

Appendix 3

Council's Submission 24th Feb 2016 to the original Discussion Paper



Submission on Discussion Paper
– Expanding Complying Development to include two storey
medium density housing types
Submitted to Department Planning and Environment - 24/02/16



Executive Summary

The Department of Planning and Environment has recently placed on exhibition a Discussion Paper which provides recommendations on medium density housing types that could be carried out as complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

The Department has identified a policy gap with regarding to medium density development, the “missing middle”, and proposes to expand the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to cover the missing middle and provide a consistent State-wide framework for the provision of medium density development in NSW.

The medium density housing types proposed to be included as complying development include dual occupancy, manor homes, townhouses and terraces that will result in 2-10 dwellings being erected on a single parcel of land.

This document has been prepared by Ku-ring-gai Council as a submission to *Expanding Complying Development to include two storey medium density housing types* and the associated supporting documentation including Volume 1 – Discussion Paper November 2015 and Volume 2 – Background Paper 2015.

Ku-ring-gai Council has reviewed the Discussion Paper and Background Paper and has significant concerns regarding the proposed delivery for medium density development via the expansion of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and the proposed development standards applying to these housing types.

Key areas of concern are as follows:

- Councils zoning should not be able to be overridden by a “blanket” Complying Development approach under the Codes SEPP. Complying Development should be restricted to development that is permissible within the zoning.
- The proposal will erode the strategic planning work undertaken by Councils which has overseen and guided development growth with both short term and long term benefit to the area character and amenity of residents.
- The medium density housing types should not be permitted within the R2 Low Density Residential zone – which is not suitable for the increased development densities.
- Medium density housing should be provided through the District Planning process instead of expanding the Codes SEPP in order to allow Councils to identify and investigate appropriate areas for this type of development.
- The proposed use of Complying Development for medium density development is beyond the current scope of what complying development currently permits – which is straight

forward, permissible development with low environmental impacts. The scale of the proposed medium density development does not fit within the scope of complying development.

- The proposal will remove the opportunity for upfront consultation with the community to identify appropriate locations for medium density development through local planning strategies.
- The proposal is better suited to greenfield areas where there is no established built character, rather than in infill areas (like Ku-ring-gai) with well-established existing character.
- The medium density housing developments are better suited to the development assessment pathway, which allows merit assessment and consideration of impacts on local character, neighbour amenity and environmental considerations.
- The proposal fails to consider the impact of population growth associated with complying development and the pressure this places on existing infrastructure, facilities and services and the ability of Council to forward plan for the delivery of new infrastructure and facilities.
- The proposal will have significant impact on the scale and densities of the locality, streetscape, vegetation, ecological values, residential character, amenity and the heritage qualities of Ku-ring-gai.

Council requests that these issues be addressed in the review process.

It is Council's view that a strategically informed and targeted local approach to identifying where medium density development would be compatible with other land use and local character management objectives is preferential to the proposed "one size fits all" State policy.

The location of medium density development should be addressed through local planning strategies where local communities have the opportunity to participate in the process.

The scope of implementation of the proposal is incredibly broad. If followed through without proper consideration for the appropriate type of assessment regime and a suitable suite of controls, the proposal risks being very destructive to large swathes of Sydney's urban area in a short period of time.

However, should the government proceed with SEPP amendments, the following submission identifies significant concerns with the proposed and controls and offers without prejudice recommendations for amendments to improve planning outcomes from any future amended SEPP.

Council also strongly urges that any proposed changes to the SEPP be subject to further community consultation once they have been drafted and prior to being made.

Comments and Recommendations

The following comments and recommendations are contained in 2 Parts. Part 1 provides comments on the policy and strategic planning merit of the proposal while Part 2 identifies concerns with the proposed standards and controls and offers without prejudice recommendations for amendments to improve planning outcomes if the SEPP amendments were to proceed.

1. Policy and Strategic Planning merits

1.1. Zoning and Permissibility

The information contained in the Background Paper and Discussion Paper is ambiguous regarding the issue of permissibility and zoning.

Currently, to be complying development, the proposal must be permissible with consent in the land use zone under the relevant Councils Local Environmental Plan, as required by Clause 1.18(1)(b) of the Codes SEPP. The Background Paper outlines *“The current exclusions from complying development in clause 1.17A, 1.18, and 1.19 of the Policy (refer to attachment 3) are recommended to continue to apply”* (Page 21). In this regard, one could assume that Clause 1.18(1)(b) is intended to apply to the proposal.

However, the discussion paper then requests feedback on the appropriate zones in which the medium density complying development should be permitted – and it is generally understood that the proposed zoning would be R1, R2 and R3 zones, noting that the Discussion Paper outlines that all proposed medium density development types are not proposed to be permitted as complying development in R4, R5, Rural Zones and Environmental Living zones.

It is unclear whether it is proposed to allow the medium density development types to be permitted as complying development only in zones where they are a permissible under the LEP **OR** whether it is proposed to allow medium density development types to be permitted as complying development where they would otherwise be prohibited under the LEP.

Council is concerned that the proposed expansion of the Codes SEPP will allow for a blanket approach by allowing medium density housing types to be permitted as complying development within zones where they are currently prohibited by the relevant Council’s LEP. This has the potential to undermine the strategic planning work undertaken by Councils, which has overseen and guided development growth with both short term and long term benefit to the area character and amenity of residents.

Recommendation

- The proposed development types should only be permitted as complying development in zones where they are a permissible development type for that zone within the LEP. The current Clause 1.18(1)(b) contained within the Codes SEPP should be retained. Council has significant concerns regarding a blanket approach to allowing medium density development throughout R1, R2 and R3 zones indiscriminately.
- The proposed medium density development types should not be permitted within the R2 Low Density zone. The zone objectives will be undermined if land within this low density zone is permitted to be significantly intensified and fragmented by dual occupancy development and subdivision. The R2 Low Density zone is not suitable for the increased development density proposed.

1.2. Future District Plans and Local Housing Strategies

The Department is currently preparing a North District Plan which will help to set out how *A Plan for Growing Sydney* (Sydney Metropolitan Strategy) will apply to local areas. The North District Plan will guide the delivery of housing supply.

