Appendix 1

Table of Assessment

Explanation of Intended Effect - Medium Density Housing Code (MDH Codes SEPP)

Item	Commentary and Recommendation
1.1 **Introduction**	Ku-ring-gai Council supports any improvements that will promote and deliver higher quality residential development to all market levels within NSW. SEPP 65 and the Apartment Design Code has been successful in setting a positive precedent in lifting high-density residential design quality, whilst enabling the preservation and integrity of local area character and geography.
1.1 (cont'd) **The Missing Middle**	*A planning system that facilitates a diverse range of housing options is important in delivering greater housing choice to support the growth population and changing demographics of NSW.* This statement (pg.5) is supported in principal as it is acknowledged that this housing typology would increase housing diversity. *The State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development (SEPP 65) ensures that the assessment and delivery of apartment buildings are guided by clear, effective, evidence based planning requirements.* It is agreed that SEPP 65 with the associated ADG has facilitated the successful delivery of Residential Flat Buildings (RFB.) The key strength of SEPP 65 and the ADG is that it fully enables local LEP and DCP provisions, which ensure the RFB is integrated into the local context; it applies the DA process, which ensures thorough consideration of all specific fields and the implications of design and delivery; it provides a comprehensive Design Guide consistent with the SEPP, and which can be used by those Councils which do not have in place controls to deliver quality RFBs. *…The aim is to make approvals for these housing types more efficient and provide greater consistency with approvals. This will make it easier to increase supply and choice to the market, putting downward pressure on housing costs.* Whilst complying development will fast-track approvals, the efficiency is questionable, it is unlikely that the in-depth due diligence and consideration will be given to specialist areas (such as Storm water, Landscaping, Accessibility for all, Crime Prevention Through Environmental Design, Overshadowing etc.) Whilst supply may be increased, the quality of the end product will not compare to the DCP Multi-Dwelling models developed to integrate into the established character of Ku-ring-gai. However, given Ku-ring-gai's high land value and appeal due to its location of railway and bus routes, excellent schools and facilities, and its quality urban and landscape character, downward pressure will not be put on housing in this area. In fact, given the ability of wealthy overseas investors to purchase land and property in Australia, the price of property, regardless of type, will not be decreasing. In November 2016 a Multi-Dwelling housing development site at 18-20 Bent St, Lindfield with DA for 8 dwellings sold for $13M (at least $1M per dwelling once constructed) In terms of affordable housing, it is a priority in the provision of medium density housing, there is a 10% mandated allocation of every Complying Development should be dedicated for affordable housing provisions. *To ensure that housing delivered in this way is well designed, the Discussion Paper also recommended that a design guide for low rise medium density housing be developed similar in nature to SEPP 65 and the Apartment Design Guide (ADG).* Whilst the MDDG is s supported, comparing it or trying to model it on the ADG is an impossible task, as the ADG is linked to a SEPP that does not override local Council LEP or DCP provisions, and as such is able to consistently deliver residential flat buildings across the state that are successful in the context of their local area. The fact that the MDDG is linked to Complying Development, which overrides local controls, means that the outcomes of the MDDG can only deliver development that is blind to site factors (like existing trees), blind to neighbouring sites (like Heritage Items), blind to streetscape and area character, and blind to other systems and infrastructure needs beyond the walls of that building.
1.1 (cont'd) **The value of low rise medium density housing**	*Low rise medium density housing provides a low cost and sustainable way to achieve higher densities with minimal impact on the existing urban form.* This statement is only correct if the delivery mechanism of the medium density housing has a means to ensure developments adopt and reflect a sustainable approach and reduce impacts through considered assessment of the integration of the development into its context. This will not be possible through complying development with private certifiers unqualified and unable to make merit assessments or apply rigor of checks on development documentation.

	The costs of delivering medium density housing through a fast-track system, may be low in the short term with the delivery of basic housing; however, the medium and long term costs of development whose design has given little to no attention to impacts on the urban character and infrastructure, will be exceptionally high, with the burden of those costs being put onto local Councils which will be expected to fix the problems generated by poorly considered fast track development.
1.1 (cont'd) **Medium density housing as complying development**	*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.* While it is intended to only allow the medium density complying development where it is permissible under the Council LEP zoning, complying development will still override a Council's strategic planning work, particularly with regard to the controls and requirements within Council DCP. The complying development standards and criteria are less sensitive than the controls within the DCP which seek to ensure that medium density developments are sympathetic to the streetscape and local character. This statement at p.7 is inconsistent with the entire premise of the document. It is clear that all Council's principle development standards are intended to be overridden by the Codes SEPP. A 'one-size-fits-all' approach will not respond to or deliver urban character specific to local government areas, nor will it have the capacity or due diligence to integrate new development with the local geographical, topographical and infrastructure systems. In November 2016 a court judgement (*Vanovac Tuon Architects Pty Ltd v Ku-ring-gai Council [2016] NSWLEC 1558)* 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). Commissioner Brown said *"it is of such importance that the application should be refused for this reason alone"* referring to Council's DCP controls on setbacks, site coverage, and deep soil. He found the proposed setbacks: - were inadequate to achieve Ku-ring-gai's urban built form character - led to excessive site coverage which could not provide sufficient deep soil to achieve Ku-ring-gai's landscape character of buildings within a landscape setting. - are significantly less than Council's DCP were: *"contrary to the relevant building setback objectives"….* The development was refused in a very comprehensive judgement that reinforced the importance of Ku-ring-gai's DCP controls. Had this development been conducted under complying development through the exhibited Codes SEPP, it would be classified as Multi-Dwelling Housing (Terraces) with a basement and would have complied with the MDH Codes SEPP proposed development standards for landscape and setbacks. https://www.caselaw.nsw.gov.au/decision/58362714e4b0e71e17f55699 **Private Certification:** The NSW Government has recently undertaken a review into the effectiveness of the building regulation and certification system in NSW, the final report was released in September 2016-http://www.bpb.nsw.gov.au/news/strengthening-certification-nsw. 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 Government 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'* (p173) The review outlined that one of the targeted outcomes of the reform needs to be *"Providing a robust foundation for the expansion of complying development*". The review noted that 'The evidence is that the system is not as effective and thorough as needed to have confidence in the outcomes generated through the complying development process.' (p309)

	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 when the current system is not effective and thorough, and has been found to be in need of reform. It is naïve to believe that the private certification process will achieve better quality outcomes than the traditional DA process. Certifiers in general are NOT qualified nor trained to undertake planning assessments of this complexity. Current 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. To expect certifiers to ensure "compliance with the Design Criteria" overestimates the abilities of most current certifiers. The ICAC -The ICAC submission regarding A New Planning System for NSW (Green Paper) 2012 stated the following: *The Commission also makes the observation 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.* *These processes should include requirements for evidence based justifications for land uses, defined design quality standards, including those related to density and scale, and oversight mechanisms. This will help ensure that conflicts about permitted uses and design principles are resolved in an objective and robust manner. Other elements of strong decision−making processes are discussed below.* *Streamlined Approval -The green paper raises the possibility of excluding councillors from development determination processes. The Commission recognises that decisions about whether the state government or local councils should determine development applications are a matter of government policy and has previously observed that there is no reason to suppose that a minister or state−level planning official is any more or less susceptible to corrupt approaches than a local−level councillor or professional planning officer.* *The Commission's key concern is the adequacy of the in−built anti−corruption safeguards in decision−making processes, in the interests of efficiency, adopted safeguards should be commensurate with the level of corruption risk involved in a decision.* https://docs.google.com/file/d/0B1phj5J6584wV3ZpbEFJQnQ3Znc/edit The role of PCAs for this scale of development fails to address the complexities of medium density housing, lacks transparency is inconsistent with the ICAC's recommendations above to protect against corruption effectively transfers the existing independent, transparent assessment process from local councils to one absent of transparency, that is dependant, with inherent conflict of interest where both parties (the developer and the PCA) have vested financial interest in the speed and success of a development approval with little governance removes independent mechanisms to verify the certification places unreasonable responsibility onto a party that is not trained, qualified, or experienced in performing the assessment tasks required. PCAs unqualified to perform merit assessment- removing the consent authority from Ku-ring-gai Council requires PCAs to determine urban design, architectural design quality, heritage, landscape, engineering and all other specialist discipline compliances for all aspects requiring a merit assessment where the MDDG does not provide numerical performance benchmarks. DAs invariably are inconsistent and very often have poorly resolved designs that are poorly coordinated. A typical example in Ku-ring-gai requires trees and topography as fundamental considerations on the majority of developments. The majority of medium density development is lodged proposing often complex stormwater designs that will not work when integrated into the broader system and indeed prevent landscape, or proposed development from occurring as architectural or landscape plans indicate. This assessment requires a multi-disciplinary team of qualified professional to consider the impacts between each discipline. Even with numerical benchmarks, certification relies on PCAs to verify that each discipline has complied with the numerical

	benchmarks and has coordinated their input. There is little incentive for them to do this and there is a great question over their ability to do this. Rather, the incentive is to approve the development by relying on the checklist provided by the designer or other consultant that will, by definition, confirm each of the items is compliant and that the Design Verification Statement indeed confirms the development meets the design quality principles. Separately they may but coordinated they may not. Rather, the incentive is to approve the development by relying on the checklist provided by the designer or other consultant that will, by definition, confirm each of the items is compliant and that the Design Verification Statement indeed confirms the development meets the design quality principles. Separately they may but coordinated they may not. PCAs are not trained, qualified, nor have the expertise to perform either the verification or a merit assessment for the many disciplines captured by the Codes SEPP and MDDG. Of particular concern is the terrace type with basement car parking, and manor house that is a Class 2 building that could result in many more dwellings than is intended under the EOIE, or where separate but concurrent applications are proposed that results in a single large development with cumulative impacts. In effect, the role of PCAs means the MDDG cannot be applied because most of the design criteria, design guidance and objectives all contain terms such as 'should' which can only be determined by merit assessment and/or are not numerical. There is high probability that very few developments that are certified will achieve the compliance required and the Design Quality Principles. This problem will be exacerbated by the broad range of complexity in models of medium density housing and the absence of the requirement for a registered architect to prepare the design. The use of PCAs in context of existing serious deficiencies - The review of Building Professionals Act identified serious weaknesses and deficiencies currently experienced with the use of PCAs that remain unaddressed. The Environmental Defenders Office (EDO) submission to the Department for the Discussion Paper proposing medium density housing under the Codes SEPP found: *Community and authorities' concerns about governance and oversight of private certification must be addressed before any attempt to expand code-based assessment. There is ample evidence of private certifiers certifying non-compliant developments, or issuing construction certificates in contravention of consent.* As noted by Justice Pepper in 2013 in Kogarah City Council v Armstrong Alliance Pty Ltd: *"Once again before the Court is an application for declaratory relief sought by a council occasioned by the unlawful certification by an accredited certifier of a development that is markedly different to the approval granted by that council. Regrettably this is becoming an all too common occurrence in this Court. It must not be tolerated. It brings the certification system into disrepute and undermines the planning regime of this State." 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:* *…the BPB has a key role in accreditation, education and training, professional support as well as compliance investigation, audits, discipline and monitoring. There are both real and perceived conflicts between some of these roles. Indeed, the BPB has been criticised as being too reluctant to exercise its disciplinary powers and too slow in conducting investigations. There is a perception by some that the BPB is more focused on the support role than on supervisory elements and this could be a reflection, to some extent, of current legislative provisions.* We concur with the EDO NSW's submission summary that emphasises: exempt and complying development processes must only be used for genuinely minor, low-impact developments; exempt and complying development should not occur in environmentally sensitive areas; and cumulative impacts of multiple developments must be taken into account. We also submit that use of the code should not be extended, even for low-impact developments, until serious accountability, quality

