erode Council's remaining and very limited power to manage strategic planning under this mechanism.

## 3. Qualification to design complex multiples of housing

The Codes SEPP has no requirement for registered architects to design any medium density development while at the same time enabling potentially unqualified, financially vested regulators to assess the development under private certification.

There is no requirement for medium density housing under complying development to be designed and coordinated by a registered architect familiar with the legal necessity of providing professionally competent and integrated design solutions with corresponding documentation. Architects undergo a minimum 6 year degree study which gives them the skills to deliver good outcomes for multi dwelling sites and their neighbourhoods, and address short and long term environmental, social and economic issues that can arise from such development.



Registered architects would have the knowledge and the qualifications to align their designs with local, State and Federal policy on development outcomes. They would have the skills to consider and balance multiple conflicting issues around the design, over and above the bottom line delivery of maximum allowable dwellings permitted on the site.

On the other hand, building designers have no formal registration or accreditation requirements in NSW and can therefore potentially design medium density development with no credentials. This increased risk and liability poses a burden on Council who is then expected to integrate poorly considered development. Accreditation by the Building Designers Association of Australia (BDA) in NSW is not regulated, is entirely voluntary and can be considered 'informal' at best (only Building Designers in Tasmania, Queensland and Victoria are regulated). It is noted that the recent *Missing Middle Design Competition* calls for registered architects, graduate architects, students of architecture and building designers to develop designs. This in itself is acknowledgement that good outcomes are only achievable through the architectural community.

To this end, all medium density housing must be designed by a person with a recognised degree in architecture; officially registered as an architect with the governing architecture body in their state or territory; and be covered by the necessary liability insurances.

#### 4. Qualification to assess and certify complex multiples of housing – private certifiers

Removing the consent authority from Council requires private certifiers to determine and certify all aspects of the development. Even with numerical benchmarks, certification relies on private certifiers to verify that each discipline has complied with the benchmarks and has coordinated their input with other disciplines.

Their ability to do this is questionable; moreover, there is little incentive for them to do investigation and analysis as accommodating other environmental or integration issues might result in a reduction on the maximum dwelling number outcome on a site. The private certifier, like the developer, has a vested interest in the completion and delivery of the development to its maximum capacity.

Therefore it is highly unlikely that most private certifiers will have the same guardianship of land resource and its operation for the wider population benefit, as is the case for local Councils assessing developments.

The ICAC submission regarding A New Planning System for NSW (Green Paper) 2012 also raised concerns regarding private certification which have not yet been resolved nor considered in this exhibition. The Commission's key concern was the adequacy of the in-built anti-corruption safeguards in decision-making processes, and that safeguards should be commensurate with the level of corruption risk involved in a decision. It is noted that;

*"the introduction of increased flexibility into a system will create a corruption risk, especially when combined with the potential for proponents to obtain huge windfall profits through obtaining an approval. For this reason, where a zone emphasises market based processes, flexibility, innovation and limited development control mechanisms, it is important to have strong decision-making and governance processes in place."*

The question of independence and rigor of the private certification process remains a key issue. A private certifier may have a fundamental conflict of interest in undertaking public responsibilities as a regulator, whilst providing a service to a client for a fee. In this regard, the recently completed review of the *Building Professionals Act* considered the effectiveness of building regulation and certification system in NSW, identified a number of inherent weaknesses in the certification process. The review outlined that there is a strong case for reform of the building regulation and certification system, and included a number of recommendations and required outcomes of the reform. The Review noted *'it is essential that there is full confidence in the integrity and effectiveness of the complying development scheme if it is to continue to be expanded as a Government strategic priority.'*

The NSW Government September 2016 response to the Review supported 72 recommendations, decided 70 recommendations be subject to further investigation, and 8 recommendations were not supported.

The majority of certifiers have not completed a rigorous 5-year town planning degree. As such they do not have the skill and competence to assess complex multiple interrelated issues, and check compliance around areas such as stormwater, bulk/scale, built form and landscaping outcomes, heritage impact, waste management, and streetscape character that would arise from cumulative development impacts from multiple homes. Nor do they have the skills to balance the demands on land parcels to ensure a positive outcome for the site, the neighbourhood, the wider area, and for environmental, social and economic integration.

Current short training courses offered by universities in relation to planning and development assessment are inadequate and do not equip certifiers to undertake a meaningful planning compliance assessment including the type of complex merit assessment that will be required through the exhibited documents for complying medium density housing.

To expect certifiers to ensure “*compliance with the Design Criteria*” and with motherhood statements such as “*the development addresses the street and fits with the character*” (MDDG) overestimates the abilities of most current certifiers who may not have a town planning degree and developed skills to both understand planning legislation and to undertake associated merit assessments.

The complying development mechanism effectively transfers the existing independent, transparent, robust and highly accountable assessment process from local Councils to one which is absent of transparency, with inherent conflicts of interest where both parties (the developer and the private certifier) are dependent on each other and have a vested financial interest in the speed and success of a development approval with little governance.

Noting the outcomes of the independent review into the effectiveness of the current building and certification system in NSW, the Government should not be expanding complying development to high impact medium density development when the current system is not effective and thorough, and has been found to be in need of reform in the assessment of development with fewer implications than those associated with medium density development

### Recommendations:

- Remove the complying development pathway for all medium density housing.
- Defer all medium density development to the development application process and retain Council as the independent, transparent and accountable assessor.
- Develop a new *SEPP Design Quality for Medium Density Housing* with accompanying *MDDG* that integrates with local controls and operates in the same way as SEPP 65 and ADG.
- Release the full draft of the SEPP Medium Density Housing and a corrected version of MDDG for public comment.
- Require a registered architect, and qualified, regulated professionals for other disciplines to be independently verified by a design review panel, for all medium density development design.
- Limit the role of unqualified private certifiers to minor/very small development where there is no doubt regarding its impact, and that does not require the rigour of academic training to perform expert analyses, merit assessment, or integration of systems, or consideration of environmental, social and economic impacts of development.

- Address the existing and on-going serious weaknesses associated with private certifiers, demonstrating changes are effective, and defer any further expansion of their role until the system is reformed and able to deliver better outcomes in the existing complying development categories.

## B. CONSISTENCY WITH STATE AND FEDERAL PLANNING DIRECTIONS

**Concern is raised regarding the apparent lack of consultation and comment from groups involved in State-level future planning for Sydney and NSW. These organisations are instrumental in setting directions on the management of generational impacts resulting from development across Sydney and the State and also issue directions to Local Councils. The proposal to supply medium density housing through the complying development mechanism negates the work of these strategic bodies.**

### 1. Agencies overseeing and developing key strategic planning approaches

It is still unclear what consideration has been given to, and which specific groups and organisations were consulted in the consideration of this complying development delivery mechanism, particularly

- with regards to both the short to medium term impacts of such development on infrastructure and character of established areas, and associated burdens placed on local Councils from lack of integration into local systems;
- with regards to the long term far reaching generational social, environmental and economic impacts that will result from poorly resolved cumulative development, which cannot give due consideration to alignment with State and Federal policy due to the nature of the fast track complying development delivery mechanism, combined with the potentially unqualified designers and private certifiers preparing and assessing the developments.

The exhibition has not included any discussion on the consequences of removing swathes of established fine grain urban and landscape fabric with associated social and environmental value and character, particularly where the proposed MDH Codes SEPP and MDDG bear little relation to the local planning standards that have, and continue to, deliver high quality urban outcomes within fine grain established areas.

The exhibition documents present no discussion on the resultant **environmental** problems of increased heat emission, stormwater runoff and pollutants, and energy burdens which will inevitably arise from this delivery mechanism (as is already being experienced with single dwelling complying development delivery within Ku-ring-gai and across Sydney). The complying development pathway will place a considerable burden on the environment and create **economic** issues requiring injections to remedy and rectify the effects of poorly resolved development resulting from the fast track process.

No comment or consideration is presented regarding the fundamental fact that this delivery mechanism will result in an output that is in direct opposition to key State and Federal policy and direction. There is a lack of discussion and evidence put forward to show consideration of the environmental, economic and social impacts stipulated in those policies, and no evidence has been included in the exhibition to indicate how these impacts will be managed in the short, medium and long term across all of Sydney and NSW, and who will bear the costs for the rectification and management of the problems that will result from these developments if considered through complying development.