As part of this process, Councils will be required to update their local planning strategies to be consistent with the new plan to ensure the delivery of housing and jobs. The proposal to include medium density development as complying development will undermine the role of the district plans and updated strategies, by potentially allowing a significant proportion of medium density to be located within low density areas and without appropriate planning and provision of infrastructure.

The proposal does not provide any distinction between areas and locations that may be suited to this type of development, and areas and locations that are unsuitable for this type of development, for example greenfield areas and infill areas.

The proposed expansion of the Codes SEPP has no means of engaging with local Councils planning strategies, which consider the long term provision of dwellings and jobs, and seek to manage the impacts arising from developments.

Recommendation

- That instead of expanding the Codes SEPP for medium density, the provision of medium density development should be provided for through the dwelling targets established by the District Plans. This would allow Councils to investigate and identify appropriate areas for medium density development – instead of allowing medium density development indiscriminately across the LGA.
- The location of medium density dwellings is important in order to minimise traffic and parking impacts and improve access to shops, services, transport and improve neighbourhood amenity.
- Local communities should have an opportunity to provide comment on local planning strategies that would permit medium density development and identify appropriate locations for medium density development.

1.3. Use of Complying Development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The proposed use of Complying Development to provide for medium density is beyond the current scope of what Complying Development currently permits – which is straight forward, permissible development of low environmental impact. The proposal operates outside these basic parameters of the Codes SEPP, with the types of development proposed being of high impact and site intensification and operating outside of the local LEP.

Complying Development will be approved if it meets the pre-determined numerical development standards. The certifier and applicant do not have any obligation or discretion to make changes. This prescriptive approach does not allow for any merit assessment of issues. Complying development does not necessarily ‘achieve better design outcomes’ or ‘promote good design’ or ‘improve the quality of housing’ as claimed by the Discussion Paper. Experience with complying development approval of freestanding project homes demonstrates that ‘good’ or ‘better’ design outcomes are not achieved through this process.

The proposed expansion of the Exempt and Complying Development SEPP to include medium density development types is a blanket “one size fits all” approach for the provision of medium density housing. A strategically informed and targeted local approach to identifying where

medium density development would be preferential and compatible with other land use/management objectives.

Council is not opposed to medium density development, but this type of development should not be allowed to occur on an ad-hoc basis and without merit assessment.

Recommendation

- The proposed medium density development types are more appropriate to the Development Application pathway of assessment, which allows merit assessment and appropriate consideration of impacts on local character, neighbour amenity, environmental considerations, heritage and building design.
- Should State Policy be pursued for medium density housing types – the instrument of delivery should be more aligned with SEPP 65 and the ADG, and not the Codes SEPP, due to the high impact resulting from the proposed development types. The format of delivery via a standalone SEPP and design guide would align with Councils LEP provisions, and therefore provide consistency with Councils current development framework and standards within a local area, whilst providing a consistent state-wide approach, for medium density housing.

1.4. Dual Occupancy and SEPP53 Metropolitan Residential Development

There is significant concern regarding the proposed dual occupancy and subdivision of dual occupancy development via complying development.

Dual occupancy development is only permitted within the Ku-ring-gai local government area on a limited number of sites via Schedule 1 of the LEP. In this regard, the proposed medium density expansion of the Codes SEPP would introduce dwelling forms that are currently prohibited under the Ku-ring-gai LEPs. Should an applicant be unable to meet the requirements for complying development, there would be no opportunity to lodge the same proposal as a Development Application – as the development would be prohibited by the LEP. This outcome is inconsistent with the current application of the Codes SEPP.

The proposed subdivision of dual occupancies into 200sqm lots will have significant negative impacts to the existing subdivision pattern (which is generally large lots) which contributes to the character of the Ku-ring-gai area.

The former State Environmental Planning Policy No.53 permitted dual occupancy development within low density residential areas, and the following development standards applied for dual occupancy development:

- The allotment is to have an area of 400sqm or more where there are two attached dwellings
- The allotment is to have an area of 600sqm or more where the two dwellings are detached
- The building or buildings on the allotment after the development is carried out are to have a floor space ratio of 0.5:1 or less
- Subdivision not permitted unless it was permitted by another planning instrument.

Under SEPP53 dual occupancy dwellings were developed throughout Ku-ring-gai. These developments resulted in significant negative impact on the streetscapes, vegetation and existing residential character/amenity within suburbs of Ku-ring-gai.

Like the proposed expansion of the Codes SEPP, SEPP53 was a 'blanket' approach to dual occupancy, with no consideration of local area issues.

As seen in the development standards above, the requirements for dual occupancy developments under SEPP53 were more demanding – noting larger site areas for detached dual occupancies, inclusion of FSR and not permitting subdivision – than what is currently proposed for dual occupancy development under the expansion of the Codes SEPP. In this regard, the potential impacts resulting from the proposed expansion of the Codes SEPP could be even more detrimental.

Recommendation

- The proposed expansion of the Codes SEPP to include dual occupancy development should not be permitted, noting that dual occupancy development under the SEPP 53 has been repealed in favour of developing local planning strategies.

1.5. Impact on environmental and built character

The proposed standards demonstrate inadequate consideration of existing urban areas with established characters.

Ku-ring-gai is characterised by large lots, garden setting, significant trees and vegetation. The proposed medium density complying development will have a significant negative impact on the streetscapes, vegetation, existing residential character, amenity and heritage qualities of the local government area.

The Councils selected to undertake the analysis of development controls and development approvals do not have similar built form and environmental character to many other LGAs, for example, Pittwater, parts of Hornsby, Lane Cove and Ku-ring-gai. The proposed development controls for the medium density complying development are dissimilar and disparate from Ku-ring-gai Council's controls contained in the LEP and DCP for dual occupancy and townhouse developments; Council's controls seek to ensure the character of the locality is retained by ensuring that buildings and other development have a good relationship with neighbouring developments, the public domain and the landscape qualities of the locality. The proposed complying development standards are less sensitive than Council's current controls, will not improve this housing type within Ku-ring-gai and will significantly and negatively impact on the environmental and built character of Ku-ring-gai.