	control and transparency issues are addressed in relation to the use of private certifiers, and until building efficiency and sustainability standards have been strengthened. https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2648/attachments/original/1456972057/sub_Expanding_Complying_Development_EDONSW_1602.pdf?1456972057https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2648/attachments/original/1456972057/sub_Expanding_Complying_Development_EDONSW_1602.pdf?1456972057 None of the ICAC's recommendations have been followed and none of the NSW Local Government, Court, and community group concerns are addressed in the proposed legislation despite the intent to expand the role of PCAs to certify often highly complex medium density housing development. The question of independence and rigor of the private certification process remains. A private certifier has a fundamental conflict of interest in undertaking public responsibilities as a regulator and providing this as a service to a client for a fee. In this regard, the recently completed review of the Building Professionals Act identified a number of inherent weaknesses in the certification process that remain unaddressed. Private certifiers must be provided with detailed tick charts to enable them to check every standard, every design objective, and guideline against including citing the Design verification statement. This would make them more accountable where decisions and approvals are flawed. There needs to be a more robust and accountable system at state level to manage and monitor complaints regarding Complying Development. An increasing burden is being placed on Council with community dissatisfaction with the lack of an effective route for complaints, or effective punishment for lack of compliance in the final built outcomes of Complying Development certified by private developers. There needs to be an opportunity for community consultation wherever an increase in density on adjoining properties is proposed. Recommendations: a) Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing with a Design Code that achieves the design quality of the ADG. b) Retain local council as the consent authority. c) Require all medium density housing to be designed by a registered architect and suitable qualified and regulated professionals for other disciplines to be independently verified by a design review panel. Government review into the effectiveness of the building regulation and certification system – **Design:** Building Designers are also allowed to design these developments and there is no requirement for them to be designed by Architects only. Building designers have NO formal registration or accreditation requirements in NSW. ANYONE can practice as a Building Designer and there is no requirement to be qualified, have experience or have any credentials whatsoever. 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 also questionable whether Building Designers would be able to secure the necessary liability insurance as is required for architects. Architects must: • have a formal tertiary education / degree in architecture • be covered by the necessary liability insurance (this is required for registration)

	• be officially registered as an architect with the governing architecture body in their state or territory Building Designers have none of these requirements. Increased risk and liability issues are inevitable. In addition, this approach will have a detrimental impact on Heritage Items (HI) and Heritage Conservation Areas (HCA). Complying development must not be permitted on lots that adjoin, or are on opposite sides of the road, to HIs and/or HCAs. Substantial front, side and rear set-backs are required to separate any unsympathetic Complying Developments from Heritage properties to protect their curtilage. A landscape buffer is required to separate any proposed unsympathetic Complying Development from the established built form and garden setting of HIs and/or HCAs. *This scale of development is able to be delivered by a large range of builders with simple and often less expensive construction methods.* The development standards and design criteria are not aimed at the highly skilled architects, building designers, developers and builders who are already innovating design, but rather they are targeted to developers, architects, building designers, and planners currently providing the lowest quality of medium density housing. *…it* (the MDH Codes SEPP) *is aimed at a simple small scale, low rise development without the additional design challenges found in residential flat buildings, such as common areas, privacy and scale impacts.* This is an overly simplistic view – medium density development and even low density development can and does result in privacy and scale impacts. Medium density development types are more appropriate to the Development Application pathway of assessment, which allows merit assessment and appropriate consideration of impacts such as local character, amenity, and privacy. **Impacts of Complying Development on the Environment** 'Deep soil area' in preference to 'Landscaped area' - to achieve retention of existing significant vegetation as well as long term establishment of new sustainable tree plantings, deep soil as a minimum area with minimum width (such as SEPP Seniors) should be a design standard on medium density developments as it is on apartment buildings. The 'landscaped area' definition under the Code SEPP and the Principal Standard LEP has a proposed minimum width of 1.5m however there is no minimum depth. The proposed medium density controls allow the entire site as basement with all landscape area as planters as little as 200mm soil depth with a slightly larger planter of 800mm soil depth at the front and back for a small and medium sized tree. Both 'deep soil area' and 'landscaped area' could be design standards for medium density developments, particularly where basements are likely, such as in terraces and townhouses, as used in SEPP Seniors. A portion of land which is subject to riparian and biodiversity provisions should not be considered suitable for Complying Development of any kind. It should not be dependent on a definition of "Environmentally sensitive land" or an "Ecologically sensitive area" to exclude these areas. Additionally, the provision for obtaining separate permit/approval for removal of trees prior to the issue of a CDC is extremely undesirable. By way of example, an appeal is currently under way surrounding the refusal of a DA for removal of four trees in order for the applicant to undertake construction of a Complying Development dwelling on a steep lot which is subject to both riparian and biodiversity mapping. When assessing such an application, Council is fettered in its assessment of impacts on the riparian and biodiversity values, replenishment planting and landscaping of the site not to mention a lack of arboricultural reasons for removal of the trees. Additionally, there is no certainty once DA consent is in place that the proposed CDC will be pursued. Complying Development should not extend to these sites and should not rely on attaining prior consent/permits for removal of healthy trees. It is believed that implementation of the proposed code SEPP will result in increased impact to our local biodiversity, including our urban forests. This continued direct and indirect impact to our urban forest reduces available habitat for both local and migratory species, leading intern to decreased species diversity, pollination, as well as a reduction in the Sydney's ability to adapt to climate

	change. In addition to values for flora and fauna, our urban forest also provides significant benefits to the human population, including: Reducing energy consumption - Urban forests and green spaces provide major economic benefits through shading buildings in summer, thereby reducing both the need to air conditioning and the costs associated with its use. Health benefits - Australia has the highest rate of skin cancer in the world. The major cause of skin cancer is exposure to UV radiation from the sun. Good-quality shade can reduce UV exposure by up to 75% (Cancer Council NSW. 2013, *Guidelines to Shade*, Cancer Council NSW, Sydney). Our urban forest provides the best form of natural shade and thereby provides clear health benefits within the LGA. Carbon storage and pollution - Our urban vegetation plays a vital role in ameliorating air pollution and greenhouse gases (including Carbon dioxide). Increasing property values and identity -The urban forest plays a role in defining Ku-ring-gai and enhances the areas 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) Reduce nutrient loads and stormwater - The urban forest (canopy and roots) influence the volume, quality and timing of stormwater flows and nutrient loads that end up in our creeks. Tree canopies reduce erosion, delay runoff; whilst healthy tree roots can absorb stormwater, and reduce its nitrogen, phosphorus and heavy metal content. Protection of this vital resource is paramount (particularly within an urban area). Development that fails to protect or simply seeks to replace these assets is simply contributing to the decline in our natural and human environments, as well as failing to maximise the financial benefits these assets provide. Our urban forests provide a value above simple replacement costs. Protecting our natural systems is often more cost-effective than technological substitutes or building new infrastructure. Replacement of trees is often a poor substitute for protection, due to the risk of failure to plant or plant survival, loss of genetic integrity as well as the loss of habitat (including irreplaceable mature habitat features such as hollows). Due to space constraints within the urban area, onsite replacement is often unachievable and would seldom be undertaken without appropriate planning provisions. The impacts and risks associated with the long term changes in weather due to climate change are strongly influenced by the characteristics of each location. In Ku-ring-gai the topography is one of deeply incised valleys, stabilised by forested slopes with ridge top urban development. In such an environment the potential risks associated with poorly planned development include impacts by bushfire, impacts by flash flooding, destabilisation of slopes, erosion, sedimentation, loss of canopy trees, vulnerability to storms and infrastructure failure. The extreme weather events most likely to impact and cause damage in Ku-ring-gai are: Storms - According to OEH, (2016) rainfall extremes and average rainfall is likely to increase but become more variable. Compounding the effect of this transition are the occurrence of east coast low (ECL) events 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. (OEH, 2016 Impacts of Climate Change – East Coast Lows, http://climatechange.environment.nsw.gov.au/Impacts-of-climate-change/East-Coast-Lows (accessed 21/11/16) If the land use planning system permits a poorly planned and controlled increase in impervious area in the three major catchments in Ku-ring-gai the result is a likely shift in the foreseeable risk of flash flooding and significant impacts occurring to both council and community assets. Controlling stormwater flows requires not only expensive, long term engineering retrofitting of stormwater infrastructure but also the retention vegetation cover particularly around the steeply sloping valleys. Loss of vegetation cover will almost certainly cause rapid and destabilising effect on soils and slopes in the landscape. The substantial costs associated with

	these impacts have the potential to motivate litigation against those decision makers who disregarded these foreseeable risks. Flash floods have caused considerable damage to infrastructure and homes in Ku-ring-gai in the past; increasing this risk will likely lead to loss of insurance cover and in turn see an increased demand on disaster recovery funding by council and the community. Heatwaves - 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. Land use modifications, especially those that reduce the area of shade from the destruction of the tree canopy and reduce air flow across the region combine to increase not only daytime temperatures but more importantly night time temperatures. (http://climatechange.environment.nsw.gov.au/Impacts-of-climate-change/Heat, (accessed 22/11/16)) According to UNSW – Built Environment (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 a, (2016) notes that heat waves kill more people than any other type of natural disaster. Other notable impacts of increasing heat emissivity particular at night include a rise in domestic and drunken violence, increase demand on the energy supply network, obesity and loss of amenity value. (UNSW – Built Environment, 2016 http://www.be.unsw.edu.au/events/multi-scale-research-urban-climate-sustainable-development (accessed 21/11/16)) **Development Contributions** The key issue for development contributions in extending the role of private certifiers in approving medium density development is ensuring that contributions conditions are accurately incorporated and paid. At present certifiers tend to put in a 'catch-all' condition in CDCs which basically says that if contributions apply they must be paid and leaving the onus on the applicant to liaise with council. Contributions relate to the size of the development and larger developments incur higher contributions. It is important that certifiers liaise with Councils and correctly advise their clients. It has been council's experience that this frequently does not happen with smaller scale development; extending the scope of complying development to medium density development, will create considerable issues with providing accurate advice to developers during assessment. Current Medium Density Zones & Private Certifiers - In Ku-ring-gai currently, R3 as well as R4 zones are generally located in close proximity to the local centres and are included in these catchments for the purposes of development contributions under the current s94 contributions plan. The Local Centres catchments have higher contributions that the lower density areas due to the infrastructure required by intensive redevelopment. Future Medium Density Zones - Scope for Council to investigate and plan for future medium density zones is preferred to the scenario of permitting medium density in lower residential areas on an ad hoc basis. Planning for future medium density areas permits Council to identify areas well served by public transport and local retail and commercial facilities and identify, cost and plan for future infrastructure requirements arising from co-located cumulative development. This planning process allows for a contributions plan to be updated, revised or drafted to cater for the increased demand concurrent with other strategic planning processes. Lower Density Zones - The extension of medium density to lower density zones encourages piecemeal development and inhibits the process of planning for the delivery of supporting infrastructure – and its funding. Infrastructure such as intersection upgrades and new parks and playgrounds will be particularly affected because they have the greatest reliance on close geographic nexus. Checklists and Graphics - Any checklists / graphics should also remind a planner or certifier that the Contributions Plan (CP) should be considered as well as the LEP and DCP.
1.1 (cont'd) **Medium Density Design**	The intention to deliver medium density development that is *well designed, respectful of the environment, and contribute positively to the existing built form (p7)* is supported in principle.