### 2. Justification of complying development outcomes - State, Federal Government directions

No regard appears to be given in the exhibited documents to the fact that medium density development deals with housing multiples and the associated complex cumulative impacts that cannot



be managed through the complying development route, and that will be exacerbated through the minimal considerations possible via complying development being designed by unqualified groups.

The pattern of intensification that this proposed complying development delivery mechanism will enable across swathes of Sydney and NSW will create impacts that are cumulative, high intensity and generational, and which are in direct conflict with the directions of Greater Sydney Commission, Federal Government Green Cities policy, NSW Government Better Placed policy, NSW Office of Environment and Heritage Climate Change heat emission and rainfall policies, to name a few.

The exhibited documents make no reference to the current and ongoing work of these organisations, and do not appear to have consulted and integrated the outcomes of this delivery mechanism into those broader policies which this proposal will directly influence.

Medium density development delivered through complying development will not align or achieve the directions, aims and outcomes of key strategic organisations, as illustrated below

### **Greater Sydney Commission (GSC)**

The exhibited documents are not aligned with the GSC key documents. The delivery of medium density housing through complying development will not achieve the key strategic directions stipulated by the GSC, rather it will counteract those efforts.

For example *A Plan for Growing Sydney* states goals and directions which rely on good urban design and planning to “*make the city’s built environment sustainable and energy efficient while also protecting the environment*”. It refers to principles of environmental sustainability and the importance of strategic and considered planning “*promoting environmental resilience as housing and economic development occurs (and which) will have greater benefits than site-by-site decision making*”. Complying development can only deal with site specific delivery. It does not have the capacity or expertise to consider implications beyond the site.

It makes reference and commitment to the *Green Cover Demonstration Design Project 18* stating that the Government will “*deliver Green Cover Design Principles to inform how to incorporate vegetated, permeable and reflective surfaces into urban settings, to address thermal loading in the built environment and provide co-benefits such as reduced energy costs for cooling, stormwater management, cleaner air and biodiversity habitat*”; and

It refers to social sustainability and how “*through urban layout, we can improve air quality in residential areas to improve our health and wellbeing... These actions will encourage best practice urban design to manage or mitigate the impacts of increased urban temperatures and will reduce the impact of Sydney’s growth and increasing density on the quality of our natural environment and on our neighbourhoods and communities.*” The outcomes that will result from the proposed medium density, delivered through complying developments, as per the MDH Codes SEPP and MDDG make no attempt to consider these issues, resulting in developing that will ignore these considerations.

The draft amendment update to *A Plan for Growing Sydney* called *Towards our Greater Sydney 2056* states core objectives for “*A Sustainable Sydney*” including “*A city in its landscape; An efficient city; A resilient city*” and “*how we can green our streets, neighbourhoods and suburbs with new tree canopies.*” The proposed development standards cannot deliver on these principles.

Sarah Hill, (CEO GSC) has commented that “*the Commission is focused on making Greater Sydney a better place and a strong global city to ensure that as Greater Sydney grows it becomes more liveable, more productive and more environmentally sustainable.*” The GSC “*recognises that cohesive and vibrant cities have overlapping components and an integrated approach to city making is crucial to success.*” The complying development mechanism does not have the ability to deliver this integrated approach.

The proposed complying development pathway for medium density housing will result in fast-track, poorly resolved development that will undermine the principles of the *Draft North District Plan* which Ku-ring-gai and northern Councils are required to assimilate.

The mechanism of delivering medium density housing through complying development will not *“enhanc(e) the great places in the North District (which) require protecting and, where possible, enhancing these highly valued liveability characteristics, and managing growth to create healthy, well-designed, safe and inclusive places that encourage economic and social activity, vibrancy and community spirit”* as stated in the *Draft North District Plan*. This is particularly the case for high quality established fine grain areas such as Ku-ring-gai and much of the North District.

The draft *District Plan* instructs local Councils: *“when making strategic plans, relevant planning authorities should consider how tree canopy cover in land release and established urban areas can be protected and increased, with a focus on providing shade to streets.”* The exhibited complying development documents make no consideration of this and will undermine this principle within areas such as Ku-ring-gai where this principle is already established and delivered through the integrated planning documents.

Rod Simpson (Environment Commissioner GSC) commented: *“The biggest threat to ecological systems both locally and globally is climate change and we will be working very closely with state and commonwealth agencies and councils to work out the most effective ways of helping to achieve a zero carbon city by 2050, as well as being more energy and water efficient”*. Ku-ring-gai Council has integrated numerous green principles in its DCPs to ensure delivery of all built outcomes lower the impacts on climate change. The proposed complying development delivery of medium density housing will undermine the efforts that this Council has put in place to ensure development is delivered in a considered manner to provide the required accommodation whilst managing short and long term impacts.

#### **Federal Government’s ‘Green Cities’ policy** (announced 01/2016 by Minister Greg Hunt)

The exhibited documents are not aligned with the Federal Government’s direction. The delivery of medium density housing through complying development will not achieve the principles stipulated by the Minister, rather it will counteract those efforts.

For example, the FSR and landscape as proposed in the exhibited documents, are diametrically opposed to the policy which calls for *“cities with high levels of trees, foliage and green spaces (as they) provide enormous benefits to their residents. Increasing urban canopy coverage decreases heat, which improves health and quality of life.”* Ku-ring-gai Council is currently delivering on these aspects for all housing typologies. The proposed complying development mechanism will undermine this Council’s long standing efforts in developing models of delivery that consider both short and long term outcomes.

The fine grain integrated suite of planning documents that Ku-ring-gai Council has put in place are the result of extensive research and consultation to ensure development delivery meets current needs whilst supporting the established area character and integrating growth in a considered and sustainable way with due consideration of generational impacts on social, environmental and economic issues.

#### **Urban Green Cover Guidelines - Minimising Local Temperature Impacts in Cities and Towns**

This technical manual stipulates *“integrating vegetation, green spaces and permeable surfaces into our cities and towns (so that) communities can adapt urban environments to minimise local temperatures, now and into the future. Increasing urban green cover provides effective and relatively low cost resilience to heat impacts while improving community amenity and providing multiple*

*benefits*". The complying development pathway does not have the depth of consideration of a development to ensure any of these considerations and their delivery in the final outcomes.

Rob Stokes MP noted the importance of considering climate change in any planning approach that delivers accommodation for communities: "*The Urban Green Cover Guidelines will assist NSW built environment professionals increase resilience to future extreme events and natural hazards and help communities prepare for a changing climate. I trust you will find them a useful resource for planning and achieving more liveable and resilient neighbourhoods and communities in NSW*". The complying development pathway, utilising designers that are not registered architects and private certifiers that do not hold a town planning degree, does not have the mechanism to give any in depth consideration along these lines.

### **Office of Environment and Heritage (OEH)**

The exhibited documents are not aligned with important direction from OEH regarding management of development with regards to climate change. The delivery of medium density housing through complying development is in direct opposition to these directions.

According to OEH 2016 Impacts of Climate Change – East Coast Lows, rainfall extremes and average rainfall is likely to increase but become more variable. Compounding the effect of this transition is the occurrence of east coast low (ECL) events which can happen up to ten times per year and bring heavy rain and strong winds. OEH reports that climate change is likely to already be affecting the intensity, frequency and duration of these ECL events. As a result many NSW Councils are already looking to upgrade stormwater drainage systems to cope with increase in flow volume and intensity.

The complying development mechanism is already failing in terms of creating effective stormwater outcomes for single dwelling developments delivered through complying development, with Council having to remedy poorly resolved stormwater design, spending considerable time and expense to mitigate the impacts of the complying development. Stormwater, particularly the increase predicted by OEH, is of particular concern in Ku-ring-gai given the ridge, valley, slope topography.

The Ku-ring-gai DCP seeks deep soil allocations and the planting of vegetation including large canopy trees to all housing typologies. This requirement has many reasons, one of which is the importance of permeable areas to absorb increasing runoff, and the establishment of deep and wide root systems to hold soils in place and prevent downslope erosion with runoff. If not managed, the erosion will not only denude the ridges and slopes, but create knock on effects of sediment and pollutants in downslope riparian areas. The complying development pathway will not support this local approach, nor will it be able to consider stormwater issues with the rigour of Council assessment which ensures developments do not cause ongoing issues.