There has been insufficient testing, modelling and analysis of the proposed development standards applying to the medium density development types. There has been no analysis of the outcomes and impacts the proposed controls could have on streetscapes and suburbs. The sample of just six townhouse projects (Background Paper p30) is far too limited and the findings cannot be representative of the broad cross-section of approaches in LGAs across the Sydney Metropolitan area. The Discussion Paper and Background Paper provide an inadequate basis to support the major change in development control across the State.

The proposed lot sizes (400sqm, 500sqm and 600sqm) are too small to allow for proposed number of dwellings (2-10 dwellings) to still achieve other key planning objectives. In Ku-ring-gai the minimum lot sizes for dwelling houses within the R2 Low Density Residential areas, generally require a minimum lot size of 930sqm, while medium density developments within the R3 Medium Density zone require a minimum lot size of 1,200sqm to ensure adequate space for deep

soil landscaping and communal open space. The contrast between a single dwelling on 930sqm, compared to 10 dwellings on 600sqm is substantial.

The proposed controls are largely based on establishing the building envelope, with little consideration given to dwelling amenity, landscaping, streetscape, building design or character of the surrounding area.

The medium density complying development resulting from the proposed development standards will result in major intensification of the land, increase in footprint, bulk and scale, and the impacts on amenity and area character bear no resemblance to the existing areas in which they will be allowed or the current standards applying to medium density development in those areas. This will have a large cumulative impact on suburbs within Ku-ring-gai and other similar LGAs.

Recommendation

- The proposed medium density complying development controls would result in development that is inconsistent with the existing and desired future character of the locality.
- Further testing and modelling of the proposed development standards is required to understand the outcomes and impacts of the proposal on streetscapes and suburbs.
- The proposed medium density complying development is better suited to greenfield areas where there is not established built character, rather than in infill areas (like Ku-ring-gai) with well established existing character.

1.6. Design Quality

Council has concerns regarding the built form outcomes of the proposed medium density development types under complying development, noting that compliance with numerical standards will not automatically achieve a good design outcome for the surrounding streetscape or character of area. This concern is noted in the Background Paper (page 50) “..... as the numerical controls alone will not automatically achieve good design”.

Council’s DCP contains numerous controls to ensure dual occupancy and townhouse style developments are sympathetic to the streetscape, buildings are of a high architectural quality that contributes to the local character and are good places to live. However with the proposed process of medium density development via complying development – the certifier cannot ask for better or more sympathetic designs – if the proposed development meets the standards it will be approved. The proposed controls do not provide sufficient certainty of the built form outcomes resulting from the proposed medium density development types.

The State government has recently amended SEPP 65 and Apartment Design Guide to improve the design amenity of residential flat developments. It would be negligent to allow developments of a similar intensity to not be of such a high quality design and dwelling amenity.

The Background Paper recommends “*The development types and suite of controls would lend themselves to a standalone instrument accompanied by a design guide*” and “*To this end it would be appropriate to develop a design guide along the lines of the Apartment Design Guide to assist in layouts and design issues*”.

A guidance document, like the Apartment Design Guide, for medium density development would result in better outcomes and ensure better design for medium density housing across NSW. The design guides are useful in showing how development can be delivered in different ways according

to setting such as greenfield locations or infill areas. There cannot be a one size fits all approach for this type of development due to its density and building form having the potential to drastically impact on streetscapes and area character. A merit based assessment regime is required to allow for a design guide to operate effectively.

This would provide cohesion in standards applying across the State for medium density development. However, any design guide would need to be given weight through a merit based assessment. This is antithetical to the proposed numerically based complying development assessment regime. Without attributing weight to a design guide through a merit assessment, any such document will be ignored in practice.

Recommendation

- A design guide would assist in delivering better design outcomes for medium density development, ensure the high density standard required for these types of developments and have regard for local character.
- It is recommended that the proposed medium density development types should be designed by a qualified designer, similar to SEPP65, in order to assist in delivering positive built form outcomes for the streetscape, character of the surrounding area and adequate amenity for dwellings. As part of this process, proposal should be reviewed by an appropriately qualified Design Review Panel.

1.7. Development Contributions and Infrastructure Planning and Delivery

Ku-ring-gai's Contributions Plan has been designed to levy contributions on a per capita basis. As such, it can cater to increased cumulative growth by levying adequate contributions to support per capita delivery of facilities.

The potential to extend medium density developments to R2 zones has implications for both estimating the total quantum of new development in the LGA in such a manner as to support appropriate forward planning for infrastructure and for the delivery of facilities. In order to deliver geographic nexus to scattered development, very specific monitoring of scattered development will be required – and there is a greater risk that the critical mass to support new facilities might not be achieved in geographic proximity to scattered contributing developments.

At present, higher density developments such as villas and townhouses are carried out in R3 zones which are mostly centred on the local centres and St Ives. This ensures a critical mass and a foreseeable yield that supports geographic nexus – as well as causal nexus – in the delivery of the facilities that are actually required being demonstrably met. It would be more appropriate to retain the limitation of villas and townhouses, as well as manor homes, in R3 zones only. Council's Residential Strategy and considered responses to the next phase of dwelling targets, following investigation and exhibition, will allow the identification of appropriate additional R3 zones if applicable. This is good planning process and should not be by-passed in favour of an ad hoc approach.

The areas outside the local centres are also subject to the contributions cap which was fixed at \$20,000 by s94E Direction first issued on 1 February 2009. The R3 zones within The Ku-ring-gai local centres are exempt from the cap. Under these circumstances, if the cap continues and begins to apply to medium density development by reason of geographic location only, there will be an increasing financial incentive for developers to target townhouse developments away from

these centres and, consequently, away from public transport. The potential disincentive or delay in developing local centres R3 zones, also has financial implications in terms of cash-flow for the delivery of centres-based infrastructure. This is not considered good planning practice.

Scattered ad hoc development of up to ten units will also increase demand for community facilities, however, without being able to estimate the quantum or location of such development, it will be difficult to justify augmentations to existing, advanced plans, for the delivery of new community facilities in centres such as Lindfield and Turramurra.

The other key aspect of the management of the development contributions system is the practicality of levying contributions and receiving due and timely payment without an excessive additional administrative load.