Guide	However, the proposed Development Standards and inability of local Council's to set principle development controls is not supported and will lead to very poor urban outcomes.
1.1 (cont'd) **Medium density housing as development application**	This section appears inconsistent with the *Steps For Preparing a Development Application if Council has adopted the Design Guide* in the MDDG. The Codes SEPP development standards override the LEP development standards and thus any applicable controls that sit in the body of the DCP (not within the DCP section on multi-dwelling housing) could not be applied if in conflict with achieving the Codes SEPP standards. This has critical impacts to controlling desired local urban character.
1.2 **Existing Provisions**	The traditional Development Application process considers appropriate subdivision planning. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. The ability to maintain trees on lots of 200m^2 is particularly limiting. Small trees have little impact on the storage of CO--$_2$. Australia's annual greenhouse gas emissions were estimated at 592 million tonnes and have been projected to increase to 690 million tonnes in 2020. It is critical that traditional forms of subdivision are not compromised to ensure that tree retention in the suburbs is maintained. Presently, approved developments can be Strata Subdivided. Strata subdivision ensures that maintenance of common property and that building facades are maintained in a common fashion. It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application. It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard.
1.3 **Proposed Development Types**	Particular concern is raised with respect to the proposal to enable the Torrens Title Subdivision of small lots and its impact on future generations. The *Environmental Planning and Assessment Act 1979* specify the objectives under Part 5 as: *(a) to encourage:* *(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,* *(ii) the promotion and co-ordination of the orderly and economic use and development of land,* *(iii) the protection, provision and co-ordination of communication and utility services,* *(iv) the provision of land for public purposes,* *(v) the provision and co-ordination of community services and facilities, and* *(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and* *(vii) ecologically sustainable development, and* *(viii) the provision and maintenance of affordable housing, and* *(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

	(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment. In this regard, the provision of the SEPP must ensure that development is properly managed with the assurance of co-ordinating orderly and economic use of development land. Essentially, the SEPP must also ensure that development is ecologically sustainable; and, provide an appropriate level of public involvement and participation in environmental planning and assessment. It would appear that the current provisions as proposed would not meet these objectives. The definition of ecologically sustainable development under the *EP&A Act 1979* is derived from Part 6 (2) of the *Protection of the Environment Administration Act 1991*. Concern is particularly raised with respect to intergenerational equity with respect subdivision plans. The redevelopment of 200m^2 allotments under Torrens Title is likely to place significant pressures on the future redevelopment of sites within the next 40 to 60 years. We are only now seeing the implications of previously subdivided terrace housing and attached semi's in Sydney. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space. The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same light. Further concern is raised with respect to the redevelopment of the created small lots potentially approved under this scheme. Ironically, under the proposed controls, the redevelopment of a site approved for such development would not be able to be re-developed in the event of a fire or demolition under the very controls which approved the development in the first instance. Setback controls to the existing boundaries would prohibitively restrict the redevelopment of the site to achieve compliance. Lot amalgamation to redevelop urban areas is an expensive exercise. The Strata Act was changed to enable Strata Plans to be redeveloped even where not all owners are in agreement. All three proposed development types must include the requirement for each dwelling to have a frontage to a Public Road. The ambiguity and successful court cases can deliver outcomes that appear unintended through this instrument. The Development Standards at Part 3 in the MDH Codes SEPP are inconsistent regarding frontage each dwelling to a Public Road. Medium Density Housing types **-** Ku-ring-gai supports the inclusion of only 3 of the types advocated in the MDDG. 1 Two Dwellings Side-by-Side – single driveway for each dwelling, both addressing a **public** street with new definition of 'frontage' (as previously identified). 2 Terrace Houses - **only** where a **pubic rear lane** is provided for car parking. 3 Multi-dwelling Housing - **only** where basement car parking is provided (more than 4 dwellings or FSR is around 0.7:1) (terrace/row type or townhouse). NOTE: Manor Houses are a potentially positive type that could be used in Ku-ring-gai but should only be permitted in R4 zones and managed under local development controls. Manor Houses fall between SEPP 65 /ADG, and Medium Density Housing so require 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 a CDC pathway or design by an unqualified person. 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.

	Appendix 5 is very unhelpful. 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, confused development standards (Torrens and strata titling issue) inconsistent with proposed development a) Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing. b) Delete all maladaptive housing types that prioritise vehicles over pedestrians, and/or landscape and/or result in large areas of hard stand. c) Structure the document similarly to the Apartment Design Guide d) The ADG contains all the required amenity standards, which can be easily transferred to medium density housing. e) Retain independent, well-governed, and accountable assessment through local councils and their qualified consultants. Development controls poorly manage outcomes between Torrens titles and strata title development. A 'lot' for strata and Torrens title means two different things (or can do). The minimum lot sizes therefore must be consistent and differentiate whether they apply to Torrens title (land size) or dwelling /car parking of strata title. Many of the site requirements and development standards are inconsistently referenced and it is unclear whether the controls relate to the parent lot or completed subdivision. **Recommendations:** a) Test, and amend wording, and categories of development standards that are consistent with desired strata or Torrens title outcomes.
1.4 **The Role of the Design Guide**	*The Medium Density Design Guide (MDDG) will supplement the complying development standards. The purpose is to provide a resource to improve the planning and design of medium density housing by providing benchmarks for designing and assessing these developments.* In its current state the MDDG is inconsistent and unachievable particularly through the Complying Development route. The design criteria do not deliver the intentions stated in the Design Principles and there is no clear way for an unqualified private certifier to make merit assessments around how those Principles have been achieved or how a development complies with the Design Guidance. *The MDDG has been developed to:* *- deliver quality design for housing that responds appropriately to the character of the area, landscape setting and surrounding context.* *- improve liveability through enhanced internal and external amenity ensuring functional room sizes, solar access, privacy and natural ventilation.* *- provide options for well-designed houses that are connected to existing communities and infrastructure.* *- improve neighbourhood streetscape* *- enable diversity in built form.* The development outcomes stated in the MDDG do not respond appropriately to the character, landscape setting and surrounding context of established areas, such as Ku-ring-gai. The outcomes that will be delivered through Complying Development and its 'fast tracked' process alongside unqualified designers and private certifiers will not enable broader considerations including how the development will be connected to existing communities and infrastructure. In fact, these developments will not be integrated with

	local infrastructure and will place a burden on Council who will have to facilitate the lack of integration and assimilation. These developments will not improve neighbourhood streetscapes in high quality, established areas as the Development Standards are in direct contrast with existing provisions, particularly for an area like Ku-ring-gai which has developed a suite of fine grain planning documents to make sure all typology of development is delivered in a manner that is integrated into the local character and that responds to state wide policies on environmental, social and economic issues. **Tools for Local Councils, Planning and Urban Design Professionals** *The MDDG has been prepared to be used by local councils, planning and urban design professionals to assist with the strategic planning and preparation of local controls to create successful communities.* Given that the MDDG wipes out key Development Standards in established local areas and does not operate from a strategic planning level, considering long term generation impacts, it is highly unlikely that the MDDG will contribute to the creation of successful communities. **Tools for Designers and Applicants** *The MDDG provides further explanation of the development standards under complying development, and guidance on the finer design details of the development that lead good design outcomes and liveable housing.* In its current state, the MDDG does not provide guidance on the finer design details and will not lead to good design outcomes This is because it relies on the most part on merit assessment to achieve fine design, but there is no requirement for registered architects to deliver the design or for qualified town planning professionals to under merit assessment. **Using the Design Guide for Complying Development** A private certifier with no town planning degree qualifications will not have the knowledge or expertise to check that the design verification statement (produced by architecturally unqualified applicants) and will simply accept and 'tick the box' on its content.
1.5 Permissibility	Clause 1.18 of the Codes SEPP will apply to the new Medium Density Complying Development Code – which outlines that to be considered complying development the development type must be permissible on the subject site under the LEP zoning. This is supported and resolves some of the major objections raised in the previous submission however it is understood that this is still a concern for many other parts of Sydney which permit medium density development types within low density R2 zones. Whilst it is noted that Clause 1.18 of the Codes SEPP will apply to the medium density development types, there is an ambiguous point in the "key considerations" for Manor Houses on page 195 of the MDDG which states that they are allowed on land zoned for low and medium density residential development. The notes on page 16 of the Explanation of Intended Effects qualify that a Manor House will be allowed as Complying Development on any land where multi-dwelling housing is permitted. Would there realistically be many instances where Councils allow multi-dwelling housing within the R2 zoning and, if not, should the reference to low density zonings in the "key considerations" be omitted?
1.6 Subdivision	It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application. It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space.

	The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same light. **The Opportunity** *Most local environmental plans have standards such as minimum lot size and minimum lot width that apply to sites where medium density is permissible. These are often large and reflect the size of traditional detached dwelling houses with large gardens – even in areas zoned for medium density housing.* The current exhibited documents downplay the impacts that will result by relating the outcomes of the proposed medium density complying development types to the existing single dwelling complying development type based on the final outcomes of a single dwelling on a single 200sqm lot and the height limits of 2 storey plus attic as might be found in a single dwelling complying development. There is no regard to the fact that medium density deals with housing multiples possible across many sites at the same time and as a result creating impacts are cumulative, high intensity and generational. **If it looks like Torrens Title it Should be** *The complying development proposed for medium density housing will result in the dwelling have a frontage to a public road. Therefore, the multi-dwelling housing will essentially look like a terrace house. If there is no common area there is no need for it be strata titled.* No consideration has been given to how the creation of Torrens Title Single Dwellings, initially developed as Multi-Dwelling housing will alter the permissibility of the development within the zone and change of the status of the land. Common areas in Multi-dwelling housing is essential in established areas such as Ku-ring-gai as it provides provision for the deep soil landscaping to house the planting, including canopy trees which are integral to the character of the area and which are fundamental to preserving generational impacts on the environment and protection of sustainable communities into the future. **Solutions for Complying Development** Under no circumstances should Torrens Title Subdivision be enabled through Complying Development on Multi-dwelling sites. It is only acceptable on Dual Occupancy sites. Sydney is seeing a swathe of problems where individual terrace houses are being demolished or modified to the detriment of adjacent properties. In addition, changing the status to medium density to low density single housing on a single lot opens the pathway for single dwelling complying development to be conducted on each individual lot. No indication has been to how dual occupancy sites will be prevented from re-subdividing in the future. **Recommendation for Efficient State Wide Consistency** *The standard minimum size of lots has generally been formulated on the basis of a conventional subdivision for a single dwelling.* No evidence has been provided to justify this statement. Subdivision patterns vary from area to area, and within Ku-ring-gai the requirements are far higher, than stipulated here. In addition, it is inappropriate to compare a Single Dwelling to a Multi-dwelling development, because Multi-dwelling development deals with multiples of dwellings, whereas Single Dwellings deal with single dwellings, at no time will a Multi-dwelling housing development comprise one single dwelling. Therefore this comparison and justification is flawed. **Concurrent Consent For Dwelling and Subdivision** It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application.

	It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space. The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same light. It is essential that roof stormwater capture and disposal for each dual occupancy and multi-dwelling housing is independent prior to supporting a Torrens title subdivision in order to avoid messy 88b instruments implications on the roofs of each dwelling which will inhibit future redevelopment of each dwelling, especially if a storey is added to one dwelling. Further, each dwelling should be designed to be structurally independent of the other so it could be intensified without requiring structural works to be undertaken on the party wall and/or to the remainder of the dwelling not part of the future development. Future re-development in R3 Medium Density Residential Zones- The R3 zone is typically located at a transitional zone to R4 and it is capable of accommodating a large proportion of the population, now and in the future. By allowing Torrens title subdivisions in the R3 zone you are stifling the ability to consolidate sites for future redevelopment in the medium to long term by making it difficult for developers to achieve large enough area to develop at a future desired density.
1.6 (cont'd) **Recommendation for efficient State wide consistency**	In principle, state wide consistency is encouraged, however it is highly unrealistic to expect that a 'one size fits all 'will result in good outcomes across the state. The content of the draft standards, and implementation of this policy through Complying Development is so deeply flawed, it will have a devastating impact on existing suburban subdivisions and the considered orderly development of precious resources which many state policies seek to preserve. This proposal fails to coordinate with federal and other state government policies around city planning and place making. The only obvious driver for the policy is to speed up the approval process. This may have validity as the planning process currently can be excessively cumbersome. The problem arises because of the structure of the document and delivery through Complying Development, and the structure of the development standards. The merit in application of the Medium Density Housing Code (MDH Codes SEPP) will be in new subdivisions on greenfield sites in where the Code can play an important role in increasing density in a controlled and strategic way. With a developer considering sub-division beyond a single site, and integrating the public domain layout – street network, public parks and open spaces. The street layout is critical for establishing a subdivision configuration that will maximise the benefits of the proposed MDH Codes SEPP. The MDH Codes SEPP will fail without specific street layouts and subdivision patterns that suit the typologies and that integrate the new housing into its local amenity provisions. By contrast, implementation of MDH Codes SEPP in existing subdivisions will be ad hoc and randomised. This fails in the first principles of strategic city planning. This is contrary to Federal Government policy, the Greater Sydney Planning Committee charter and many of the NSW State government's other planning instruments. Within established area, such as Ku-ring-gai, the imposition of the MDH Codes SEPP development and sub-division that is unable to successfully integrate into an established neighbourhood and infrastructure unless fine grain site analysis, development integration and management of local and wider impacts can be undertaken.