Ku-ring-gai, like many other areas has an aging population. As people age they become more vulnerable to heat stress. Heat waves are recognised by the NSW Department of Health and the Red Cross as a major risk associated with climate change. According to OEH 2016 Impacts of Climate Change – Heat, land use modifications, especially those that reduce the area of shade from the destruction of the tree canopy, increase hard surfaces, and reduce air flow across the region. These combine to increase not only daytime temperatures but more importantly night time temperatures. This contributes to the increase in heat exposure and greater reliance on mechanical ventilation during night hours and associated energy consumptions and increase demand on the energy supply network.

According to UNSW Built Environment Multi-Scale Research Urban Climate Sustainable Development 2016, as the urban footprint increases in density the risk of creating urban heat islands rises accordingly. Transitioning to greater densities requires particular planning skills to ensure the risk of creating heat islands across an area is minimised. Ignoring this requirement once again creates a scenario of a significant increase in foreseeable risk of hospital admissions and deaths related to extreme heat events. (Deaths that are preventable.)

OEH (2016) notes that heat waves kill more people than any other type of natural disaster. Considered strategic planning of medium to high density development is vital in ensuring both the social and environmental sustainability of the communities that are being housed within new development. Considered strategic planning also avoids the need of remedial 'fix it' works having to be conducted to deal with poor initial development.

The one size fits all complying development pathway cannot deliver considered strategic planning across the numerous different terrains across Sydney and NSW and can only result in poor environmental, social and economic impacts due to its fast track nature and limited cross consultation and integration.

In terms of economic sustainability, the urban forest plays a role in defining Ku-ring-gai and enhances the area's aesthetics and consequently its property values. Studies have estimated that properties in tree-lined streets are valued around 30% higher than those in streets without trees (Sander H., Polansky S., Haight R.G., 2010. *The value of urban tree cover: a hedonic property price model in Ramsey and Dakota, Minnesota, USA*. *Ecological Economics* 69(8), 1646-4656) Significant canopy coverage provided by our urban forests improve the lifespan of some assets (for example asphalt), by shading them from harmful rays – potentially by 30%. ('*Urban Forest Impacts on Carbon, Water and Urban Heat Islands*', G McPherson, Centre for Urban Forest Research, USDA Forest Service, 2009). These type of preventative measures have not been considered in the MDH Codes SEPP or MDDG.

### United Nations

The proposal is inconsistent with the United Nations, General Assembly Draft outcome document *United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*, particularly with regards to loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect which impacts on the amenity and liveability of housing and their environments. It noted that:

*"Given cities' demographic trends and their central role in the global economy, in the mitigation and adaptation efforts related to climate change, in the use of resources and ecosystems, the way they are planned, financed, developed, built, governed and managed has a direct impact on sustainability and resilience well beyond urban boundaries."*

These outcomes cannot be achieved through the complying development pathway.

### Government Architect, NSW

The NSW draft policy *Better Placed – A Design Led Approach: Developing Architecture and Design Policy for New South Wales*, is a key strategic document which refers to the importance of place-making, people, context and the elevation of high quality design. The document describes fundamental design considerations and a process very similar to the approach Ku-ring-gai is advocating for dealing with medium density housing- probity (independent review), architects as key to delivering good outcomes, local context and character, local strategic planning in consultation with local communities, and valuing the 'green grid.' It primarily stipulates the link between good design and sound long-term **economic** outcomes as design excellence is related to economically positive outcomes.

This policy, located on the Department of Planning and Environment website, *"sets out the New South Wales Government's position on design in the urban environment, with a focus on cities, towns, streets, open space, public spaces, infrastructure, buildings and public domain... Great design in the built environment is informed by and derived from its location, context and social setting. It is place-based and is relevant to and resonant with local character, heritage and communal aspirations"* and



*“design excellence generates ongoing value and reduces costs over time. It is an essential component of achieving durable, resilient and cost effective urban buildings and places. As the arena for daily life, the built environment can dramatically improve value creation if effectively designed.”*

The draft policy outlines the significant **environmental, social and economic** effects of poor design, stating that “... ‘poor design’ or even ‘business as usual’, is likely to have significant adverse environmental, social and even economic effects” and emphasises that “sustainability is no longer an optional extra, but a fundamental aspect of functional, liveable design.” The proposed complying development pathway cannot deliver on this policy and in fact will operate in opposition to it due to the far reaching cumulative impacts that will result from the lack of integrated and robust consideration of development delivery.

### Recommendations:

- Remove the complying development pathway for all types of medium density housing.
- Incorporate robust measures and standards that reflect current strategic work by key organisations in the area of environmental, social and economic sustainability of development.

## C. MECHANISM FOR DELIVERY OF MEDIUM DENSITY HOUSING

**Complying development is an inappropriate mechanism for the fast track delivery of medium density housing. This is due to the cumulative impacts of increased density delivered horizontally across multiple lots, exacerbated by a mechanism relying on unqualified designers and unqualified private certifiers to deliver a complex development typology that has the biggest on the ground social, environmental and economic impact.**

**To date, complying development has not been able to deliver consistent, high quality integrated development that does not detract from the character of fine grain established areas, and create burdens upon whom the task to fix poor outcomes befalls, despite the complying development being only for single dwellings.**

### 1. Scope of complying development

Given its scale, density and high site coverage, the proposed use of Complying Development for medium density development is beyond the scope of complying development - which is straight forward, permissible development with low environmental impacts.

Although this built form typology is a well-received choice for housing, it does in fact deliver one of the highest development impacts due to its large footprint (arising from cumulative developments) and ability to cover vast tracts of land, and in doing so, strip the land of all other attributes. For this reason, it is a residential typology that requires innovative and considered solutions from expert multi-disciplinary teams for its delivery to minimise impacts whilst providing well designed, desirable dwellings.

As such, it is vital that qualified architects prepare designs to deliver interesting, engaging and integrated built outcomes for medium density housing that contribute to the area, and at the same time avoid visual impacts of monotonous development that is often the result of this typology where a unit is repeated in ‘cookie-cutter’ fashion with no consideration of the site features or area context. The delivery of this typology is far beyond the scope of the complying development pathway and beyond the capabilities of unqualified designers and private certifiers to deliver one of the most environmentally challenging residential typologies. The delivery of medium density housing must be



through a mechanism that can limit the development impacts, and that can ensure alignment with the growing number of policies on development impacts that are being released at State and Federal level.

As previously stated, the justification for the complying development route through comparison with single dwelling complying development is incorrect as height is not the only determinant of a building typology. The typologies for lower density single dwellings and for medium density terraces, vertically or horizontally attached/detached dwellings (dual occupancy, terraces and manor houses) cannot be categorised as the same.

Medium density housing is not comparable to single dwelling housing in that the on the ground footprint of a medium density development is more dense, as are the elevational and siting aspects; and, single dwellings do not have to consider inter-related amenity impacts of multiple housing in close proximity.

The typologies are differentiated by elevations, setbacks, garages, hardstands, openings, gardens, footprint etc. and their on the ground delivered outcomes. As such, single dwelling complying development and medium density complying development (dual occupancies, terraces, manor houses) are two distinctly separate building typologies. Refer to **Appendix 1** of this paper.

## 2. Scale and complexity of medium density housing

Medium density housing comprises a broad range in scale and complexity of development. This cannot be successfully managed under Complying Development Certification.

The *Explanation of Intended Effects* presents an impression of all medium density complying development having little and manageable impact to surrounding character (although ignoring potential cumulative impacts of 2, 3, 4 new dwellings at a higher density on a single site).

The reality that does not seem to have been considered is that a proposed development could be very large scale as an amalgamation of lots, and complex if including a basement and/or any development with dwellings above or below another (Manor House, Dual Occupancies). In effect, medium density development could comprise a basement, be Class 2, and under the proposed MDDG design criteria, could result in multiple 4 storey developments on any number of amalgamated lots.

In the case of R2 zones, depending on each LGA's LEP development standards for minimum lot size for subdivision and the permitted type of development (dual occupancy within Ku-ring-gai), it is possible for a very large scale, complex development to comply with the Codes SEPP requirements and qualify for the complying development pathway. This raises multiple issues.

Should the Codes SEPP enable this type of development, the location of amalgamated sites cannot be controlled by local Councils' strategic planning policies. There is nothing to prevent concurrent complying development proposals for any number of lots for a single developer, should a site meet minimum site requirements.

Ku-ring-gai's R3 zoned sites where multi-dwelling housing is permitted, will automatically have the option of development application or complying development pathway, and generally landowners prefer the complying development pathway as they are not interested in best outcomes or the bigger issues at stake, preferring a faster development and quick monetary returns on sales. However, given that within Ku-ring-gai these are often highly complex sites due to steep topography, biodiversity, heritage and other factors, their consideration is beyond the capacity of a fast track simple complying development system operating in the hands of unqualified designers and assessors.