It has been our experience that private certifiers do not even attempt to calculate actual monetary contributions or correctly apply conditions in the manner that should be expected – and rarely do they contact Council for assistance. This has resulted in some time-consuming debt collection proceedings to date. It is our concern that this difficulty would be amplified significantly for larger developments.

Certifiers include conditions which are basically a copy/paste of the legislation and simplistically say that if contributions apply, then they should be paid. This is inappropriate and there is the increased potential for Council to be obliged to instigate legal proceedings for more – and larger – developments to obtain the appropriate contribution if the scope for CDCs is extended. Private certifiers should not be determining applications without including an appropriate condition that provides the applicant with information about the quantum of contribution due and facilitates their payment to the correct inflation quarter, yet they do so routinely. This presents a substantial issue for higher density development as complying development.

Recommendation

- The proposed scattered, ad hoc approach to allowing medium density development across R2 and R3 zones will result in increased demand for community facilities – however Councils will be unable to estimate the amount or location of such development. Therefore, should the proposal proceed, it is recommended that the proposed medium density housing only be permitted within R3 zones to ensure the delivery of facilities in areas where they are required.
- Private certifiers need to include an appropriate condition for development contributions which provide the applicant with information about the quantum of contributions due and facilitates their payment to the correct inflation quarter.

2. Application of development Standards and controls.

Ku-ring-gai Council is **opposed** to the expansion of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to include two storey medium density housing types. However, should the government proceed with SEPP amendments, the following discussion identifies concerns the proposed controls and offers without prejudice recommendations for amendments to improve planning outcomes from any future amended SEPP.

Council also strongly urges that any proposed changes to the SEPP be subject to further community consultation once they have been drafted and prior to being made.

2.1. Bush fire prone land, Biodiversity Protection and Riparian land

Ku-ring-gai LGA contains significant areas with high ecological values, such as biodiversity and riparian lands.

Council has identified strategically important biodiversity and riparian lands and mapped them as part of the LEPs. The LEPs also contain specific additional local clauses relating to the protection of biodiversity and riparian lands. Concern is raised that the proposed medium density complying development does not take into consideration biodiversity significance or riparian land on sites. The maintenance and enhancement of biodiversity and riparian values within the LGA is dependent on appropriate policy to manage the existing and future pressures.

The minimum lot sizes and width do not take into consideration steep topography, riparian zones, and the preservation of remnant vegetation and established gardens. Within Ku-ring-gai, locally occurring vegetation includes both critically endangered and endangered ecological communities and the integrity of its creeks and watercourses is important to the health of these vegetation communities. It would be impossible to construct the proposed medium density housing types within the minimum lot sizes and retain the environmental outcomes for the local area.

Bushfire risk represents a clear and present danger to the Ku-ring-gai community. The extent of bushland within and adjoining the LGA and the steep topography of the area results in significant risk from fire. Development has occurred in a number of areas where the local community is surrounded by extensive areas of bushfire prone vegetation, often with inadequate road networks to enable safe evacuation. Pressure to increase development in these areas has led to increasing evacuation risks for residents. The evacuation risk in these areas is recognised by the prohibition of development under SEPP (Housing for Seniors or People with a Disability) 2004 and dual occupancy development under former SEPP53 – Metropolitan Residential Development. Concern is raised that the proposal to allow medium density complying development is inconsistent with the recognised prohibition in these evacuation areas which seeks to limit increases in residential density – in order to reduce the number of people trying to leave an area where there is a high risk of not being able to evacuate safely.

Recommendation

- Clause 1.19 should be amended to exclude medium density complying development on riparian land and areas of biodiversity as mapped under Councils LEPs.
- Clause 1.19 should be amended to exclude medium density complying development on bushfire prone land and/or areas of bushfire evacuation risk.

2.2. Heritage

Of concern to Ku-ring-gai is the impact of the medium density complying development on neighbouring lots. That is – complying development in the vicinity of heritage items and conservation areas.

Ku-ring-gai's current DCP stipulates setbacks – 12m separation from heritage items and front setbacks the same as adjacent heritage item – in order to protect the curtilage of heritage items and places within a heritage conservation area. The proposed 0.9m – 2m setback to the side boundary (which does not include roof overhangs and eaves) will encroach upon the visual curtilage of many of our heritage places.

Council's DCP includes specific controls relating to development on sites that either directly adjoin or are in the vicinity of a Heritage Item or HCA. These controls are in place to ensure that new development respects and conserves the significance of nearby Heritage Items or HCAs and their settings.

The Heritage Conservation Area boundaries in Ku-ring-gai were created to incorporate assessed areas of cultural significance. Ku-ring-gai did not “pad out” the Heritage Conservation Areas by unfairly creating a buffer of non-significant properties around these significant areas – but – clearly if these heritage properties are to be protected from unsympathetic complying development, a curtilage buffer within the statutorily recognised Heritage Conservation Area is required.

The canopy of mature trees provides a backdrop to Ku-ring-gai's historic buildings and streetscapes. The mature and established gardens and traditional garden setting of heritage places (both within their own lots and borrowed from their neighbours garden landscape) would be at risk if a significant portion of the LGA's soft landscaping could be built over by medium density complying development.

Long term effects as a result of the proposed medium density complying development could include pressure to erode, delist or demolish heritage items outside of HCAs due to impact on value. Owners of heritage items may not undertake maintenance – hoping to develop the site in the future.

Recommendation

- To not allow complying development on lots that adjoin heritage items and/or heritage conservation areas, and to allow assessment against Council development controls which protect the heritage values. Placing this affectation on these lots would represent only a marginal change in the availability of places for complying development across Sydney, but would represent a significant gain to heritage conservation.