The effect will be to devastate all suburban areas (similar to the demonstrated medium density failure of SREP12 and SEPP 25 that resulted in their repeal approximately 7 years after implementation). Historical evidence indicates around 92% of development of dual occupancy and granny flats under SEPP 25 was speculative (*The Perils of Urban Consolidation*, *Patrick Troy, 1996, cit. Urban Scrawl, 1994)* the impact of the typology on local communities was a demonstrated failure causing its repeal some seven years after its introduction.

The reality of the controls being advocated may be seen in the following figures:

As-built Two Dwellings Detached

Multi-Dwelling Housing – Row Housing As-built back to back with minimum setbacks

Large-scale, long-term impact on the environment of standardised and inadequate setbacks and landscape controls

The MDH Codes SEPP will only work in existing suburban subdivisions where ***all*** of the following existing conditions are present:

1. Street and laneway pattern with high levels of pedestrian amenity and reservation width of primary streets sufficient for canopy street tree planting
2. High quality public domain – parks and open spaces in close walking distance to areas where these developments can occur
3. Public transport infrastructure within walking distance of the developments
4. Local services and amenities to support increased density
5. Established subdivision pattern compatible with the proposed Development Standards.

The fact is there are very few areas of the existing urban and suburban areas of NSW that meet any, many, or all of these basic requirements.

Therefore, the result will be that the State will be presiding over a randomised, as hoc application of a policy with no strategic basis other than reducing approval time.

	It is critical that increasing density within the 'missing middle' be applied thoughtfully and strategically. Local Councils need to be given the tools to implement increased densities but done in such a way that responds to the vastly different urban conditions – topography, infrastructure, street layout and public domain networks, subdivision patterns – of their LGA. The economics in Ku-ring-gai should be further investigated to confirm whether there is economic viability of the medium density types that would be most compatible with Ku-ring-gai's urban character (Side-by-Side houses or Manor Houses). Poor design quality in a bid to cut costs would be an unacceptable outcome for the locality of the city and NSW. The KLEP's do not include this model provision - Clause 4.1B Minimum lot sizes for dual occupancy multi- dwelling housing and residential flat buildings Of great concern is the ambiguity around permissibility of all MDH types in the various zones, particularly within R2 zones. Whilst the *SEPP (Exempt and Complying Development Codes) 2008* 1.18 states that the development types will be permissible only where stated within the Local LEP, the lack of clarity and inconsistency of definitions between the Codes SEPP and the Standard Instrument LEP (replicated in Ku-ring-gai's LEPs) provide the opportunity to override LEP definitions with SEPP definitions, and make development types permissible in zones where they are not supported through the local LEPs. For example, the interpretation of the Standard Instrument LEP definition of 'dwelling house' as *'a building containing only one dwelling'* implies detached dwelling in one existing lot. It does not mean detached single houses or dwellings stacked on top of each other in strata title, or a row of dwellings abutting each other in strata title or Torrens Title. The danger is that row housing, terrace housing, townhouses are consistent with the definition of a 'dwelling house' under the Codes SEPP and therefore can override the LEP and what is permitted in R2 Zones. Therefore it is imperative the SEPP definitions align with the SI LEP definitions. In addition, as the walls are attached but not shared, see *Figure 2: Options for Subdivision* p18, there is concern about the dwellings being developed as medium density development, yet being vested single dwelling status through the proposed Torrens Title sub-division that can form part of the Complying Development application: Multi-dwellings of any type must only operate under Strata Title to ensure any future demolitions, alterations and additions are conducted in a holistic manner across the entire multi-dwelling site; further Strata Title will ensure the status of the land remains 'multi-dwelling' and not change to "single dwelling" status with individual Torrens Title dwellings. This change in status also then opens the avenue for those individual lots to utilise single dwelling complying development to make changes that may not be congruent with the original multi dwelling development. The figure below illustrates the worst possible outcomes now being seen across Sydney where individual Torrens Title developments have exerted their right to demolish or rebuild regardless of the impacts on adjacent properties.

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

Villa typologies have been a disastrous type as illustrated in the below figure and should be omitted in all their forms unless internal driveways are fully designed public streets.

Example of Villa typology. Large-scale, long-term impacts on the environment of standardised and inadequate setbacks and landscape controls.

The proposed development standards under the MDHC Code will effectively destroy Ku-ring-gai's established urban character that is defined by buildings within a landscaped garden setting with large canopy trees supported by deep soil provision.
</td></tr>
<tr><td>**Concurrent consent for dwelling and subdivision**</td><td>Sub-division of Complying Development for medium density housing stands to detrimentally alter the fabric of large swathes of Ku-ring-gai.</td></tr>
<tr><td>**2.0 DETAILED DESIGN**</td><td></td></tr>
<tr><td>**2.1**
Design Principles</td><td>The design principles listed in the MDH Codes SEPP are not aligned with the proposed development standards. There are numerous inconsistencies.

The fundamental issue is that the proposed standards are suited to the highly urbanised ring of suburbs within a 5-10km radius of Sydney's city centre. They are not unsuitable for outer ring suburbs where randomised implementation will occur that is not coordinated with local planning strategies, nor will they enable high quality development.

The delivery of single dwelling through Complying Development has resulted in a lower standard of built form in Ku-ring-gai, with dwellings having little or no relationship to the site, to the street, or to the neighbourhood character and do not reinforce the fundamental long-term or future desired character of Ku-ring-gai which is built form within a deep soil landscaped garden setting including canopy trees. The result is that buildings lack innovation and are poor contributors to existing high quality streetscapes within Ku-ring-gai. Below is an example of two dwellings recently developed with very different outcomes for the streetscape.</td></tr>
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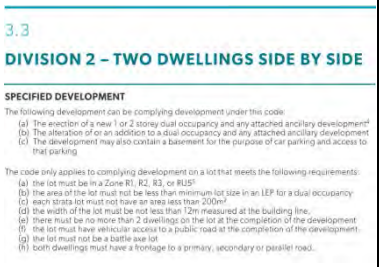
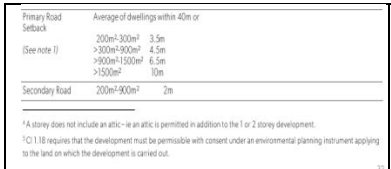
	 **Complying development delivery** – poor connection/integration of built form with the site itself, and lack of contribution to streetscape and Ku-ring-gai's character of built form within a deep soil landscaped garden setting including canopy trees.  **DA Delivery** – dwelling integrated into the site 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.
2.2 **Torrens Vs Strata Titling**	The intended move towards Torrens Title will impact on Council's DCP controls for all setback zones to be primarily in common ownership. Common ownership of setback areas and recreation areas on a medium density site ensures the retention of deep soil landscapes and the associated layered landscaping and tall tree provision that is typical of Ku-ring-gai's garden visual setting to all building typologies. Subdivision has been demonstrated to impact on the long-term quality of the landscape character because the land falls into the control of each owner who can choose to maintain or remove planting within what becomes their private garden. The proposed types, size of allotments, and development standards in combination with landscape control being privatised, will all have a detrimental impact on the deep soil landscape character of Ku-ring-gai, particularly from the cumulative impacts of this development.
2.3 **Two Dwellings Side by Side**	Ku-ring-gai Council does not permit dual occupancy development anywhere in the LGA. This housing typology is not consistent with the area's large lot subdivision pattern (minimum 930sqm under the KLEPs) nor the character of large style houses within a landscaped garden setting. However, there are certain sites within Ku-ring-gai which retain dual occupancy status under Schedule 1 of the KLEPs. These sites were generally a direct translation from the KPSO. The DCP integrates and manages denser dual occupancy buildings into the established areas typically through standards around setbacks, building separation and The type could work well in Ku-ring-gai only where council retains control of FSR, building height, site coverage, and landscape standards. If this is achieved, the scale and appearance of this type of development would be able to integrate into established R2 zoned areas. Consideration of impacts on adjoining properties is an important requirement.
2.4	The intended application is restricted to R3 development. However, this is not reflected in the examples in *Appendix 5 Recommended Principle Controls for Different Types* of the *Medium Density Design Guide,* which recommends <u>all</u> types be

Multi-Dwelling Terraces (3+ dwellings side by side)	implemented in low and medium density zones. This will lead to a state-wide planning failure of uncoordinated poorly implemented R3 types into sprawling R2 zones due to technical loopholes created in the MDH Codes SEPP and documents.
2.5 **Manor Houses and Dual Occupancies where a Dwelling is Above or Below Another**	This type is supported in principle as being suitable for R2 zones. NOTE: Dual occupancies in the rear yards of existing detached houses present a poor landscape outcome in Ku-ring-gai because of the permitted loss of canopy trees that define Ku-ring-gai's 'green' urban character. This is also inconsistent with the new DCP Multi-dwelling Housing that clearly intends the internal site character to include deep soil areas to break up the domination of strata'd fencing (that would be made worse with Torrens subdivision).
3.0 DEVELOPMENT STANDARDS	
3.1 **Background**	No comment
3.2 **Medium Density Housing Code**	There is no information about what would comprise *Division 5: Tertiary Development Standards* See Appendix 1 for detailed Division 2, Division 3 and Division 4 comments. **General comments on the proposed Development Standards** Controls need to be tested before they are ready for public comment. Local council strategic planning will be overridden. Local council principal LEP development controls will be overridden. Local council DCP controls will be overridden. Outcome to urban character likely to be worse than under SEPP Seniors and People with a Disability, SEPP ARH for boarding houses. The economics in Ku-ring-gai should be further investigated as to the economic viability of the medium density types that would be most compatible with Ku-ring-gai's urban character (Side-by-Side houses or Manor Houses) due to high land and housing prices, and construction costs. Fast track delivery will not result in affordable housing prices. Ku-ring-gai is a highly desirable locality and is seeing large scale overseas buy up of development sites. The wording and structure of the draft Development Standards is inconsistent, lacks clarity around whether FSR and lot sizes provisions are for the parent lot or the new subdivided allotments. This has major implications to urban character depending on the interpretation. The *Recommended principal development controls for different types* at Appendix 5 of the MDDG are largely non-compliant with the draft Development Standards for FSR and lot sizes, and contain images that do not represent the proposed controls (superior outcome to what the Standards permit). If we assume the FSRs are for the *subdivided* allotment, in the Ku-ring-gai context for a lot complying with Ku-ring-gai's minimum lot size (>500m2), proposed FSR is 2 to 3 times more (0.6:1) than existing KLEP 2015 controls for R2 zones (0.2 to 0.3:1 generally)**.** Minimum landscape at 35% does not include a provision for deep soil to ensure meaningful landscape plants can occur. The MDH Codes SEPP appears to override council landscape controls although section 2C of the MDDG states *Landscaped area is best controlled in the LEP for low and medium density development where it can effectively preserve the landscaped character.* There are no site coverage controls to maximise area available for landscaping and ensure the 'landscape' and 'deep soil' definitions are consistent with the Codes SEPP definition (Note: all hard paved areas are excluded from landscape and there is no