The exhibited MDH Codes SEPP states that "*complying development is not intended to override a council's strategic planning, but work with the controls development through strategic planning to effectively deliver simple housing forms.*" However, whilst the MDH Codes SEPP appears to respect

the local LEP permissibility of development types within zones under cl 1.18, it will still override a Council's strategic planning framework, particularly with regard to the development standards, controls and requirements within Council DCPs.

This is a big concern for Ku-ring-gai as the complying development standards and criteria are less sensitive than the controls within the DCP which seek to ensure that medium density developments in the locality are sympathetic to the streetscape and support the local character by reinforcing deep soil setbacks and substantial shrub and canopy tree planting within communal areas which are retained for the life of the development as shared common areas.

### 3. Conflict with Council's strategic planning

The proposed complying development pathway undermines the local strategic planning framework undertaken by Councils, particularly those with a fine grain established area character, to deliver quality outcomes for the area. Complying development stipulates design standards within the MDH Codes SEPP and the MDDG that over rule all DCP standards, and which are of a lower standard than those stipulated in local DCP controls for high quality considered outcomes for areas such as Ku-ring-gai .

In addition, the suite of Ku-ring-gai Council's planning documents have been developed to align with current State and Federal directions which stipulate the importance of understanding, preventing and managing impacts of development such that fosters long term sustainable communities, whilst contributing towards Sydney as a growing sustainable city.

#### **Established high quality area character**

Poor design and delivery of medium density housing through complying development, as posed in the MDH Codes SEPP (dual occupancy, terraces, manor houses), will have significant impacts on the character of many established areas across Sydney and NSW, with negative consequences on streetscape, vegetation, ecological, riparian, biodiversity and heritage values, urban landscape character, visual and service amenity.

Whilst the housing typologies proposed via complying development might fit into the streetscapes and character of certain parts of NSW where consultation and development of the proposed models might have occurred, they are not typical to large swathes of Sydney, and not suited to the fine grain integrated established character of areas like Ku-ring-gai.

Ku-ring-gai Council is actively engaged in delivering sustainable outcomes across all development types and has developed a suite of comprehensive planning documents to deliver low, medium and high density housing typology models which honour the highly valued and established local character of urban form integrated into the landscaped setting of gardens and canopy trees.

Medium density housing developments are better suited to the development assessment pathway which allows qualified assessment and qualified merit consideration of impacts on local character, neighbour amenity, and greater social, environmental and economic issues in line with State and Federal policy. The development assessment pathway through local Councils is the only mechanism that can successfully integrate development into the local context and systems.

Given its high cumulative impact, medium density development is well beyond the scope of the complying development pathway and must only be delivered through the highly transparent and accountable development application process which conducts full and frank investigation and due diligence around all decision making.

### 4. Current delivery under complying development

There is a clear consensus within organisations involved in ensuring the reasoned development of finite resources such as land, that development must consider more than just the site potential. As previously stated, there is enough evidential data and enough policy and direction emerging from State and Federal government bodies to support the case for the removal of the complying development route for medium density housing.

In terms of current delivery via complying development, for the most part, developers have chosen private certifiers to issue the Complying Development Certificate (CDC) and for the most part the developments have delivered little to no consideration of site features or aspects beyond the site confines. The key driver in complying development is to fit the maximum on the site and increase profit margins in a short space of time, regardless of medium and long term impacts.

Like many other high quality established areas around Sydney, Ku-ring-gai is now seeing single houses delivered through complying development that lack site integration, make very little meaningful contribution to the established streetscapes or to the overall Ku-ring-gai character of built form within a landscaped garden setting including canopy trees.

In addition, Ku-ring-gai, like other areas, is seeing instances where tree removal is being requested to pave the way for complying development houses and pools. In complying development, there is no scope for negotiation with disinterested applicants on adjustments to their designs to save trees or features, including Aboriginal heritage which are not publicised, on their land as they are only concerned about their accommodation and its rapid delivery.

Developers have very little interest in any site attributes or features, and very little interest in addressing the environmental, social and economic impacts of their development choices. In addition, between the unqualified designer and private certifier there is no scope to negotiate better design outcomes and as the dwelling is being developed under a SEPP that overrides local controls. It has been difficult to argue on sites applying for tree removal to facilitate a complying development dwelling that bears no relation to the site and depends on a cleared site. Council is now appearing in Court to dispute tree retention on development applications being made to clear sites of canopy trees and existing vegetation to facilitate a complying development site. In addition, there are more instances of trees being destroyed by construction works, resulting in their eventual removal.

Below is an example of two different developments within the same locality in Ku-ring-gai, illustrating the difference in the delivered outcomes:



**Complying development delivery** – poor connection/integration of built form with the site itself, and lack of contribution to streetscape and to Ku-ring-gai's character of built form within a deep soil landscaped garden setting including canopy trees.



**Development Application Delivery** – dwelling integrated into the site and in relation to neighbouring dwellings. Considered architectural treatment of elevations contribute to high quality streetscape character. Inclusion and retention of existing and new canopy trees to front and rear setbacks respects the overall Ku-ring-gai character of built form within a deep soil landscaped garden setting including canopy trees.

## 5. The SEPP 65 and Apartment Design Guide (ADG) mechanism

The proposed delivery of medium density housing via complying development will mean the development will not align with the local LEP and DCP standards and outcomes, as the Codes SEPP would override the possibility of integrating local controls. The result will be complying development out of character with the high quality established urban and landscape character of Ku-ring-gai and many other local Councils, and associated far reaching negative impacts arising from poorly designed medium density development and the associated cumulative impacts

Following a detailed review of the exhibition documents, it is clear that the proposed changes will not replicate the success of SEPP 65 and the Apartment Design Guide due to the mismatch in the pairing of a delivery mechanism over riding local development standards via complying development, and a design document attempting to direct positive outcomes for the whole of NSW, an impossible task if individual local area issues are not factored in.

SEPP 65 and ADG provide minimum standards and design guidance, but defer to the local Council planning instruments (LEP and DCP) to ensure successful integration into the local context. The ADG also works as a DCP type document for those Councils that choose to use it in the absence of their own development standards, allowing their planning staff to conduct merit assessment on how development meets the ADG within their locality.

Unlike the functioning of SEPP 65 and ADG which call up and integrate local planning controls, the proposed inclusion of medium density housing as complying development establishes an entirely different relationship - with the MDH Codes SEPP and MDDG over ruling Council's development standards which are set at a higher level for high quality established areas, such as Ku-ring-gai.

The attempt to deliver a document that deals with both Complying Development and Development Application pathways has resulted in a confusing and difficult to understand document. To be effective, the MDDG must follow the ADG with a single development application pathway which is clear, concise and accurate.

As the quality of high density development is improving, local urban character is being protected and the inevitable changes and layering of place-making is being carried out in an orderly fashion. Medium Density Housing could and should be managed in a similar way to high density residential housing. SEPP 65 and the ADG are working well, with developers and Councils now conversant with the process. The ADG contains all the required amenity standards, which can be easily transferred to medium density housing to ensure medium density does not provide lesser standards of development outcomes and amenity.

The MDDG separation of the Design Principles from the Guidelines distances the relationship between the two and dilutes their purpose. The confusion and difficulty in navigating the exhibited documents is exacerbated by the numerous errors and inconsistencies across the exhibited documents and within different sections of the documents themselves. This is especially worrying where numerical standards are different at different places, and where words have dropped off in one section but are retained in another.

The successful relationship between SEPP 65 and the ADG is the result of the following:

- SEPP 65 recognises the complexity of apartment development, which it should be noted can be similar to the complexity of many medium housing development models;
- SEPP 65 requires development approval via a Development Application pathway, retains all local principal development controls, is well structured to embody design quality and provides no overriding development standards other than those specifically about amenity;
- The standards are of a quality that delivers excellent levels of minimum amenity that consistently achieves the design quality principles regardless of the overall quality of the application;

- Defers to Council to conduct thorough, integrated, transparent assessments and relies on a robust Court system to prevent inappropriate development;
- Provides clear documents for guidance as the documents only pertain to one route - Development Application.

Complying development must be removed as the delivery mechanism, for all types of medium density housing (Dual Occupancy, Terraces, Manor Houses) and a better delivery mechanism based on SEPP 65 and ADG and the development application approval process needs to be developed.