2.3. Development standards and built form controls

Of particular concern is the dissimilarity between the proposed complying development standards and Ku-ring-gai Council's existing development controls relating to Dual Occupancy and Townhouse development. Ku-ring-gai's controls relating to these development types seek to ensure the character of the locality is retained by ensuring that buildings and other development have a good relationship with neighbouring developments, the public domain and the landscape qualities of the locality. Comparison tables of the proposed complying development standards and Ku-ring-gai Council's controls for Dual Occupancies and Townhouses are provided in **Appendix 1**

The proposed standards do not provide any controls to limit floor space ratio or gross floor area, unlike the General Housing Code and Ku-ring-gai Councils LEPs. Neither does it provide any other type of density control, such as site area per dwelling or maximum dwelling size. The lack of density controls will encourage the complete maximisation of footprint within the required setbacks and height. For example, the 'manor-home' depicted in Figures 12, 13 and 14 of the Background Paper is an unrealistic depiction of what may occur on this site, as it is showing approximately 43% landscaped area. Without a density control, this development can fill the area within the setbacks by removing any remaining deck or garden in the rear setback (down to the minimum 30% landscaped area), by removing articulation at the front door, and removing any additional balcony beyond what is required at the upper floors. This will make for large and boxy built form that is unsympathetic within their context in terms of footprint and bulk. A well measured density control can assist in preventing this type of maximisation that will result in overdevelopment.

Consideration should be given to providing an overall building length control in order to limit the overall bulk and scale. Consideration should also be given to providing a wall length control in order to break down longer walls with articulation.

The proposed controls do not shape car parking outcomes beyond driveway width, setback and car space numbers. There is no discussion provided regarding on-grade parking versus basement parking. Further consideration should be given to controlling on-grade parking outcomes with provisions such as number of car parking spaces grouped together, length of driveway, parking within setbacks and integration of landscape. In terms of basement parking, consideration should be given to controlling the distance from the street edge that driveway ramps can start (refer to Figure 10 Background Paper for a poor streetscape outcome), the treatment of basement walls partially out of the ground, access to and from basements given building class under the BCA/NCC and accessibility requirements.

- Consideration should be given to a form of density control to reduce the impacts associated with overdevelopment of lots.
- Consideration should be given to articulation controls which can assist to reduce bulk and scale as well and meeting required landscaped area requirements.
- Additional controls are required to shape car parking outcomes in a positive way as the current proposed controls will allow for negative design outcomes.

2.4. Dwelling Amenity

There are no proposed standards relating to the provision of minimum dwelling sizes. This is of particular concern, noting the small minimum lot sizes proposed for the development types, being 400sqm-600sqm and allowing up to 10 dwellings. This will encourage developers to crowd as many dwellings possible on each lot. It would be possible for instance to provide 10 25-30sqm studios in a single development. Standards should be provided on minimum dwelling size, and should be similar to, or exceed, those outlined in the Apartment Design Guide.

The Background Paper (page 25) outlines *"...ensures that amenity issues such as access to natural light and ventilation area readily achieved"* – however the proposed amenity standards for all development types outlined in the Discussion Paper do not include any standards relating to access to natural light or ventilation of dwellings.

The Discussion Paper notes that *“Amenity standards manage the impact upon the amenity of adjoining properties and control the appearance of the building.* None of the standards contained in Amenity Standards ensure adequate amenity for occupants of the dwelling.

At a minimum, standards should be provided for solar access to living rooms and private open spaces, daylight and ventilation of all habitable rooms, natural cross ventilation, maximum building depth and minimum room sizes. These should be similar to those outlined in the Apartment Design Guide, however as medium density housing is a lower density housing form, it is considered that solar access and natural cross ventilation should be provided to all dwellings rather than a percentage.

The proposed orientation controls which state ‘no dwelling can be orientated towards a side boundary’ is too simplistic and results in poor built form outcomes. Whilst this arrangement means that neighbouring sites will not be overlooked, the outcome is that the proposed dwellings will look into *each other* instead creating visual and acoustic privacy issues. The “all orientated to the front” arrangement is also particularly poor in terms of address and access, requiring pedestrian pathways and driveways winding in the depth of the site. A preferred orientation control is to allow rear townhouses to orientate towards the side boundary, but include greater side setback controls for these dwellings. This arrangement ensures adequate building separation and landscape between properties and simplifies address and access pathways

The Discussion Paper does not give any consideration of pedestrian access or circulation within the site. Standards should be provided which requires a dedicated pedestrian path is provided to each dwelling – separate from driveways. Consideration should also be given to ensuring that every dwelling that faces the street should have an address to the street and that every dwelling has a clear and positive address.

The Discussion Paper does not specify any provisions for storage within dwellings. Storage provisions should be similar to, or exceed, the volumes outlined in the Apartment Design Guide to ensure adequate storage is provided, particularly in smaller dwellings.

The Discussion Paper does not specify any provisions for a proportion of housing to be adaptable housing. It is noted that the medium density housing types proposed could be readily designed and constructed to be adaptable housing to assist ageing in place. It is recommended that standards should be included that require a proportion of the medium density housing to be designed, constructed and certified as adaptable housing. The standard should require compliance with the Liveable Housing Design Guidelines.

Recommendation

- Standards should be included to ensure the adequate amenity of dwellings. Standards should cover at a minimum solar access and daylight access, natural cross ventilation and natural ventilation, maximum building depth and minimum room sizes.
- An alternative orientation control should be investigated as the proposed control will result in poor built form.
- Standards should be provided around pedestrian access and dwelling address.
- Standards should be provided for the provision of storage within dwellings.
- Standards should be provided for the provision of minimum dwellings sizes.
- Standards should be provided that specify a proportion of the housing to be designed and constructed as adaptable housing in accordance with Liveable Housing Design Guidelines, with 100% of dwellings being constructed to Silver level, and 10% Platinum.

2.5. Landscape

Historically, Ku-ring-gai's planning policies have required deep front setbacks to provide space for the planting of canopy trees that reduce the dominance of built form. The imposition of a lesser 4.5m setback, or average setback between existing irregular built form, will reduce landscape and streetscape outcomes, undermining the intended planned character of the area as expected by the community.

Ku-ring-gai requires a minimum side setback of 3m in order to achieve landscape outcomes and adequate building separation. The imposition of a lesser setback of 0.9m-2.0m will reduce the scale of planting possible between properties as a landscape buffer, reducing the amenity and compromising the outlook for habitable rooms of the proposed development facing the boundary.

The proposed controls provide no requirements for screen planting, canopy tree planting or soft landscape treatments, with only vague suggestions for "opportunities" for driveway planting, boundary screen planting to side setbacks and landscaping to rear setbacks.

The definition of landscaped area should describe the area as "for planting such as lawns, groundcovers, shrubs and trees". Driveways, hardstands and hard paved areas need to be excluded from the calculation of landscaped area on a site.