	requirement for deep soil).
3.3 **Two Dwellings Side by Side**  3.3 DIVISION 2 – TWO DWELLINGS SIDE BY SIDE SPECIFIED DEVELOPMENT The following development can be complying development under this code: (a) The erection of a new 1 or 2 storey dual occupancy and any attached ancillary development[2] (b) The alteration of or an addition to a dual occupancy and any attached ancillary development (c) The development may also contain a basement for the purpose of car parking and access to that parking. The code only applies to complying development on a lot that meets the following requirements: (a) the lot must be in a Zone R1, R2, R3, or IRU5[3] (b) the area of the lot must not be less than minimum lot size in an LEP for a dual occupancy (c) each strata lot must not have an area less than 200m² (d) the width of the lot must be not less than 12m measured at the building line, (e) there must be no more than 2 dwellings on the lot at the completion of the development (f) the lot must have vehicular access to a public road at the completion of the development. (g) the lot must not be a battle axe lot (h) both dwellings must have a frontage to a primary, secondary or parallel road..	Complying development must not be permitted on lots that are adjacent, or are on opposite sides of the road, to HIs and/or HCAs. Attic rooms must only be permitted where they can provide good dormer windows. Design Guidelines must be provided to guide attic development, particularly design and location of dormer windows. Skylights must not be allowed as the primary light source within a habitable room in an attic. The Development Standards must state that a skylight is not permitted. a) R1, R2 and R3 zone (isolated sites) appropriate for this type. Ku-ring-gai has one (1) area Zoned R1. This is subject to site specific Master Plans, which therefore coordinate the broad range of permitted housing types within a specific major development precinct. These should be amended to read: *(a) the lot must be in a Zone R1, R2, R3 or R4 but **not permitted** on sites that have been Master-planned for specific outcomes* b) KLEP nominated Schedule 1 properties permitting dual occupancy has a minimum lot size of 550m2 - see comments for Division 4). KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP. Retaining local control of minimum lot size will be critical in retaining Ku-ring-gai's urban character. c) Lots of 200sqm would significantly change existing subdivision pattern of all Ku-ring-gai R2 zones. It is more compatible with R3 zone character. However, this type of development is unlikely to be taken up in R3 zone due to lower FSR than multi-dwelling housing currently permits. The MDH Codes SEPP places no control on future sub-division of each 550sqm dual occupancy site within Ku-ring-gai to be further sub-divided into two (2) further lots of minimum 200sqm as permitted in this MDH Codes SEPP. d) Ku-ring-gai's KLEP4.1(3A) min lot width of 18m. This conflicts with the MDH Codes SEPP (12m). The MDH Codes SEPP min. width assumes rear lane access which generally does not exist in Ku-ring-gai. MDDG Appendix 5 example recommends min 15m lot width for sites where garages face street and is thus inconsistent with the proposed Standard. In addition, the 18m frontage for dual occupancy enables the built form to be integrated into the local single dwelling context of buildings in a garden setting with landscapes to all setbacks. The clause should be amended to read: *(d)The width of the lot must not be less than 15m measured at the building line or as stated in the Local LEP, whichever is the greater.* e) Supported f) Supported g) Supported h) Supported
SUMMARY OF DEVELOPMENT STANDARDS TABLE 4: DEVELOPMENT STANDARDS STANDARD SUMMARY DEVELOPMENT STANDARDS PRINCIPAL DEVELOPMENT STANDARDS Maximum Height of Building: Dwelling with frontage to a primary, secondary or parallel road- 8.5m Maximum FSR (for each lot): 200-300m² 0.75:1; >300m²-400m² 0.70:1; >400m²-500m² 0.65:1; >500m² 0.60:1	**Height:** Supported. It is unclear why the statement includes reference to street frontage relating to height when Site Requirement (h) is that *both* dwellings must have a street frontage. The statement should clarify where height is measured and read: *Dwelling with frontage to a primary, secondary, parallel road- 8.5m from natural ground line.* Concerns Regarding Impact on HIs and HCAs - in the event the development is adjacent to a HI or HCA, the heights of proposed buildings should be the same or lower than the adjacent HI or HCA. **FSR:**

	The FSR ratio control of ratio control of 0.6-0.75:1 is excessive for R2 zoned land and is likely to result in large dwellings that will not provide an affordable housing option. In Ku-ring-gai there is R2 zoned land on which dual occupancy is permitted to a maximum floor space ratio of 0.4:1. The gross floor area of an attached dual occupancy on a 900m2 allotment would be 585m2 under the proposed medium density code and 360m2 under the Ku-ring-gai LEP. At all times the maximum gross floor area should be that specified in the LEP that applies to the land. If there is no floor space ratio control in an LEP the maximum floor area should be that specified for dwelling houses in the General Housing Code (whichever is higher). FSR is less than the 0.8:1 that generally applies to R3 zones in Ku-ring-gai. The proposed 0.6:1 FSR would permit GFA of 360m2 on a 600m2 site, 330m2 on a 550m2 site which is double to triple the current KLEP density. Ku-ring-gai policies seek to encourage a balanced integration of built upon area and deep soil landscaped areas on every site to avoid overdevelopment due to inadequate site coverage controls that result in loss of landscape that we see typically occurring in Sydney's new subdivisions. Loss of deep soil landscaping results in increased heat emissions, increased reliance on artificial cooling systems, loss of soil integrity and denudation during rainfall events, loss of canopy trees and substantial vegetation, including threatened species, due to cut and fill around root balls and loss of soil from increased poorly managed stormwater runoff. The MDH Codes SEPP should encourage larger green garden areas and keep them in communal areas to preserve their long term integrity, and encourage smaller dwelling sizes to sit within those gardens for this typology – otherwise there is little to differentiate the typology from an apartment building which also has limited external garden area allocated to each unit, but worse than the apartment building in that there is no provision for open communal areas within the development as there is for apartments in most Council areas. This would also avoid the increased demand for air-conditioning and energy generally. The MDH Codes SEPP document contradicts itself. On the one hand it is setting principal development standards that override Council's LEP while on the other stating the MDH Codes SEPP is not intended to override Councils' strategic planning. Setting FSR effectively overrides LEP standards which contradicts the stated intention of the Codes SEPP at p7, 8. Implications of the proposed FSRs mean that the scale of buildings in the Ku-ring-gai R2 context will be double to triple those currently permitted. Two 330m2 side-by-side dwellings will have a significant impact on the streetscape and appear as an anomaly in the established setting, particularly as the Complying Development route will not facilitate any negotiation of integrating into the existing high quality fabric of the area. The FSR as proposed is diametrically opposed to the Federal Government's 'Green Cities' policy (announced 01/2016 by Minister Greg Hunt… *"cities with high levels of trees, foliage and green spaces — provide enormous benefits to their residents. Increasing urban canopy coverage decreases heat, which improves health and quality of life.*
Minimum Landscaped Area (for each lot): 200m²-300m² 20%; >300m²-400m² 25%; >400m²-500m² 30%; >500m² 35% (Min width 1.5m) Landscaped area forward of building line: 25% minimum	Landscape: The landscaped area requirement of 25% in front of the building line is very low and is unlikely to reflect the character of existing streetscapes in R3 zones. This requirement should be increased to 50%, to match the control in the General Housing Code that applies to sites which have a frontage of more than 18m. The proposed 35% assuming Council retains control of min lot size will have a significant impact on R2 zone due to the overriding FSR controls being x2 to x3 more density on smaller sites. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 25% landscaped area forward of the building line will not be sufficient and will not relate to the traditional garden setting of HIs and/or HCA. An increase in front setback landscape area is necessary to provide amenity to the HI and/or HCA to maintain the visual integrity of the HI and/or HCA.



Primary Road Setback	Average of dwellings within 40m or	
(See note 1)	200m²-300m²	3.5m
	>300m²-900m²	4.5m
	>900m²-1500m²	6.5m
	>1500m²	10m
Secondary Road	200m²-900m²	2m

[1] A storey does not include an attic – ie an attic is permitted in addition to the 1 or 2 storey development.

[2] Cl 1.18 requires that the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.

Primary Road Setbacks:

This control should refer to existing buildings rather than dwellings, as unlike R2 zoned sites, sites zoned R3 may not be adjacent to dwellings.

Proposed 10m (assuming sites >500m2) also permits a further encroachment of 1.5m articulation zone.

It is important that the standard retains the provision for existing building lines of neighbouring dwellings to set the street setback. However, the Standard appears to be worded as a choice of: *Average of dwellings within 40m* ***or*** the nominated minimums. Therefore, this is likely to be tested through a court appeal process given the lesser range 3.5m to 6.5m proposed would be more attractive to maximise FSR.

The proposed minimum setbacks to the primary road will significantly alter the existing deep soil landscape character of Ku-ring-gai, and therefore this clause should read:

Primary Road Setback: Average of dwelling within 40m or

$200m^2$-$300m^2$ 3.5m

>$30mm^2$ – $900m^2$ 4.5m

>$900m^2$-$1500m^2$ 6.5m

>$1500m^2$ 10m

Whichever is the greater

Concerns Regarding Impact on HIs and HCAs:

In the event the development is adjacent to a HI or HCA, the front setbacks should be in line or behind adjacent HI and/or HCA. The proposed first floor level should be well set back from the front building line and the proposed front boundary fences should not exceed the height of adjacent fences of the HI and/or HCA.

Road Setbacks: Existing streetscape character offers protection for retaining Ku-ring-gai's quality streetscape character of built form within landscape garden settings that include substantial vegetation.

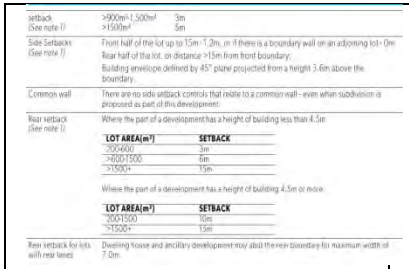
Controls proposed in the MDH Codes SEPP will have a detrimental effect on achieving adequate landscape in the rear of side-by-side dwellings (see also comments Division 4 on impacts from rear subdivisions to dual occupancy).

The MDH Codes SEPP provisions are generally diametrically opposed to Federal Government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments.

Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state.

http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx

http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening



setback (See note 1)	>900m²-1,500m² 3m >1500m² 5m
Side Setbacks (See note 1)	Front half of the lot up to 15m - 1.2m, or if there is a boundary wall on an adjoining lot - 0m Rear half of the lot, or distance >15m from front boundary: Building envelope defined by 45° plane projected from a height 3.6m above the boundary.
Common wall	There are no side setback controls that relate to a common wall - even when subdivision is proposed as part of this development.
Rear setback (See note 1)	Where the part of a development has a height of building less than 4.5m

LOT AREA(m²)	SETBACK
-200-600	3m
>600-1500	6m
>1500+	15m

Where the part of a development has a height of building 4.5m or more

LOT AREA(m²)	SETBACK
-200-1500	10m
>1500+	15m

Rear setback for lots with rear lanes	Dwelling house and ancillary development may abut the rear boundary for maximum width of 7.0m.

Side setback: A greater side setback (2m) should be stipulated for 2 storey buildings. This will ensure deep soil planting to side boundaries consistent with R2 Zoned development in Ku-ring-gai.

Concerns Regarding Impact on HIs and HCAs:

In the event the development is adjacent to a HI or HCA, the proposed 1.2m side setback for the lot will encroach on the visual curtilage of HIs and HCAs and should be increased.