### Recommendation:

- Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing.
- The Medium Density Design Guide (MDDG) must not be adopted in its current form, but amended to improve its standards, content and clarity.
- Retain local Council as the consent authority to ensure thorough and accurate delivery of medium density housing that is integrated into the local urban fabric and gives due consideration to environmental, social and economic issues related to the development.
- The Codes SEPP must ensure that all medium density housing being conducted through complying development, including dual occupancies, is located only in R3 and R4 zones across all Councils.
- The document structure and function of the MDDG must be the same as SEPP 65 and the ADG.
- The outcomes of the objectives, design criteria, and design guidance must be equal to or better than under the ADG.
- Test all development controls against the worst outcomes they enable so ensure the desired design quality can be consistently achieved.

## D. BURDEN PLACED ON LOCAL COUNCILS

**The fast track nature of complying development means that it is difficult for in depth consideration to be given to any complex or far reaching issues around a development. This fact coupled with the lack of qualifications of designers and certifiers, and lack of interest in issues beyond the maximum delivery of site potential means that the due diligence required around a development proposal cannot be adequately conducted.**

**An increasing burden is being placed on Council having to deal with issues around problems arising from complying development. Growing number of complaints are being received due to community dissatisfaction on the lack of an effective route for complaints, or effective consequences for lack of compliance or poor outcomes in the final built outcomes of complying development certified by private certifiers.**

### 1. Rectifying Stormwater Issues

Due to the fast-tracked provision of complying development which applies little rigour of investigation or integration with local systems, Council is being called on more and more frequently to remedy problems arising from ill-considered complying development, including legal action.

For example, inadequate stormwater consideration in complying development has resulted in Council having to deal with growing numbers of people complaining about overflow and flooding issues affecting neighbouring properties due to poor resolutions and possible non-compliance within the



complying development site. Council is left in the unfortunate position of having to spend considerable time and money in the rectification of the root of the problems.

Since Council was not involved in the complying development pathway and received no fees to undertake this type of damage control role, therefore, consideration must be given to compensating Council for time spent repairing and doing the integration work that should have been picked up by the private certifier, for legal costs associated with the rectification of poor outcomes, and for time spent dealing with irate public complaining about developments delivered through complying development.

## 2. Collection of Development Contributions

Given that medium density housing is a dense development form, it will generate S94 Development Contributions. It is therefore anticipated that Council officers will be spending considerable amounts of time on complex calculations and advising on the Contributions. This is the current experience with calculation and chasing collection of Contributions for complying development single dwellings which is far simpler under the S94A requirements.

In a development application, the cost of staff time is factored into the fees, however Council is spending increasing amounts of time calculating, advising and collecting on contributions for complying development with no payment for the service. This situation must be remedied in a fair manner with fees being apportioned to Council for its services around calculation and collection.

## 3. Complaints on Non-Compliance and Poor Outcomes

As noted by Justice Pepper in *2013 in Kogarah City Council v Armstrong Alliance Pty Ltd*, complying development is causing wide reaching issue within the general community:

*Ongoing breaches not only undermine community confidence in the certification and planning system, but leave councils with the responsibility of managing resident concerns and in certain instances commencing proceedings in the Land and Environment Court. Of further concern is the Building Professionals Board (BPB) poor enforcement record. This issue, and the related potential conflicts of interest, were highlighted by George Maltabarow in his 2013 report.*

As such, medium density development must not be delivered through the complying development mechanism as it will multiply the current problems in the community through its cumulative impacts.

It is not Council's role to be responsible for, or to deal with, or act on time consuming complaints for developments with poor outcomes. In the absence of a robust and satisfactory system of accountability that members of the public can go to with their complaints regarding complying development, Council is being placed in the difficult position of being expected to fix, remedy, attend to listen to the problems that are the result of complying development.

If Council is experiencing these problems with single dwelling complying development, consideration must be given to the larger cumulative problems that will result from medium density sites and the further burden that will be placed on Council.

Prior to any expansion of complying development, a more robust and accountable system at State level has to be developed to manage and monitor complaints regarding Complying Development, deal with community dissatisfaction on the lack of an effective route for complaints, or effective consequences for developers and private certifiers delivering problematic development.

### Recommendations:

- Remove all medium density development from the Codes SEPP complying development route.
- Retain local council as the consent authority with all medium density development being subject to a development application.

- Provide Council with monetary benefits (fees) for attending to issues arising from complying development, including works conducted to remedy and integrate complying development into local structures and systems and any other tasks such as around development contributions.

## E. TORRENS TITLE SUBDIVISION

**Subdivision patterns are integral to the character of an area. No consideration has been given to the widespread impacts, and changes to subdivision patterns in established areas by enabling substantially smaller lot sizes through complying development in an area characterised by large lots. No consideration has been given to the long-term implications of altering the status of multi dwelling developments to single dwelling development by enabling Torrens Title subdivision (200sqm lots) to each individual terrace dwelling, and the resultant loss of medium density lands in the LGA.**

The Codes SEPP and MDDG do not address the fundamental issue of existing street pattern and block structure. This is a fundamental flaw of the policy. These are defining features of every city, town, suburb that set the foundations for the urban character. The Codes SEPP cannot be applied successfully where the development standards have no ability to consider this fundamental physical structure of the city.

Lot size forms part of the character of a local area and therefore the Torrens Title subdivision through complying development of terrace houses on minimum 200sqm lots is of great concern.

Clarification needs to be provided on the acceptability of the loss of long term medium density lands through Torrens Title subdivision of individual terrace houses as it alters the status of the land to that of a single dwelling. They may not be permitted development within certain Council LEPS. The Torrens Title Subdivision through complying development is not supported.

It is vital that medium density lands are retained as such for future generations. Just as we see old apartments being demolished and rebuilt to higher densities, these R3 lands must be retained as consolidated strata title sites to allow for strategic future proofing and enable ease of any future redevelopment. Splitting the land into numerous small portions will create problems of consolidated uplift in future planning. Torrens Title of small lots that originate as medium density development must be considered on the long term strategic implications, and the provision of flexibility around land as a resource that will inevitably experience generational change.

Ku-ring-gai, like many other Councils, allows only strata title to all multi dwelling development. In Ku-ring-gai the important deep soil landscaping is maintained within the common open areas (setbacks and communal areas) of these developments. This approach prevents the built form blanket approach of this typology with its poor environmental outcomes. Therefore, Torrens title subdivisions through complying development is not supported as it will prevent the long term retention of deep soil areas, as each individual Torrens Title land owner will have the right to pave garden areas and also to develop the lot under single dwelling complying development.

The implications of allowing Torrens Title subdivision on small lots can be seen in the below example where demolition has occurred, but will also be an issue with individual dwellings being able to enact unilateral alts and adds without overall consultation of a body corporate overseeing and maintaining consistency within the entire development site, resulting in very poor outcomes for the streetscape, neighbours and local character.

### Recommendations:

- Remove all Torrens Title subdivision from the Codes SEPP complying development route. Council must retain control of setting minimum subdivision sizes across the LGA, including for dual occupancy.

- Council must retain control of the current minimum lot size for any multi-dwelling development site (1200sqm for Ku-ring-gai)
- All medium density housing must operate under Community or Strata Title.
- Council must retain control of subdivision pattern for strategic public infrastructure such as new roads, public open space and land use intensification.

Under the complying development proposal, Ku-ring-gai and all other Councils lose their ability to plan and manage subdivision patterns that may deliver new public streets well-located, coordinated with broader strategic infrastructure, new public spaces and managing natural assets. This has serious implications in context of the MDH Codes SEPP and MDDG definitions and use of terms for 'streets', 'roads' 'lanes' and 'frontage'.



**Example of small lot subdivision outcomes in medium to high density area** now being seen across Sydney where individual Torrens Title developments have exerted their right to demolish/ rebuild regardless of the impacts on adjacent properties, streetscape, and area character. The inclusion of Torrens Title subdivision for medium density housing through the complying development route will result in more of these types of long term issues, which will have generational impacts on Sydney and NSW.