The minimum requirement of 30% of the site as landscaped area is similar to SEPP (Housing for Seniors or People with a Disability) 2004, however the policies differ in a number of ways. For example, the SEPP Seniors requires a minimum 15% deep soil area (minimum 3m width). The proposed medium density complying development does not provide any requirements for deep soil landscaping.

Council's DCP requires 30-40% deep soil area for medium density style developments. Deep soil area is defined by Ku-ring-gai Council's DCP as follows:

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
 - stormwater pipes of 300mm or less in diameter
 - lightweight fences
 - bench seats
 - lighting poles
 - drainage pits with a surface area less than 1sqm*
- II. That has a minimum width of 2sqm*
- 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 planning required by this DCP*

The requirements for deep soil landscaping ensure there is sufficient space to provide for large and medium sized trees which provide shade and amenity, soften the built form, capture carbon and maintain and enhance the tree canopy. Concern is raised that by not specifying a requirement for deep soil landscaping to be provided on site, there will be insufficient space for planting of canopy trees, noting the proposed basement excavation setbacks.

Recommendation

- The method of controlling setbacks is insufficient to achieve desired landscape outcomes.
- Controls need to be included which require screen planting, canopy tree planting and soft landscaped area treatments.
- The definition of landscaped area should describe the area as “for planting such as lawns, groundcovers, shrubs and trees” and needs to ensure driveways, hardstand car spaces and hard paved areas are excluded from the calculation of landscaped area.
- Controls need to be included which require a minimum deep soil area to be provided on the site – noting that Councils DCP requires 30%-40% deep soil area.

2.6. Subdivision of Dual Occupancy

The proposed Torrens title subdivision of dual occupancy developments under the Codes SEPP is misleading, as once the subdivision is complete; the dwellings are no longer considered a dual occupancy – but a single dwelling on a single lot.

It is unclear whether the proposed 30% minimum landscaped area will apply to the sites before or after subdivision. If it only applies before subdivision, one Torrens Title lot can be deficient in landscaped area. Further, the Codes SEPP appear to allow the opportunity for additional development to the resulting Torrens Title sites under Exempt and Complying development that may increase environmental impacts. For example, outbuildings and decks permitted under the Codes SEPP may further reduce landscaped area.

It is noted that the detached form of dual occupancy discussed on p13 of the Discussion Paper is not further elaborated upon and does not appear to meet the proposed controls (Figure 2 shows that the minimum rear setback is not met). No testing appears to have been conducted for this type. It is suggested that this detached form should not be included until its workability is demonstrated.

Recommendation

- If Torrens title subdivision is to be permitted as complying development, then it should only be permitted after the dual occupancy buildings are completed.
- Conditions need to be included to prevent the multiple subdivision of sites, by staging a successive series of dual occupancies developments on the original site.
- Conditions or controls need to ensure that development creep on resulting subdivided Torrens Title lots which increases environmental impacts cannot occur.
- The detached form of dual occupancy should not be included until testing can demonstrate its workability

2.7. Stormwater, Waste and Earthworks

Council has concerns regarding the proposed standards relating to stormwater and waste for the proposed medium density development types.

The proposed Amenity Standards 2.1.3, 2.2.3, 2.3.3 relating to drainage are insufficient with regards to the requirement to the disposal of stormwater to an inter-allotment drainage system. The terms of the easement and existence of suitable infrastructure must be known. Connection of new stormwater works to a dilapidated or non-existent pipe causes flooding to neighbours. The installation of a new pipe in a long easement through a number of properties is not itself

complying development and would require its own development application. It should be noted that dual occupancy development also requires on-site detention.

With regards to the proposed standards 2.2.1 and 2.3.1 regarding on-site stormwater detention systems, it should be noted that water management has evolved past on-site detention. Rainwater retention and re-use as well as stormwater treatment are required to achieve the objectives of other planning instruments, such as SREP (Sydney Harbour Catchment) 2005, Clause 13(h) which requires:

Development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water.....

Council certification of on-site detention designs and water management only applies to areas outside Sydney Water's area of operations (Section 68 of the Local Government Act 1993 and Clause 3.32 of the Codes SEPP) and should not be introduced elsewhere. Assessment in isolation means that other matters such as impacts on trees or effects on downstream properties through inadequate inter-allotment drainage infrastructure could be missed.

Appropriately qualified specialists could certify that the water management designs comply with Council policies, however how are they to be identified as being "appropriately qualified". At present, certification of water management designs for complying development is variable and can be unreliable.

With regards to waste management, Ku-ring-gai Council requires internal collection for development of more than four dwellings (not ten as proposed). This requires manoeuvring space to be provided for a 5.5m long truck as well as 2.6m minimum headroom and 20% driveway gradient. Other Councils do not have this requirement. In this regard, certification of waste management facilities in isolation is not a good idea.

With regards, to the proposed standard 2.2.3 relating to earthworks, retaining walls and structural support, there is a need to quantify what is meant by "proximity to side and rear boundaries". If the proposed side boundary setback is 1.2m, then any fill will be in proximity to the boundary.

Recommendation

- Proposed standards relating to disposal of stormwater via inter-allotment system is insufficient.
- Consideration of other water management systems such as rainwater retention and re-use and stormwater treatment instead of only on-site detention as proposed.
- Council certification of on-site detention designs and water management only applies to areas outside Sydney Water's area of operations and should not be introduced elsewhere.
- Outline specific accreditations to recognise "appropriately qualified" specialists, as at present certification of water management designs for complying development is variable and unreliable.
- Certification of waste management facilities in isolation is not recommended.
- Clarification of what is meant by "proximity to side and rear boundaries"

2.8. Implementation

Council has concern regarding the implementation of landscape maintenance period requirements, how would these be enforced and by whom?

Additional conditions need to be considered for the protection of Council property such as roads and footpaths within the vicinity of development sites, as this is presently not covered by the complying development conditions and already causes problems for Councils. Where excavation is involved (as proposed for the medium density complying development) the damage is likely to be worse due to the size and weight of vehicles involved. Conditions need to be included which clearly state responsibility for repairs during and after works.