Rear setback: Codes SEPP is more consistent with Ku-ring-gai's R3 controls, but will have detrimental impact on R2 zones in Ku-ring-gai that generally require 12m setback irrespective of building height while Codes SEPP will permit 3m for height <4.5m and 10m for height >4.5m.

A very poor landscape outcome will be achieved with the 3m setback for both R3 and R2 zones. In context, this would achieve a worse outcome than SEPP Seniors or People with a Disability. The proposed setback does not take into account whether or not a rear lane is present to provide building separation for visual and acoustic privacy, outlook, daylight access, does not consider internal layout and location of living areas for separations, and will not achieve Ku-ring-gai's landscape character.

However, Ku-ring-gai's subdivision pattern provides some protection providing the KLEP 2015 can control the lot size and configuration.

Concerns Regarding Impact on HIs and HCAs:

In the event the development is adjacent to a HI or HCA, the proposed rear setbacks will not be sufficient and will encroach on HIs and/or HCAs. A landscaped buffer is required to separate the proposed building from the established garden setting of the HI and/or HCA.

These provisions are diametrically opposed to Federal government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments.

Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state.

http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx

http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening

DESIGN STANDARDS

Design Criteria — The development must comply with the design criteria listed in Part 3.1 of the Medium Density Design Guide.

A design verification statement is required to be provided by the person who designed the development that provides evidence of compliance with the design criteria.

A template for the design statement is provided in the appendix to the guide.

Note:
1. The current exceptions to setbacks will still apply.
2. Existing provisions with respect to tree removal, bushfire prone land and flood affected land will continue to apply.
3. Existing provisions for vehicle access will still apply.

Overall amenity falls to the Design Guide. The current wording and structure of Division 2 (see screen shot to left) then captures the Design Criteria of the MDDG as "Design Standards". However, the preamble of the MDDG clearly states its intended use to be as a 'tool' and does not define it in terms of providing 'development standards'. This leaves a grey area as to its status. All references to *"the person who designed the development"* must be amended to read: *"the registered architect."* This will ensure some quality and innovation in the outcomes of medium density housing. Otherwise, the outcomes will be the result of plans which seek to fit the maximum on the site, and elements that are determined by the plan layout and as an afterthought rather than the architectural consideration of elevational treatment.

3.4

Multi-Dwelling Housing (Terraces)

Complying development must not be permitted on lots that are adjacent, or are on opposite sides of the road, to HIs and/or HCAs.

Attic rooms must only be permitted where they can provide good dormer windows. Design Guidelines must be provided to guide attic development, particularly design and location of dormer windows. Skylights must not be allowed as the primary light source within a habitable room in an attic. The Development Standards must state that a skylight is not permitted.

Comments on Specified Development:

The Standards nominate 1 or 2 storey development. This is inconsistent with MDDG Appendix 5 Recommended Principal Controls – Terrace Houses that recommends 3 storeys with height of 10m.

3.4

DIVISION 3 – MULTI-DWELLING HOUSING (TERRACES)

Specified development

The following development can be complying development under this code:

(a) The erection of a new 1 or 2 storey multi-dwelling housing (terraces) development and any attached ancillary development[2]

(b) The alteration of or an addition to a multi-dwelling housing (terraces) development and any attached ancillary development

(c) The development may also contain a basement for the purpose of car parking and access to that parking

The code only applies to complying development on a lot that meets the following requirements:

(a) the lot must be in a Zone R1, R2, R3, or RU5[3]

(b) each strata lot must not have an area less than 200m²

(c) each strata lot must have a width at the building line not less than 6m,

(d) the lot must have vehicular access to a public road at the completion of the development,

(e) the lot must not be a battle axe lot

(f) all dwellings must have a frontage to a primary, secondary or parallel road.

Comments on Site requirements:

a) R2 sites generally unsuitable for this type of development -in Ku-ring-gai and suburban areas, generally in NSW. R3 zone is appropriate for this type but needs to be located and coordinated with Ku-ring-gai's zoning strategy. The only R1 zoned sites in Ku-ring-gai are subject to site specific Master Plans, which therefore coordinate the broad range of permitted housing types within a specific major development precinct. Complying Development in Master-planned sites should not be permitted. The MDH Codes SEPP should enable Council to nominate specific sites that are not able to be considered through Complying Development.

b) There is no reference to LEP in Site Requirements for minimum lot size of parent lot. KLEP 2015 cl 4.1 (3) does not permit Torrens subdivision as proposed in the MDH Codes SEPP. Therefore the clause must be included to say:

The area of the lot must not be less than the minimum lot size in the LEP for the multi-dwelling house.

MDDG Appendix 5 Recommended Principal Controls – Terrace Houses recommends lot sizes of 100-150m2, which is non-compliant with the MDH Codes SEPP Development Standards.

Only strata development is included in the draft Site Requirements. Yet Torrens Title subdivision is the stated aim of the Codes SEPP (section 1.6 Subdivision - Explanation of Intended Effects). There appears no minimum lot size of the parent lot for such a subdivision.

c) Inclusion of Torrens Title of 200m2 lots would significantly change existing subdivision pattern of all Ku-ring-gai and have significant cumulative impacts on the ability to continue to provide deep soil landscaping and significant vegetation essential to not only the character of the area, but also vital to the retention and stability of soil and sub-strata at the ridge and slope topography of this area. Small lot size precludes the possibility of common areas on multi-dwelling sites that can provide substantial landscaping, including large canopy. 6m is not an acceptable street frontage for a dwelling within Ku-ring-gai. The KLEP cl 4.1(4) does not apply to strata subdivision hence, 200m2 lots could be proposed as a side-by-side strata or community subdivision, which would be detrimental to Ku-ring-gai and result in possible court proceedings. Note: The image used in MDDG Appendix 5 Recommended Principal Controls – Terrace Houses shows a terrace with garaging that has a minimum width 10m-12m which is double the recommended standard and therefore not representative of the outcome that is proposed and also is indicative of the inadequacy of a 6m lot width.

d) This appears to enable a battle-axe type and makes no sense in context of (f). It is unclear whether the lot referred to is the completed subdivision lot or the parent lot.

e) Conflicts with (d) depending on interpretation. Ambiguous.

f) Supported. However a statement must be provided to clarify that this refers to existing primary secondary or parallel roads, and stipulates that the creation of private roads within a site will not permit Complying Development to occur fronting that new private road. Without clarity in the prohibition of MDH Complying Development within deep sites, there is a real danger of 'gun barrel' type development being created and justified where the internal access driveways are given the status of private roads.

Further, there is unacceptable ambiguity regarding Torrens Title, which will result in multiple lots that can operate as a single "dwelling house" on a "single allotment".

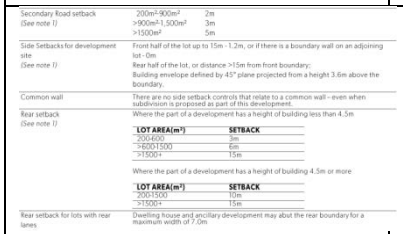
The type takes no account of existing subdivision patterns, provides no mechanism for Councils to implement uptake strategically, and is a type that would have adverse effects on the existing landscape in established areas, such as Ku-ring-gai.

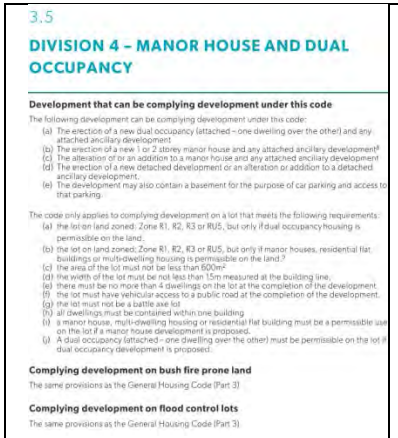
There is no requirement to meet LEP minimum lot sizes. This will result in subdivisions proposing the minimum 200m2 lots.

The lack of control and coordination with Ku-ring-gai's strategic planning will have detrimental impacts on low density areas and destroy much of the existing landscape character.

The type can work well in R3 medium density zones. However, the fatal flaw is that the type assumes rear lane access as optimal,

	which is not available in Ku-ring-gai. This development type enables multiple driveways in conflict with Ku-ring-gai's urban character for basement car parking in multi-dwelling housing development. Poor wording, clumsy coordination, and conflicts between the MDDG recommendations of Principal Development Standards will present difficulties in interpretation and application.
TABLE 5: DEVELOPMENT STANDARDS MUTI DWELLING HOUSING (TERRACES) **STANDARD** **SUMMARY DEVELOPMENT STANDARDS** **PRINCIPAL DEVELOPMENT STANDARDS** Min lot size for each dwelling: 200m² 6m wide. Maximum Height of Building: 9.0m Maximum gross floor area (for each lot): 200-300m² 0.80:1; >300m²-400m² 0.75:1; >400m²-500m² 0.65:1; >500m² 0.60:1	**Min Lot:** 200m^2 not appropriate in Ku-ring-gai. Takes no account of existing subdivision pattern or suitability of type on existing lot configurations. Will lead to 'random' quasi up-zoning with very poor outcomes to urban character. Terrace type is not suitable adjacent to low density zones, particularly adjacent to Heritage Items or Heritage Conservation Areas, as no provision for interface, separation or deep soil landscaping has been factored into this building type. Lot size is more compatible with R1 and R3 zone. Building type is consistent with R3 zone. **Height:** 9m is supported**;** however *MDDG Appendix 5 Recommended Principal Controls – Terrace Houses* recommendations of 3 storeys and height of 10m is inconsistent MDH Codes SEPP standards. Concerns Regarding Impact on HIs and HCAs - In the event the development is adjacent to a HI or HCA, heights of proposed buildings should be the same or lower than the adjacent HI and/or HCA. **FSR:** A 0.8:1 FSR in Ku-ring-gai has been challenging to achieve the desired deep soil landscape character and topographical repute, therefore the 0.65:1 and 0.6:1 are questionable within Ku-ring-gai.
Minimum Landscaped Area (for each lot): 200m² 300m² 20%; >300m²-400m² 25%; >400m²-500m² 30%; >500m²+ 35% (Min width 1.5m) Landscaped area forward of building line: 25% minimum	Landscape: The MDH Codes SEPP makes no provision for Deep Soil. The Landscape definition is inadequate as it could be above basement structure and comply. The application would be disastrous for Ku-ring-gai specifically and all suburban areas (except inner city urban areas) of Sydney, regional cities and towns. There is no requirement for placement of deep soil landscaping to front, side or rear boundaries for streetscape or screening to neighbours. Ku-ring-gai relies on significant vegetation, including large canopy trees being provided within all sites to ensure long term sustainable outcomes for medium and high density developments and to ensure their integration within Ku-ring-gai landscape and local character.. The 20%-35% landscaping could be achieved with in front setbacks. Strata title assumes common areas but it is unclear how this translates given side setbacks for terraces at either ends of a row would comprise a significant component. Torrens Title lot sizes and inadequate landscape requirement will not enable sufficient area for planting to achieve Ku-ring-gai's landscape character. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 25% landscaped area forward to the building line will not be sufficient and will not relate to the landscape areas of HI and/or HCA. An increase in landscaped area is necessary.
Primary Road Setback (See note 1): Average of dwellings within 40m or 200m²-300m² 3.5m; >300m²-900m² 4.5m; >900m²-1500m² 6.5m; >1500m² 10m 1 A storey does not include an attic – ie an attic is permitted in addition to the 1 or 2 storey development. 2 Cl 1.18 requires that the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.	**Primary Road Setbacks:** Within Ku-ring-gai street setbacks are key to providing the streetscape character of buildings within a landscaped garden setting of substantial vegetation, including large canopy trees. As such, the DCP requires 10m primary street setback to multi-dwelling housing sites. The MDH Codes SEPP setbacks will destroy any possibility of maintaining the garden setting with substantial trees within Ku-ring-gai. The MDH Codes SEPP permits a further encroachment of 1.5m articulation zone into what could be a front setback of 3.5m to 6.5m. The Standard must retain the provision for existing building lines of neighbouring dwellings to set the street setback. However, the Standard appears to be worded as a choice of: *Average of dwellings within 40m* ***or*** the nominated minimums. Therefore, this is likely to be tested through a court appeal process given the lesser range 3.5m to 6.5m proposed would be more attractive to maximise FSR.