## F. AMBIGUITY, INCONSISTENCIES, LACK OF CLARITY

**The exhibited documents, MDH Codes SEPP and MDDG, must not be adopted in their current form due to the numerous areas of ambiguity and inconsistency that may be misinterpreted and deliver outcomes that fall far below the already reduced standards of development being proposed.**

### 1. Ambiguity of definitions

#### Dwelling House

Clarity needs to be provided on the differences between definitions regarding 'dwelling house' in the Codes SEPP and those in the Standard Instrument LEP as these are fundamentally different. The exhibited documents appear to indicate that amendments will be made to amend the Codes SEPP definitions to match those in the SI LEP. This must be stated explicitly as the colour coding of certain definitions is confusing and implies a different level of inclusion. All definitions within the Codes SEPP must be the same and follow those within the SI LEP. This will ensure that no ambiguity around permissibility of the dwelling types arises, particularly where permissibility is the only aspect where the complying development path defers to the local LEP.

#### Roads

All references to any type of road in the MDH Codes SEPP and the MDDG pertaining to complying development pathway must refer to a '**public**' road. This will avoid terrace and other development being provided within deep sites on the premise that internal driveways are 'primary', 'secondary', 'parallel' roads. Enabling internal driveways that operate as private primary, secondary, parallel roads will result in exceptionally dense developments being put forward to maximise on site dwelling numbers by unqualified designers/certifiers, and increase the associated multiplied issues of lack of

integration or consideration of environmental, social and economic impacts beyond the site or beyond the immediate time frame as previously discussed.

Internal driveways are essentially not roads as they serve a development in the same way as a driveway. They are not considered in a strategic manner, as roads are, with connections and links into the local road system, improving urban permeability and vehicular flow. Medium density housing types that result in internal driveway systems that operate as private roads and large areas of hardstand internal to a site must not be advocated or permitted through complying development.

## Frontage

Clarification must be provided on the term 'frontage' with clarity that frontage is only achieved to a **public** street or road. Frontage' is not defined in the MDDG, MDH Codes SEPP, EP&A Act or SI LEP. Frontage is a matter of interpretation, for example, developers have justified frontage has been achieved in the following ways:

- achieved by a public or private internal road;
- achieved throughout a site by providing a private road access from a public road;
- achieved by a parent lot before subdivision, or each subdivided lot, or the full extent of a building, or part of a building, or the full width of each individual dwelling, or just a gate, or a path, or door.

The ambiguity around the interpretation of 'frontage', coupled with the misinterpretation of streets as discussed above, will enable the stacking of complying development terraces on deep lots.

The Macquarie Dictionary defines frontage as "the front of a building or plot of land." This definition potentially enables dwellings in a second row behind the front row, provided some part of the building (not individual dwelling) is visible from the street. This is further supported by the diagrams in the MDDG which are open to interpretation and can be pursued through complying development due to the difficulty in integrating the development application pathway with the complying development pathway within the one design document. A private driveway does not provide frontage and is not defined as a street, road or lane.

The term 'frontage' must be defined to mean *"the full extent of a lot boundary and the entire width of the dwelling elevation that provides the main entry to that dwelling must directly address and be seen from the public street/road/lane that provides the access to the dwelling. Frontage is only achieved to a public street or a public road."*

## Deep Soil Landscaping

'Deep Soil Landscaping' is different from 'Landscaping' which can mean shallow planter beds above basements or areas, where plantings are unable to grow to any significant heights or establish deep systemic root structures. The Codes SEPP must include a deep soil definition and include requirements for it across all development types to ensure meaningful planting, including tall shade trees, is facilitated across NSW.

The importance of deep soil landscaping is its fundamental role in the delivery of sustainable environments through enabling substantial landscaping including large canopy trees that are known to result in the following:

- retention of soil integrity through systemic deep root structures;
- stormwater absorption, filtration and runoff management;
- meaningful plantings that deliver shade to reduce heat emission from hard surfaces;
- pleasant character and appearance of urban areas.

Deep soil provision and its benefit is integral to the Government's current sustainability agenda. The growing acknowledgement in State, Federal and International policies and directions of the importance to deliver development that considers the generational impacts on local and greater environments cannot be ignored, as is the case in the exhibited proposal.

In the absence of any definition, the Ku-ring-gai DCP contains the following deep-soil definition:

***Deep soil landscaping*** is the soft landscaped part of the site area:

- i. *that is not occupied by any structure, whether above or below the surface of the ground, except for minor structures such as:*
  - *paths to 1.2m wide;*
  - *storm water pipes of 300mm or less in diameter;*
  - *lightweight fences;*
  - *bench seats;*
  - *lighting poles;*
  - *drainage pits with a surface area less than 1m<sup>2</sup>.*
- ii. *that has a minimum width of 2m;*
- iii. *that is not used for car parking;*
- iv. *may be used for water sensitive urban design, provided it does not compromise the ability to achieve the screen and canopy planting required by this DCP.*

**Note:** *For the purposes of calculating deep soil landscaping and landscaped areas, any access handle on battle axe sites is excluded.*

## 2. Lack of clarity and inconsistencies

The exhibited documents use ambiguous language to explain the requirements. For example use of terms such as "should" do not clearly indicate what the certifier is required to check. This goes back to the issue of certifiers being unqualified but having to make merit assessments due to ambiguous language in the documentation.

There are numerous inconsistencies, ambiguities, conflicts between the *Explanation of Intended Effects* and the *MDDG* which are likely to lead to negative outcomes. The confusion and difficulty in navigating the exhibited documents is exacerbated by these numerous errors and inconsistencies across the two exhibited documents, and also by the many errors and inconsistencies within different sections of the documents themselves.

This is especially worrying where numerical standards are different at different places, and where words have dropped off in one section but are retained in another. This leaves the standards and requirements open to interpretation by the designer and a merit assessment by a private certifier who do not hold a town planning degree and do not have the ability to make such interpretation.

The attached review tables at **Appendix 1** and **Appendix 2** provide detailed comments identifying areas that require deletion, further consideration, correction, amendments and/or clarifications for the *Explanation of Intended Effects* and the *MDDG*.

The *MDDG* attempts to deal with both Complying Development and Development Application pathways. This has resulted in a confusing and difficult to understand document. The *MDDG* should follow the *ADG* with a single development application pathway which is clear, concise and accurate, and which as a result is delivering positive outcomes across NSW.

There are broad ranging deficiencies within the *MDDG* resulting in Objectives, Design Criteria and Design Guidance that is inconsistent with the Nine Design Quality Principles within the document. In its current form, the proposed structure, quality of objectives and design criteria in Part 3 enable



medium density housing development to be certified that is inconsistent with the Design Quality Principles.

Part 2 of the MDDG generally contains sound objectives and design guidance. However, the document structure separates the design guidance (performance) from the design criteria (compliance). The separation of the Design Principles from the Guidelines distances the relationship and dilutes their purpose. The effect is that the performance and merit components of design will be ignored by private certifiers and their unqualified designers. This appears to be a result of attempting to include medium density housing development via the complying development pathway whilst trying to at the same time provide a development application pathway. It is a flaw and will lead to poor design outcomes.

There are inappropriate housing typologies contained in the MDDG such as 'Mews' and all intensified medium density development that proposes at-grade car parking. This will have a significant effect on Ku-ring-gai's urban character and public domain amenity that will be compromised. Appendix 5 to the MDDG is unhelpful as it includes a confusion of medium density types with ranges of development controls all with vastly different outcomes within the one type. Many of the types comprise a mix between poor exemplars, with confused development standards, including Torrens and Strata titling issues, inconsistent with proposed development.

Detailed comment on the 3 dwelling types under the proposed complying development is contained within the Appendices to this submission. A brief synopsis is presented below:

- No medium density housing types that result in internal roads and large areas of hard stand internal to a site should be advocated or permitted in the wording or diagrammatic representations.
- Two Dwellings Side-by-Side: This appears to refer to dual occupancies, therefore it should be labelled as such and include the reference upstairs/downstairs dual occupancy that is contained within the Manor House section. The association of Dual Occupancy with Manor Houses is confusing. The Dual Occupancy criteria must require that the single driveway for each dwelling, each address a '**public**' street, with new definition of 'frontage' (as previously identified).
- Terrace Houses: These must only be permitted where a public rear lane is provided for car parking, otherwise a single driveway to a basement parking limited to the footprint of the building, must be provided. The parent lot size must defer to local requirements for minimum lot sizes for these developments. No Torrens Title subdivision should be permitted so that the status of medium density land is not altered.
- Manor Houses: These should only be permitted in R4 zones and managed under local development controls to ensure their integration into the locality. This typology falls between SEPP 65 /ADG and Medium Density Housing, as such it requires special consideration. They are a BCA Class 2 type that presents complex fire safety compliance issues under the proposed setback standards. They are unsuitable for assessment via complying development pathway or designed by an unqualified person.