With regards to stormwater and waste management, the protection of on-site stormwater detention systems is achieved by the imposition of positive covenants and restrictions on title. This would have to be included in the conditions for complying developments. In conjunction with internal waste collection, is the imposition of an easement for waste collection on title. This would also have to be included in the conditions for complying developments.

If Torrens title subdivision is permitted, conditions will need to be included for the creation of easements, rights of way. A surveyor should certify that these items are in the correct place before any subdivision plan is approved. A condition requiring the Sydney Water Section 73 Certificate will also need to be included.

Recommendation

- Conditions need to be included to ensure protection of Council assets
- Conditions need to ensure the imposition of positive covenants, easements restrictions on title with regarding to on-site stormwater detention and waste collection
- Conditions need to be included for Torrens title subdivision of dual occupancy to ensure creation of easements, rights of way, Sydney Water Section 73 Certificate.

2.9. Drafting of standards

The standards proposed are not sufficiently robust to be the basis of a numerically based complying development regime. The controls must be more thoroughly interrogated and based on a broader range of precedent studies and worked examples that expose the issues and complexity arising out of the proposed controls. Any proposed controls must be carefully drafted and coordinated, and the terms explicitly defined, to avoid future implementation and interpretation issues that will lead to uncertainty in the process and to unintended and diminished outcomes.

Specific examples include the following:

- The proposed controls do not anticipate the situation where a dual occupancy and townhouses lots may have a rear lane. The opportunity to provide parking from the lane with the landscaped area located centrally should be permitted.
- The proposed controls do not anticipate the triggering of BCA/NCC Class 2 construction for the 'stacked' duplex type, 'manor house' type, or 'vertically' attached townhouse type in terms of fire separation. Proposed controls for side setbacks range from 0.9m for dual occupancy to 2m for townhouses. This will mean that almost every medium density housing complying development proposal in New South Wales will rely on an alternative fire engineered solution for BCA/NCC compliance. Accessibility provisions are also triggered under BCA/NCC Class 2 which will need to be considered.
- The proposed controls do not anticipate the complexity of definition of distinguishing between 'front', 'side' and 'rear' setbacks for corner lots and irregularly shaped lots. The controls do not anticipate the complexity of definition for 'rear' setbacks when the site has stepped setbacks and the setback is based on a percentage of site length (for example Figure 17 in the

Background Paper). A clear and robust definition of front, side and rear setbacks is required to administer the controls adequately.

- The proposed control for 'front setbacks' is stated as '4.5m or the average of the adjoining setbacks, whichever is the greater'. This construction means that where front setbacks along a street vary greatly, proposed development meeting an average front setback will be different again. The wording of the control does not appear to anticipate the situation adjacent to corner lots where the neighbouring corner property is often built closer to a side setback, nor does it anticipate other irregularities such as the existence of battle-axe blocks as adjacent properties.
- The proposed control for 'building elements within an articulation zone to a primary road' states that 'building articulation elements are not to occupy more than 25 per cent of the street setback.' This wording defines an area within the front setback which would allow for elements such as porticoes and bay windows to reach all the way out to the street edge as long as they are not wider than a quarter of the frontage. This does not appear to be an intended or desired outcome.
- The proposed control for 'privacy' states that certain windows should be 'screened'. The term 'screen' should be defined so that its performance is not too little as to not provide adequate privacy, and not too much as to restrict outlook from habitable rooms. The screening of windows as a solution to privacy, as opposed to adequate setbacks, is not supported particularly within a numerically based complying development regime where it is likely to be the predominant outcome.
- The proposed control for 'car parking requirements' states that 'any parking on a battle axe lot development...'. Battle-axe lot development is not permissible under the controls as lots must have a minimum street frontage dimension under primary standards.
- The proposed control for 'removal or pruning of trees' states that 'a separate consent is required unless the tree is not listed on a significant tree register... kept by the Council'. The term 'significant tree register' is not sufficient to capture other definitions such as 'Areas of Biodiversity'. This exclusionary definition should be thoroughly researched and broadened to capture and protect all important tree definitions.

Any additional controls proposed will also need rigorous drafting and testing to ensure their workability and appropriateness for a numerically based complying development regime.

Recommendation

- Conduct further and extensive research on controls drawn from a complete cross section of current Council controls to appreciate where the proposed controls sit in relation to existing controls
- Interrogate and thoroughly test proposed controls to ensure that they are workable and consider how they are coordinated with the BCA/NCC and other relevant provisions such as Australian Standards.
- Carefully draft proposed controls to ensure they achieve their intention.
- Carefully define terms to reduce interpretation.

2.10. Errors

The Discussion Paper contains a number of errors as outlined below:

- 2.2 Development resulting in 3-4 dwellings – manor homes – page 24 under “Design Standard – Minimum side boundary setback” outlines minimum side boundary setback of 1.5m is

proposed. However, in the summary 2.2.5 on page 29, the minimum side boundary setback is outlined as 1.2m

- 2.3 Development resulting in 3-10 dwellings (townhouses/terraces) - page 34 under “Design Standard – Minimum side boundary setback” the text outlines that a minimum 2.0m side boundary setback is proposed and refers to figure 23. However, figure 23 indicates that the minimum side boundary setback is 0.9m.
- 2.3 Development resulting in 3-10 dwellings (townhouses/terraces) – page 37 under “Design Standard – Minimum internal separation” outlines a minimal internal separation distance of 6m between dwellings in the same development. However, in the summary 2.3.5 on page 40, the minimum internal separation distance is outlined at 6.5m.
- 2.3.1 Engineering Standards – Clause 5A.2 of the Codes SEPP in the Commercial and Industrial Development Codes does not refer to on-site detention systems, as it is about water supply and sewerage. Should Clause 5A.28 be referenced instead? This Clause references Section 68 of the Local Government Act which does not apply in Sydney.