	Concerns Regarding Impact on HIs and HCAs- in the event the development is adjacent to a HI or HCA, the front setbacks should be in line or behind adjacent HI and/or HCA. Provisions generally diametrically opposed to Federal Government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments. Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state. http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening
	Secondary Road Setback: Ku-ring-gai DCP requires an 8m setback to secondary Roads to integrate within the remainder of the street. MDH Codes SEPP should defer setback requirements to the local standards to ensure integration of the multi-dwelling housing type. Side Setback and Rear Setback: No consideration has been given to setback requirements for side setback and rear setback requirements for habitable and non-habitable rooms. Side and rear setbacks should defer to the Local Planning Instruments. Ku-ring-gai DCP has considered onsite amenity and neighbouring amenity as well as deep soil landscaping within setbacks. The standard is poorly worded and constructed. Setbacks appear to relate to a parent lot size (consistent with a strata type) but are inconsistent with both FSR and landscape lot areas that are for subdivided lots. The provision for the dwelling to abut the rear boundary will be disastrous in Ku-ring-gai and enable the destruction of existing landscape in rear gardens and likely loss of canopy trees under the provisions for tree removal to enable development in the Codes SEPP. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 1.2m side setback, and the rear setbacks, are not sufficient and will encroach on the visual curtilage of HIs and HCAs, and should be increased.
	Overall amenity falls to the MDDG. The current wording and structure of Division 3 then captures the Design Criteria of the MDDG as "Design Standards". This approach can be supported in principle (performs similarly to clause 6A of SEPP 65), however the numerous errors and inconsistencies between the documents is confusing and disturbing as they override Ku-ring-gai's high quality standards and in consideration of the impacts of medium and high density development, and the necessity to make them sustainable and pleasant build forms. However, the preamble of the MDDG clearly states its intended use to be as a 'tool' and does not define it in terms of providing 'development standards'. This leaves a grey area as to its status. The meshing of an ADG type document with Complying Development is incompatible and results in the inevitable poor development. The MDH Codes SEPP and MDDG must stipulate that all works be commenced by a registered architect and not *"person who designed the development."* These medium density developments have significant cumulative impacts and therefore it is inappropriate to allow their design to be decided by unqualified people.
3.5 **Manor House and Dual Occupancy**	Complying development must not be permitted on lots that are adjacent, or are on opposite sides of the road, to HIs and/or HCAs. Attic rooms must only be permitted where they can provide good dormer windows. Design Guidelines must be provided to guide attic development, particularly design and location of dormer windows. Skylights must not be allowed as the primary light source within a habitable room in an attic. The Development Standards must state that a skylight is not permitted. This standard is confusing and ambiguous. With the unusual pairing of Manor House and Dual Occupancy, as they are very different typologies. In Ku-ring-gai, it deals with development that is permitted in R2 areas (Dual Occupancy) and a new



3.5

DIVISION 4 – MANOR HOUSE AND DUAL OCCUPANCY

Development that can be complying development under this code

The following development can be complying development under this code:

(a) The erection of a new dual occupancy (attached – one dwelling over the other) and any attached ancillary development.
(b) The erection of a new 1 or 2 storey manor house and any attached ancillary development.
(c) The alteration of or an addition to a manor house and any attached ancillary development.
(d) The erection of a new detached development or an alteration or addition to a detached ancillary development.
(e) The development may also contain a basement for the purpose of car parking and access to that parking.

The code only applies to complying development on a lot that meets the following requirements:

(a) the lot on land zoned: Zone R1, R2, R3 or RU5, but only if dual occupancy housing is permissible on the land;
(b) the lot on land zoned: Zone R1, R2, R3 or RU5, but only if manor houses, residential flat buildings or multi-dwelling housing is permissible on the land;
(c) the area of the lot must not be less than 600m²
(d) the width of the lot must be not less than 15m measured at the building line,
(e) there must be no more than 4 dwellings on the lot at the completion of the development,
(f) the lot must have vehicular access to a public road at the completion of the development,
(g) the lot must not be a battle axe lot
(h) all dwellings must be contained within one building
(i) a manor house, multi-dwelling housing or residential flat building must be a permissible use on the lot if a manor house development is proposed,
(j) A dual occupancy (attached – one dwelling over the other) must be permissible on the lot if dual occupancy development is proposed.

Complying development on bush fire prone land

The same provisions as the General Housing Code (Part 3)

Complying development on flood control lots

The same provisions as the General Housing Code (Part 3)

development type that will only be permitted in R3 areas (Manor House). For consistency and clarity, the Dual Occupancy provisions should be grouped with the other Dual Occupancy provisions of Division 2 – (renamed as) Dual Occupancy (instead of Side by Side). It should be clarified that Manor House is a medium density type and only permissible within R3 Zoned land where permitted.

No reference is made to LEP for minimum lot size of parent lot. KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP of the permitted subdivision lots. This must be included.

The only R1 zoned sites in Ku-ring-gai are subject to site specific Master Plans, which therefore coordinate the broad range of permitted housing types within a specific major development precinct. Therefore the standards should indicate it is not applicable on existing Master Planned sites.

Comments on Complying Development:

d) Refers to detached development but this is inconsistent with (h) of site requirements.

Comments on Lot requirements:

a) Dual occupancy is not permitted in KLEP R2 zones apart from nominated Schedule 1 properties. Anecdotal experience in Ku-ring-gai for dual occupancy as rear yard subdivision of existing lots is generally not supported unless sites are excessively deep and can preserve significant canopy and deep soil landscape. Dual Occupancies tend to result in very large dwellings with very little landscape and, in the Ku-ring-gai context on smaller lots, inevitably lead to loss of canopy and deep soil landscape. Side-by-side dual occupancy or other creative dual occupancy has less impact on landscape and will achieve a better streetscape and internal site character outcome provided the standards encourage the built form to be the appearance of one large house rather than the look of two dwellings that are separated through lack of design consideration of the individual and adjacent build character.

b) Whilst Manor Housing might be in principle well suited to low and medium density zones, providing appropriate development controls are in place to control desired local urban character, particularly reinforcing the built form so that it has the appearance of one large dwelling, whilst accommodating two to four dwellings.

Manor House is supported in R3 zones, as it may promote more housing choice with other multi-dwelling types within the same development; or provide more flexibility on isolated R3 zoned sites. Nevertheless, the requirements of deep soil landscaped settings prevail.

Concern is raised that only strata development is included in draft Site Requirements. Yet Torrens Title subdivision is the stated aim of the Codes SEPP (see section 1.6 Subdivision in Explanation of Intended Effects). There appears no minimum lot size of the parent lot for such a subdivision, nor is there any reference to local LEPs as to the determining document for lot size.

c) KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP for R3 zone.

d) 15m proposed under Code SEPP Conflicts with KLEP for 18m site width

e) Supported.

f) Supported.

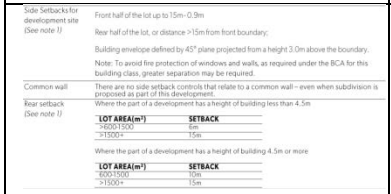
g) Supported.

h) Supported for Manor House. Requirement to be in one building conflicts with item (d) of 'detached' development nominated under this complying development category.

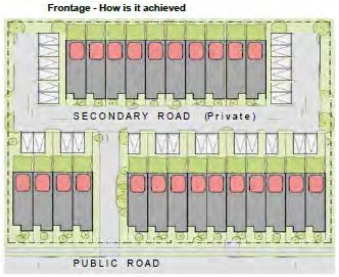
i) Supported.

j) This type of development needs to be amended to only state attached Dual Occupancy, and all Dual Occupancy standards

	must be relocated to Division 2.
STANDARD **SUMMARY DEVELOPMENT STANDARDS** **PRINCIPAL DEVELOPMENT STANDARDS** Maximum Height of Building 8.5m Maximum FSR >600m²-700m² 0.6:1 >700m² - 900m² 0.5:1 >900m² 0.4:1	**Height:** KLEP permits height of 9.5m in R2 zone and 11.5m in R3 complementing the Codes SEPP. However, the inconsistency will result in cl 4.6 submissions to vary the SEPP Design Standard. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, heights of proposed buildings should be the same or lower than the adjacent HI and/or HCA.
Minimum Landscaped Area >600m²-700m² 30% >700m²-900m² 35% >900m²-1500m² 40% >1500m² 45% (Min width 1.5m) Landscaped area forward of building line. 50% minimum	Landscape: No provision has been made for Deep Soil landscaping, which enables the planting of substantial vegetation, including tall trees which ensures that long term preservation of soils and substrata that are fundamental to stormwater catchment and which is a basic requirement for alignment with State Policies on Climate Change and sustainable cities. The Standard Instrument LEP Landscape definition is inadequate as it could be entirely above structure and comply with the MDH Codes SEPP. Application of SEPP minimum requirements would be disastrous for Ku-ring-gai specifically and all suburban areas (except inner city urban areas) of Sydney, regional cities and towns. Standards states total landscape areas of: >900-1500m2 @ 40% and >1500m2 @ 45% There is no site coverage requirement in the MDH Codes SEPP Standard that is otherwise available in Ku-ring-gai DCP controls. The provisions are generally diametrically opposed to Federal government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments. http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening Councils must retain development controls for FSR, setbacks, landscape including deep soil, site coverage to achieve site/precinct/local specific controls for the desired urban character. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 50% landscaped area forward of the building line may need to adjust to suit the adjacent HI or HCA.
Primary Road Setback (See note 1) Average of dwellings within 40m or >600m²-900m² 4.5m >900m²-1500m² 6.5m >1500m² 10m Secondary Road setback (See note 1) >600m²-1,500m² 3m >1500m² 5m	**Primary Road Setbacks:** Setbacks must be consistent with local DCP controls. The MDH Codes SEPP has small setbacks g-gai, which utilises setbacks to contribute to streetscape and areas character by enabling substantial planting. des SEPP will result in buildings that are an anomaly in the streetscape particularly as the MDH Codes SEPP .5m articulation zone encroachment into the already small street setbacks. etain the provision for existing building lines of neighbouring dwellings to set the street setback instead of being worded as a choice of: *Average of dwellings within 40m* ***or*** the nominated minimums. The ambiguity is likely to be tested through a court appeal process given the lesser range 4.5m to 6.5m proposed would be more attractive to a developer seeking to maximise achievable FSR. Proposed MDH Codes SEPP minimum setbacks to the primary road will significantly alter the existing landscape character where R2 low density housing existing urban character in Ku-ring-gai.

	Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the front setbacks should be in line or behind adjacent HI or HCA. **Secondary Road Setback:** Proposed 3m setback is significantly less than Ku-ring-gai DCP for similar development.
 Side Setbacks for development site (See note 1) Front half of the lot up to 15m- 0.9m Rear half of the lot, or distance >15m from front boundary: Building envelope defined by 45° plane projected from a height 3.0m above the boundary. Note: To avoid fire protection of windows and walls, as required under the BCA for this building class, greater separation may be required. Common wall There are no side setback controls that relate to a common wall – even when subdivision is proposed as part of this development. Rear setback (See note 1) Where the part of a development has a height of building less than 4.5m LOT AREA(m²) SETBACK 600-1500 6m >1500+ 15m Where the part of a development has a height of building 4.5m or more LOT AREA(m²) SETBACK 600-1500 10m >1500+ 15m	**Side setback:** MDH Codes SEPP is significantly less than other multi-dwelling housing controls and will not enable any screening landscape between buildings. If the SEPP Complying Development for General Housing is also implemented, it would negatively impact on landscape provision alongside boundaries between buildings and result in streetscape that are incongruent with the character of Ku-ring-gai- of buildings with deep soil landscape setting to all sides to the buildings. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 0.9m side setback will encroach on the visual curtilage of HIs and HCAs, and should be increased. **Rear setback:** These setbacks will have a damaging impact on R2 zones in Ku-ring-gai that generally require min 12m setback irrespective of building height while MDH Codes SEPP will permit 6m for height <4.5m , 10m for sites 600-1500m2 for walls >4.5m. Note: 15m for height >4.5m would achieve improved potential for positive landscape outcome although it only applies to sites >1500m2. The MDH Codes SEPP standard is poorly worded and constructed. Setbacks appear to relate to a parent lot size (consistent with a strata type) but are inconsistent with both FSR and landscape lot areas that are for subdivided lots. The ambiguity opens the standards to misinterpretation, which would have to be settled through Court decisions. The provision for the dwelling to abut the rear boundary assumes rear lane conditions which generally do not exist in Ku-ring-gai. As such, the result will be disastrous in Ku-ring-gai and enable the destruction of existing landscape in rear gardens and likely loss of canopy trees under the provisions for tree removal to enable development in the MDH Codes SEPP. The provisions are generally diametrically opposed to Federal Government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments. Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state. http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed rear setbacks will not be sufficient and will encourage on HIs and/or HCAs. A landscape buffer is required to separate the proposed building from the established garden setting of HIs.
3.6 **Subdivision Code**	The traditional Development Application process considers appropriate subdivision planning. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. The ability to maintain trees on lots of 200m^2 is particularly limiting. Small trees have little impact on the storage of CO--$_2$. Australia's annual greenhouse gas emissions were estimated at 592 million tonnes and have been projected to increase to 690 million tonnes in 2020. It is critical that traditional forms of subdivision are not compromised to ensure that tree retention in the suburbs is maintained. Presently, approved developments can be Strata Subdivided. Strata subdivision ensures that maintenance of common property and that building facades are maintained in a common fashion.

	It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application. It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard. Particular concern is raised with respect to the proposal to enable the Torrens Title Subdivision of small lots and its impact on future generations. The *Environmental Planning and Assessment Act 1979* specify the objectives under Part 5 as: *(a) to encourage:* *(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,* *(ii) the promotion and co-ordination of the orderly and economic use and development of land,* *(iii) the protection, provision and co-ordination of communication and utility services,* *(iv) the provision of land for public purposes,* *(v) the provision and co-ordination of community services and facilities, and* *(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and* *(vii) ecologically sustainable development, and* *(viii) the provision and maintenance of affordable housing, and* *(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and* *(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.* In this regard, the provision of the SEPP must ensure that development is properly managed with the assurance of co-ordinating orderly and economic use of development land. Essentially, the SEPP must also ensure that development is ecologically sustainable; and, provide an appropriate level of public involvement and participation in environmental planning and assessment. It would appear that the current provisions as proposed would not meet these objectives. The definition of ecologically sustainable development under the *EP&A Act 1979* is derived from Part 6 (2) of the *Protection of the Environment Administration Act 1991*. Concern is particularly raised with respect to intergenerational equity with respect subdivision plans. The redevelopment of 200m^2 allotments under Torrens Title is likely to place significant pressures on the future redevelopment of sites within the next 40 to 60 years. We are only now seeing the implications of previously subdivided terrace housing and attached semi's in Sydney. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space. The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same

	light. Further concern is raised with respect to the redevelopment of the created small lots potentially approved under this scheme. Ironically, under the proposed controls, the redevelopment of a site approved for such development would not be able to be re-developed in the event of a fire or demolition under the very controls which approved the development in the first instance. Setback controls to the existing boundaries would prohibitively restrict the redevelopment of the site to achieve compliance. Lot amalgamation to redevelop urban areas is an expensive exercise. The Strata Act was changed to enable Strata Plans to be redeveloped even where not all owners are in agreement.
3.7 **Definitions**	**Interpretation of Frontage-** 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. Frontage is not defined in the MDDG, MDH Codes SEPP, EP&A Act, Standard Instrument 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 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.  **'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." **Interpretation of Primary Road-** The ambiguity regarding the definition of 'streets' must be clarified and amended. Courts have defined a primary street (or road, lane etc.) as being public ***or private*** and accepted frontage as "land abutting on a street" *Langford v Copmanhurst Shire Council/1994* (82) LGERA 262 and *McGinn v Ashfield Council/2012* (NSW CA 238) The proposed use of the words 'primary', 'secondary', and 'parallel' roads/streets/lanes becomes an enabling mechanism to permit development outside the intended scope of complying medium density development. This is development of a type that has been demonstrated to achieve the worst urban outcomes across Sydney, and indeed nationally. Commonly known as 'villa' type development (attached or detached) with dwellings that are fully internalised to a site, with a driveway and vehicles impacting the full length of the site, dwellings with no public domain address, and with poor amenity due to inadequate building separations where habitable rooms are oriented to side boundaries. They result in large areas of hard stand effectively prioritising vehicular access over landscape. This can now be extended to all the proposed medium density housing types. They are permitted because these ambiguous terms have led the courts to interpret a private driveway as a

	primary/secondary/parallel 'street' if a dwelling addresses it. This is of particular concern in Ku-ring-gai due to the existing street layout that has set a very deep and often long block pattern that results in very deep subdivisions with an absence of mid-block public connections. Medium density housing models that use a private driveway as a 'street' 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. It is also worth noting, failure to comply with these policies is 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. Medium density housing that defines a driveway as a 'street' are advocated in the MDDG despite failing to achieve the required design quality principles. Recommendations: a) All streets, roads, lanes must be defined and referenced as public streets, roads, lanes etc. only and must exclude private driveways What is a street, or road, or lane? Private driveways are NOT streets, roads or lanes The inclusion of 'internal streets' that are not public streets/roads/lanes are really a network of internal private driveways. Their inclusion: - has the effect of an enabling clause for types of development not intended to be via the CDC pathway; - facilitates a pathway and provides financial incentive for corrupt behaviour; - enables very large developments (similar to those at MDDG Part 3, Design Criteria 3.3 Multi-Dwelling Housing and Master Planned Communities) to be excised from any independent assessment or verification for development in R3 zones where multi-dwelling housing is permitted; - has the effect of excising large developments of a high-impact housing type from broader State and Local strategic planning. The effect is in conflict with the intent of the policy. The housing type also results in development that fails to meet other objectives of the MDDG and is in conflict with other State and National policies. Recommendations: a) All references to streets/roads/lanes must be changed to be public streets/roads/lanes b) Should this not occur, The Department must remove from the Codes SEPP all development that proposes vehicle access via internal streets/roads/lane that are not public. These developments must be determined by DA pathway. The ambiguity regarding the definition of 'streets' must be clarified and amended. The proposed use of the words 'primary', 'secondary', and 'parallel' roads/streets/lanes becomes an enabling mechanism to permit development outside the intended scope of complying medium density development. This is development of a type that has been demonstrated to achieve the worst urban outcomes across Sydney, and indeed nationally. Commonly known as 'villa' type development (attached or detached) with dwellings that are fully internalised to a site, with a driveway and vehicles impacting the full length of the site, dwellings with no public domain address, and with poor amenity due to

	inadequate building separations where habitable rooms are oriented to side boundaries. They result in large areas of hard stand effectively prioritising vehicular access over landscape. This can now be extended to all the proposed medium density housing types. They are permitted because these ambiguous terms have led the courts to interpret a private driveway as a primary/secondary/parallel 'street' if a dwelling addresses it. This is of particular concern in Ku-ring-gai due to the existing street layout that has set a very deep and often long block pattern that results in very deep subdivisions with an absence of mid-block public connections. Medium density housing models that use a private driveway as a 'street' 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.[1] It is also worth noting, failure to comply with these policies is 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. Medium density housing that defines a driveway as a 'street' are advocated in the MDDG despite failing to achieve the required design quality principles. This leads to the flow-on implications with the term 'frontage'. Recommendations: a) All streets, roads, lanes must be defined and referenced as public streets, roads, lanes etc. only and must exclude private driveways. **Interpretation of Dwelling House** – The intention to make all Codes SEPP definitions consistent with the SI LEP definitions is supported, to remove ambiguity around permissibility of types. Existing definitions of 'dwelling house' between the Codes SEPP and SILEP permit vastly different types of development. Under the existing Codes SEPP 'Dwelling house' is defined as a building containing one dwelling, an attached dwelling or a semi-detached dwelling, but does not include any part of the building that is ancillary development or exempt development under this Policy. Under the Standard Instrument LEP 'dwelling house' is defined as a building containing one dwelling. While the intention appears to be that the Codes SEPP definition be amended and aligned with the SILEP definition, if this does not occur, the effect is essentially a blanket rezoning all R2 land to R3, extrapolated across NSW resulting in serious, long term negative impacts. This is the worst of planning implementation. This has huge strategic planning implications for NSW that should sound alarm bells for the Greater Sydney Planning Commission and NSW Planning and Environment such that this broad-reaching policy proceeds with caution and be reconsidered, coordinated, and well implemented. Recommendations: a) The definition of 'dwelling house' must be amended to align with the SILEP definition. **Amendment to definition of multi dwelling housing** – This amendment to the definition is supported and will hopefully see an end to development which has been designed in such a way that, whilst technically it provides direct access at ground level, the reality is that the development reads as a residential flat building. This has occurred within the Ku-ring-gai area whereby the development was determined to meet the LEP definition of multi-dwelling housing but also triggered SEPP 65 and had to address the SEPP 65 Design Quality Principles. The applicants used the RFDC to justify non-compliances when the relevant control to assess a multi-dwelling housing development against was considered to be the Local Centres DCP. However, the Explanation of Intended Effects notes at page 6 that low rise medium density housing as Complying Development is characterised by the entry and private open space being at ground level. Manor Houses do not fit within this definition by virtue of

	the fact that one dwelling can sit above another and the dwelling entry can be at first floor level and the private open space can be provided by the use of balconies in the rear of the site. This seems to be already blurring the line and allowing dwellings above others (albeit only two storeys high) which can provide principal open space areas at a high level thereby increasing opportunities for overlooking and acoustic impacts on adjoining properties. There needs to be further clarification as to the relationship between the definitions of 'manor house' and 'multi dwelling housing (terraces)'. Are these uses intended to be a sub category of 'multi dwelling housing' or are they intended to be standalone land uses. This clarification needs to be made as it will have significant implications for the drafting of land use table in future LEPs. Recommendations: a. The proposed amendment to the definition of 'multi dwelling housing' in the SILEP is supported. b. The relationship of the definitions for 'manor house' and 'multi dwelling housing (terraces) with multi dwelling housing' needs to be clarified and made explicit. **Inclusion of a definition for Deep Soil Landscaping -** in the Codes SEPP and in the SI LEP. '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. The importance of deep soil landscaping is its fundamental role in the delivery of sustainable environments through enabling substantial landscaping including large canopy trees, which result in • 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 current sustainability agenda and the growing acknowledgement in State, National and International policies and directions of the importance to deliver development that considers the generational impacts on local and greater environments. The Ku-ring-gai DCP contains the following definition which can replicated: ***Deep soil landscaping*** *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^2.* *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.* **Interpretation of Environmentally Sensitive land** - A portion of land which is subject to riparian and biodiversity provisions should not be considered suitable for Complying Development of any kind. It should not be dependent on a definition of "Environmentally sensitive land" or an "Ecologically sensitive area" to exclude these areas.