Images, diagrams and other graphics within the MDDG are inconsistent. Very few are an accurate representation of the outcomes of the proposed development standards, design criteria and design guidance. Further, many of the photographs show developments that have been designed by qualified architects and not the unqualified groups that are being advocated via complying development.

### Recommendations:

- Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing

- Correct inconsistencies within and across the MDH Codes SEPP and MDDG documents, including to diagrams/photos not representational of the standards within those documents.
- Address deficiencies in the structure, objectives, design criteria and design guidance of the MDDG.
- Amend the document structure and function of the MDDG to be the same as SEPP 65 and the ADG, removing the complying development pathway.
- The definition of 'dwelling house' must be clarified to align with the SI LEP definition.
- The ambiguity regarding the definition of 'streets' must be clarified and amended. All references to streets/roads/lanes must be changed to be '**public**' streets/roads/lanes.
- Include a definition of 'frontage' as stated above.

Include a definition for 'deep soil landscaping' (as stated above) and include associated development standards for its requirement across all development types.

## G. DEVELOPMENT STANDARDS

**The scope of the proposed development controls under the exhibited MDH Codes SEPP and MDDG via the complying development route, will over ride local Council controls and result in negative impacts on Ku-ring-gai and other Council areas, particularly where local planning documents deliver higher standards of development.**

**Ku-ring-gai Council has a suite of integrated planning documents, with recently updated DCPs, that are the result of extensive research and consultation. These documents seek to deliver the required quantum of housing in a sustainable manner that is also integrated into the local established character and aligned with State and Federal directions.**

**It is imperative that local controls prevail to enable local integration particularly in areas such as Ku-ring-gai where there is a fine grain established urban character that is highly valued from an aesthetic as well as sustainability point of view.**

### 1. Ku-ring-gai's suite of coordinated KLEPs and DCPs

The exhibited *Explanation of Intended Effects* states:

*"Complying development is not intended to override a council's strategic planning, but work with the controls developed through strategic planning to efficiently deliver simple housing forms."* However, the proposed complying development mechanism overrides the very controls that determine broader strategic planning objectives contained in local LEPs and DCPs including:

- |               |                                 |                         |
|---------------|---------------------------------|-------------------------|
| • Height      | • Front, rear and side setbacks | • Bushfire prone land   |
| • FSR         | • Landscaped Area               | • Tree removal          |
| • Subdivision | • Earthworks                    | • Driveways and parking |

This over ruling of local standards coupled with the inconsistencies, ambiguities, and conflicts between the *Explanation of Intended Effects* and *Medium Density Design Guide* have the potential to fail fundamental strategic planning principles for controlled, coordinated, and strategically well-located development.

Development lodged under the complying development pathway has no means of being effectively coordinated with Ku-ring-gai's development controls, and as such will result in development that cannot interface with the strategic directions for this area.

There is no development standard for complying development to consider and respond to existing and desired urban character required under local LEPs and DCPs, where the outcomes will be significantly different to the surrounding established urban fabric. The use of private certifiers cannot assess character and integration into the streetscape as this is a merit assessment.

The Codes SEPP does not include this development standard despite the fact that the policy will have broad reaching and rapid impacts in its delivery of housing.

It is noted that both *SEPP Seniors and People with a Disability* and *SEPP Affordable Rental Housing* require approval via Council's development application due to the often varying complexity and scale of development. These are similar features of medium density housing and again indicate the inappropriate inclusion of medium density housing into the Codes SEPP via complying development.

Following a detailed review of the MDH Codes SEPP and MDDG, it is clear that the quality of urban outcomes, resident amenity, and public interest is far higher under Ku-ring-gai's existing LEPs and DCPs. All development lodged under the MDH Codes SEPP therefore will be of a poorer standard than Ku-ring-gai can achieve under the development application pathway. The use of private certifiers further erodes any oversight of poor outcomes as there is little to no coordination required with Council, nor any independent verification of the certified development.

Detailed review and comment regarding the proposed standards are tabled within **Appendix 1** and **Appendix 2** attached. A synopsis of areas of key concern that will deliver the greatest negative impacts are listed below.

## 2. Areas and standards of greatest negative impact

All development standards, objectives, design criteria and design guidance must be developed to achieve design excellence and tested to protect against the worst outcomes that can be achieved by them. This will ensure the worst development will still achieve acceptable outcomes while enabling high quality development to proceed unencumbered.

### Heritage

Medium density complying development must not be permitted on any site adjacent to the Heritage Item or a Heritage Conservation Area. The curtilage of Heritage Items and the integrity of Heritage Conservation Areas are affected by sites adjacent to them. Ku-ring-gai seeks to avoid the placement of medium and high density development adjacent to Heritage Items and Heritage Conservation Areas, and sets standards to ensure adjacent properties respect the importance of heritage.

### Landscaped Area

The loss of every Council's authority over landscape fails to consider the variety and specific character of each LGA throughout NSW and does not provide a mechanism to achieve the variety that a city and NSW needs.

Deep soil landscaping is a key and important element that defines Ku-ring-gai's urban character. The MDDG Objectives and Design Criteria for landscape are manifestly inadequate for Ku-ring-gai and will not result in the trees being viable due to the high probability they will be removed, or replaced with smaller planting, or areas of paving extended post approval. Cumulative impacts resulting from the proposed Landscaped Area development standards have the potential for loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect.

Ku-ring-gai's urban character is predicated on the quality of its landscape, and has in place, detailed development objectives and controls for all setbacks, site coverage, total landscape area, deep soil and

tree removal that ensure all development of every scale sits within a dominant landscape setting characterised by canopy trees and deep soil planting. The loss of landscape controls, therefore, has a particularly negative impact on the strategic planning of urban character within this local area.

Protection of canopy trees that may have value in either providing links between areas of biodiversity significance, or contributing to the background view between allotments or internal site character is very important. This has a function as a public asset, which is not recognised in the Codes SEPP or MDDG.

The types of development that have had the greatest impact in Ku-ring-gai are those advocated in the MDDG that prioritise at-grade car parking deep within the site. These have an adverse impact on the protection of existing and diminishing landscape. These outcomes are in direct conflict with the NSW Government's *A Plan for Growing Sydney* and its *Urban Green Cover Policies*, commonwealth policies for greening cities, and housing adapted to climate change, and inconsistent with the United Nations, General Assembly *Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*.

The focus on streetscape landscape controls is important in achieving urban character, however, the exhibited complying development documents fail to adequately value the rear yard landscape assets throughout NSW and in Ku-ring-gai specifically; their importance climatically; their role protecting against further fragmentation of biodiversity significance and loss of green corridors; and, their aesthetic contribution to urban character.

In a recent November 2016 Court case, (*Vanovac Tuon Architects Pty Ltd v Ku-ring-gai Council [2016] NSWLEC 1558*), a court judgement refused a medium density housing development at 32-36 Dumaresq Street of 10 dwellings. The case was defended on the critical grounds of setbacks, site coverage, and deep soil that could not achieve Ku-ring-gai's urban and landscape character of buildings within a landscape setting (and all the DCP objectives for this).

Had this development been assessed under the proposed Codes SEPP as Multi-Dwelling Housing (Terraces) with a basement, it would have complied with the MDH Codes SEPP proposed development standards for landscape and setbacks.

**A clear illustration of how the proposed standards and assessment through complying development will erode the local established area character, particularly as medium density housing will have multiple cumulative spreading impacts.**

## Impact of vehicles

All medium density types that prioritise vehicles over pedestrians that require car access deep into the site, or impact public domain with multiple driveway cross-overs on public roads create flow-on impacts to landscape, sustainable stormwater/water management, climate impacts and urban heat sink effect, and impact on public amenity. These types must be deleted from all design guides. They are inconsistent with advocating design quality principles.

## Building separation

The current standards within the MDDG achieve less amenity than was achieved under AMCORD.

Building separations are inadequate to address visual and acoustic privacy without the use of high fencing and screens over windows/openings (maladaptive solution for visual privacy only, acoustic privacy not addressed). All design criteria for visual privacy advocate the use and control of privacy

screens. None relate to well-designed internal layouts as a compliance criteria checklist. Privacy screens are the wrong response to addressing visual privacy as a compliance criterion.

Necessity of extensive screens is indicative of inadequate building separation, inadequate setback controls, and absence of sound design principles that would ensure good internal layouts (location of rooms and their function). The use of privacy screens must be avoided at all times except in exceptional circumstances which would need to be assessed on their merits.