APPENDIX 1 - Comparison of standards

Development – Dual Occupancies (2 dwellings)

Control	Proposed Complying Development	Ku-ring-gai Council LEP + DCP	Comparison
Minimum lot size	400sqm Torrens title subdivision – each lot 200sqm	Dual occupancies only permitted on sites identified in Schedule 1 KLEP 2015 : <ul style="list-style-type: none">• minimum lot size of 1200sq Torrens title subdivision – each lot 550sqm	Proposed complying development standards significantly smaller lot size and subdivision size
Minimum frontage	12.5m detached form 15m semi-detached form	N/A	N/A
Maximum building height	8.5m 2 storey	9.5m 2 storey	Heights are comparable
Maximum FSR	N/A	0.4 : 1	No density standard proposed for complying development
Minimum front setback	4.5m or the average of the adjoining setbacks, whichever is the greater	For single storey: <ul style="list-style-type: none">• Low side – 9m• High side – 12m For two storey : <ul style="list-style-type: none">• Low side- 9m (minimum) 11m (average)• High side – 12m(minimum) 14m (average)	Proposed complying development standards significantly smaller front setback
Minimum rear setback	6m or 25% of the average length of the side boundaries, whichever is greater	Depth greater than 48m – 12m minimum rear setback Depth less than 48m – minimum rear setback 25% average depth of the site	Significantly smaller rear setback for deep lots under complying development Comparable rear setback for sites less than 48m deep.
Minimum side boundary setback	0.9m	Site width less than 20m: <ul style="list-style-type: none">• Single storey – 1.5m	Proposed complying development standards

		<ul style="list-style-type: none"> Two storey – 2m <p>Site width 20m or more:</p> <ul style="list-style-type: none"> Single storey – 9% site width Two storey – 12% site width 	significantly smaller side setbacks
Minimum Separation between detached Dual Occupancy	N/A	7m	No standard proposed for separation between detached dual occupancy development under complying development
Minimum landscaped area	30% site area	<p>2 x 1 storey dwellings – 50% site area</p> <p>1x1 storey and 1 x 2 storey dwellings – 55% site area</p> <p>2x2 storey dwellings – 40% site area</p>	Proposed landscaped area significantly lower for complying development
Minimum private open space	<p>24sqm and minimum dimension 4m at Ground Level</p> <p>12sqm and minimum depth 2.4m balcony</p>	At least one area of useable private open space – minimum depth 5m and minimum area 50sqm	Proposed standards for complying development significantly smaller amount of private open space
Garage/Parking setback	1m behind front setback	At or behind the front setback	Comparable
Driveway setback	1m	N/A	Comparable
Car parking spaces	In accordance with The Guide to Traffic Generating Development or the relevant Council controls, whichever is less	<p>Dual Occupancy under 125sqm – 1 space per dwelling</p> <p>Dual Occupancy over 125sqm – 2 spaces per dwelling</p>	Comparable

Development – Manor Homes (3-4 dwellings)

- Ku-ring-gai currently does not have any provisions for “manor homes” within the LEP or DCP.
- It is noted that the definition of “Manor Homes” is currently defined by the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* to refer to a two storey building containing four dwellings, and that it is proposed to change this definition to containing three-four dwellings. However, concern is raised that under the

Standard LEP definitions, a “Manor Home” would fall under the definition of “Residential Flat Building” being a building containing 3 or more dwellings.

Development – 3-10 Dwellings (townhouses/terraces/combination)

Control	Recommended Complying Development	Ku-ring-gai Council LEP + DCP	Comparison
Minimum lot size	600sqm	1,200sqm	Proposed complying development standard significantly smaller- only 50% of Councils requirement for minimum lot size
Minimum frontage	18m	Less than 1,800sqm = 24m 1,800sqm or more = 30m	Proposed complying development significantly smaller minimum site frontage
Maximum building height	8.5m 2 storey	9.5m -11.5m 3 storey	Council allows up to 3 storey
Maximum FSR	N/A	0.5: 1 0.8:1	No density standard proposed for complying development
Minimum front setback	4.5m	10m	Proposed complying development minimum front setback significantly smaller
Minimum rear setback	6m or 25% of the average length of the side boundaries whichever is greater	6m	Comparable
Minimum side boundary setback	2m	3m 6m where dwellings are orientated towards side boundaries	Proposed complying development side setback smaller and no standards applying to where dwellings orientated towards side boundary
Minimum Internal Separation	6-6.5m (both are stated – unsure what is correct)	Up to 2 nd storey : <ul style="list-style-type: none"> 3m between non-habitable rooms 6m between 	Comparable

		<p>habitable rooms/balconies and all other cases</p> <p>3rd Storey:</p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 7m between habitable room/balcony and non habitable room • 3m between non-habitable rooms 	
Minimum landscaped area	30% site area	40% deep soil landscaping area	Proposed complying development significantly lower landscaped area and no requirement for deep soil landscaping
Minimum private open space	<p>24sqm and minimum dimension of 4m at Ground Level</p> <p>12sqm and minimum depth 2.4m for balcony</p>	<p>35sqm at Ground Floor:</p> <ul style="list-style-type: none"> • Single space 25sqm with minimum dimension 4m + direct access to living area • Remaining space minimum dimension 2m 	Proposed complying development significantly smaller requirement for private open space area
Garage/Parking setback	1m behind the front setback	<ul style="list-style-type: none"> • Basement car parking • Garage integrated into building and located behind the building line 	Council requires basement carparking or the garage to be integrated into building.
Minimum Driveway Setback	1m	3m	Council requires larger setback of driveway to allow for sufficient landscaping
carparking spaces	As per the guide to Traffic Generating Development of the relevant Council Controls, whichever is less	<p>Within 400m railway station:</p> <ul style="list-style-type: none"> • 1 bedroom = 1 space • 2 bedroom = 1 -1.5 spaces • 3 bedroom or more = 1-2 spaces • Visitor = 1 space per 4 units 	Comparable

		<p>All other locations:</p> <ul style="list-style-type: none"> • 1 bedroom = 1 space • 2 bedroom = 1.25space • 3 bedroom = 1.5spaces • Visitor = 1 space per 4 units 	
Minimum excavation setbacks	Compliance with all applicable building setbacks and maximum depth 4m	Meet front and rear setbacks and minimum 3m side boundaries	Comparable
Adaptable Housing	N/A	All multi-dwelling housing development are to contain at least one dwelling for each 10 dwellings or part thereof designed as adaptable housing in accordance with the provisions of AS4299-1995: Adaptable Housing Class C	Proposed Complying Development provides no requirement for adaptable housing