The ADG already contains development standards for building separations that apply equally to all types of development regardless of the height of the building. The MDDG must apply the same standards for consistency and to ensure minimum levels of amenity are not less than demanded of higher density housing.

Proposed building separation is inadequate and will result in poor landscape outcomes between developments, and where detached dwellings are proposed, between the single dwellings. The inadequate building separation standards also will result in amenity that is inconsistent with the proposed Design Quality Principles.

Related to 'Setbacks', building separation applies to the separation between buildings on one site, and between buildings on adjoining sites. Medium density housing must achieve the same visual and acoustic amenity expected for high density development, if not greater.

## **Setbacks**

The issues are similar as raised as for building separation. There is an added loss of landscaping along side boundaries, functional space between buildings, and loss of light to all rooms other than service rooms. The ADG building separations must be implemented along with Council's local controls around setbacks. Setbacks must relate to the internal planning layout, room function and aspect.

The proposed development standards for setbacks will result in poor amenity and be inconsistent with Ku-ring-gai's landscape character. The front setback will rely on the private certifier to make merit assessments on whether a proposed setback is consistent with the existing streetscape. The wording is ambiguous whether '*the average of two closest dwellings*' means closest to the street or closest to the proposed lot.

In Ku-ring-gai, because of the large front setbacks that would be needed to be consistent with surrounding building lines, assuming that of the two nearest dwellings applies, will result in the scenario where the proposed requirement for 25% of the landscape in the front setback would also result in the entire proposed landscape requirements being satisfied in the front setback zone. This means the rear of the site and side setbacks can be fully hard paved or pervious with no vegetation. It is unlikely the intended trees will ever be planted.

The only criteria for setbacks are based on building height not related to internal dwelling layout. This will have a detrimental impact on internal site character for Ku-ring-gai and unacceptable amenity for the occupants and their neighbours. Setbacks influence urban character, and landscape. They also provide building separation so sound design principles can be used to address visual and acoustic privacy. The level of amenity achieved with the proposed setbacks is below that required for high density housing.

Side and rear setbacks have no design criteria that distinguishes internal layout with the required setback. The only criteria is building height. This will lead to the worst amenity and urban outcomes as side boundary setbacks of 1.2m result in bedrooms with no outlook and often heavily screened for privacy. Where windows face side or rear boundaries must have greater setbacks and enable screening through planting to neighbouring/adjacent properties.



The proposed design criteria checklist has no requirement for internal planning layouts in relation to setback. It is possible for a living room to be 1.5m from a fence with an opposing living room of the neighbour 1.5m from the fence that would achieve the minimum building separation of 3m between strata titled buildings on the same site; or, habitable rooms including the living room could be 1.2m from the neighbouring lot if Torrens Titled.

In Manor House development there is the likelihood of alternative solutions for BCA compliance with fire safety. Proposed development controls would permit the dwellings being orientated around a small central courtyard (with a minimum dimension of 3m). Likewise the same dire amenity can result in a primary outlook for a living area being 3m from the rear boundary. The building separation controls for setbacks permit a fully compliant development to have its living area 3m off the rear boundary separated by a colourbond fence to another dwelling 3m from its rear boundary.

Under the complying development pathway, the outcomes from the proposed setback controls will be significantly poorer than is achieved with Ku-ring-gai's LEP and DCP controls and lead to inconsistent urban character, and loss of valuable landscape.

### Attics

Attics must not be permitted under complying development as it will result in the repetitive outcome of attics within hipped roofs, with dormers and skylights throughout medium density development. Skylights must be prohibited as the primary source of daylight into attic rooms as they do not deliver internal amenity. Attics result in heavy reliance of mechanical ventilation to make the space habitable. Attics within 3 storey development must only progress through development application so that the typology can include a variety of innovative design, including the design of good dormer windows.

### Ceiling heights

The floor-to-ceiling height of **every** storey of **every** type of medium density housing **must** require a minimum of 2.7m. If not, only the ground floor will be 2.7m as all first and second floors will nominate 'bedrooms' to comply with the lower 2.4m permitted for bedrooms. This can enable a living room to have a floor-to-ceiling height of 2.4m and if a fan is provided, it would be non-compliant. The proposed 2.1m clearance is inadequate and does not enable a person (unless very short) to safely dress in the vicinity of the bed.

The BCA is designed for minimum standards of health and safety; it does not address design quality, qualitative perception of space, and sense of well-being. The ADG demands a minimum 2.7m floor-to-ceiling height for **all** habitable rooms because of the recognised inadequacy of the BCA minimums. A finished floor-to-ceiling height of 2.7m also enables flexibility over the life-cycle of the dwelling consistent with the objectives of the policy.

### Dwelling size

The proposed FSR controls for some medium density housing types can result in dwellings of up to 360m<sup>2</sup> whilst providing no deep soil and sustainability measures around the building footprint. This is inconsistent with fundamental policies for reducing energy consumption, climate adaptive housing, WUSUD, healthy cities and other sustainable development policies to manage and mitigate environmental impacts. Existing Federal and State government policies and research has recognised the impacts of dwelling size on the environment caused through cumulative impacts and increased consumption of resources required to build them.

Housing policy predicated on design quality must address the unsustainable and social aspects of existing models that have been identified as failing to address equity and housing adapting to climate change.

### Multiple driveway cross-overs

Medium density development types that propose individual car parking for garages or car spaces for each dwelling accessed directly from the public street has a detrimental impact on existing public amenity and streetscape character. Rows of terraces with no rear lane access and minimum lot width results in a streetscape dominated by vehicles and garages, a loss of existing on-street car parking (the minimum lot width does not allow a car to park between driveways) unless angle parking can be provided and would require the consent of Council.

This typology (terraces with no rear service lane) is not in the public interest, which apart from delivering poor elevational outcomes, results in open surveillance of streets and is contrary to Crime Prevention Through Environmental Design CPTED standards. There is no mechanism for Council to coordinate and control how this type can be managed. This type should be deleted and replaced with single driveway into basement parking under the footprint of the building.

### Excavation

The proposed development controls can enable 3m deep excavation to be as close as 1m from the boundary. This will prevent landscape in the setback area and destroy root systems of trees and vegetation on adjacent properties, thus eroding the landscaping which is a feature of Ku-ring-gai's urban character and will have long term environmental impacts. It also raises concerns for conflicts between the desire to develop maximum dwelling on sites regardless of existing trees, topographical challenges, stormwater and impacts to neighbours.

### Recommendations:

- Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing.
- The role, document structure and function of the MDDG must be the same as SEPP 65 and the ADG to respect local character by deferring to local planning instruments.
- In All MDDG objectives, design criteria and design guidance must be aligned with the ADG.
- Retain local Council as the consent authority as medium density development is better suited to the development application pathway to enable transparent and accountable assessment, including merit assessment when required.
- Ku-ring-gai is to retain the local LEPs and DCPs for all development submitted via the development application pathway.
- Should the Department proceed to amend the Codes SEPP, provision should be made for Councils to seek exemption where they can demonstrate that their local planning documents are consistent with the requirements of the District Plan and consistent with the design intent of the MDDG.

With regards to development standards:

- Include requirements for all complying development typologies to have every dwelling address a **public** street/road.
- Include the requirement for all terrace development to occur only where serviced by rear lanes.
- Delete dwelling types that propose multiple garages and vehicular cross-overs under complying development. This typology must go through a development application pathway.

- Stipulate effective deep soil area requirements for all proposed typologies, retained under strata title to ensure their long term retention and maintenance and contribution to the shading and greening of the local environment, and include requirements for meaningful vegetation including canopy trees.
- Building separation must be the same that applies to SEPP 65 for visual and acoustic privacy for development up to 4 storeys.
- Building separation must relate directly to the internal planning arrangements to allow for adequate private open space, landscape screening and amenity between dwellings without the heavy reliance on privacy screens.
- Setbacks must be retained in Council's authority and the same as those that apply to SEPP 65 including consideration of internal planning layouts of dwellings.
- Side setbacks must be increased to a minimum of 3m where basement car parking is proposed.
- Remove attics from all complying development. Buildings with attics developed must go through a development assessment to ensure amenity is achieved and to avoid poor elevational outcomes of a typology with numerous dormers and skylights.
- No medium density complying development is to be permitted adjacent to a Heritage Item or within a Heritage Conservation Area.