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Codes and Approvals Pathways
Department of Planning and Environment
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CD(CIS)

12 December 2016

Dear Sir/Madam,

**RE: DRAFT MEDIUM DENSITY HOUSING CODE & DESIGN GUIDE IN SEPP
(EXEMPT AND COMPLYING DEVELOPMENT CODES), 2008**

North Sydney Council (Council) would like to thank the Department of Planning & Environment (DPE) for the opportunity to provide comments in response to the draft Medium Density Housing Code (new Code) & Design Guide (MDDG) that are proposed to be incorporated within the State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP).

Council considered the implications of the new Code and MDDG at its meeting of 5 December 2016.

Whilst Council is generally supportive of the proposed amendments to the Codes SEPP, it resolved to lodge a submission identifying a number of issues that still need to be resolved from Council's previous submissions to the *Discussion Paper* and additional issues that require further investigation or further amendment arising from the currently established documents.

Recommendations to Council's Previous Submission

Council staff made a submission to the DPE's *Discussion Paper* on 11 February 2016, and a supplementary submission on 25 February 2016 (refer to Attached).

The draft MDDG and Explanation of Intended Effects (EIE) to the new Code have addressed a large number of Council's concerns outlined in these submissions. However, Council has identified a number of issues from its submissions that have not been adequately addressed.

Recommendation:

That the following issues be considered in the finalisation of the new Code and MDDG:

- ***Additional requirements should be added to exclude access handles and rights of carriageways from the calculation of minimum lot sizes;***
- ***Additional rear setback controls for dual occupancies and multi-dwelling houses should be developed for where a site has rear lane access (for the dwellings but excluding car parking);***
- ***Amend the proposed side setback controls for dual occupancies and manor houses such that a minimum setback of 900mm is required for the first storey (ground level) and 1500mm above the first storey (first floor level);***



- *Amend the proposed side setback controls for multi-dwelling housing such that building height plane controls are removed and replaced with nominal setbacks;*
- *Ensuring that domestic waste and stormwater disposal be certified by councils and not private certifiers;*
- *Attic rooms should not be permitted to be carried out as complying development;*
- *Adaptable housing requirements should be incorporated, stipulating that at least 10% of all dwellings within a development are capable of being made adaptable; and*
- *The amount of garage or car parking facing the street should be restricted to a maximum of 50% of a buildings frontage to a street, or 7m of a building frontage, whichever is smaller.*

In addition to the issues raised in previous submissions to the *Discussion Paper*, Council staff have identified a number of issues to the draft MDDG and EIE that are detailed in the following sections.

Definitions

The EIE proposes to amend and introduce new land use terms into the Standard Instrument Local Environmental Plan (SI LEP). However, the proposed amendments and new terms have the potential to create some confusion. Therefore, to improve the clarity in the application of the new Code and the types of development that are permissible under the new Code, it is recommended the proposed definitions be amended and additional definitions included.

Multi dwelling housing and Multi dwelling housing (terraces)

Multi dwelling housing can comprise a variety of dwelling configurations. The proposed amendments to the definition of *multi dwelling housing* and the proposed introduction of a new definition of *multi dwelling housing (terraces)* may create a level of confusion, especially if *multi dwelling housing (terraces)* is to comprise a sub-term of *multi dwelling housing*.

To improve clarity, the definition of *multi dwelling housing* should be amended to comprise a group term that identifies the different types of multi dwelling housing forms.

Townhouses and villas

It is suggested that new definitions be created for ‘*townhouses*’ and ‘*villas*’, as sub-terms to ‘*multi dwelling housing*’, to further clarify the types of development that are permitted under the Codes SEPP and avoid any ambiguity in interpretation of land use terms.

Manor Houses and Residential Flat Buildings

The proposed definition of *manor house* is quite similar to the definition of a *residential flat building*, other than it provides limitations on its connection between dwellings and imposes a maximum height and a maximum number of dwellings.

To improve clarity, it is suggested that the definition of *manor house* be amended to exclude the development type from being classified as a *residential flat building*, and that the definition of *residential flat building* be amended to exclude the development type from being classified as a *manor house*.

Recommendations:

- *To improve the clarity of the new Code, the definitions for ‘multi dwelling housing’, ‘multi dwelling housing (terraces)’, ‘manor house’ and ‘residential flat building’ should be amended, as follows (red underline represents an insertion and ~~blue strikethrough~~ a deletion):*

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with direct access to the dwelling and private open space at ground level, and no other dwellings are above or below and includes any of the following:

- (a) terraces,
- (b) townhouses, and
- (c) villas.

but does not include a manor house or a residential flat building.

~~**multi dwelling housing (terraces)**~~ means 3 or more dwellings which are attached on one lot of land; and each dwelling has a direct frontage to a public road ~~and no other dwellings are above or below.~~

Note. Terraces are a type of multi dwelling housing – see the definition of that term in this dictionary

manor house means a building containing 3 or 4 dwellings on one lot of land, where:

- (a) Each dwelling is attached to another dwelling by a common wall and/or floor, and
- (b) The building contains no more than two storeys, excluding any basement storey. and does not include a residential flat building.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, manor house or multi dwelling housing.

- **To improve the clarity in the types of development that are permitted under the Codes SEPP and avoid ambiguity in the interpretation of land use terms, definitions for ‘townhouses’ and ‘villas’ should be included, as follows:**

Townhouses means 3 or more dwellings (whether attached or detached) on one lot of land, and does not include terraces or villas.

Note. Townhouses are a type of multi dwelling housing – see the definition of that term in this dictionary.

Villas means 3 or more dwellings (whether attached or detached) on one lot of land, not exceeding 1 storey in height and does not include terraces or townhouses.

Note. Villas are a type of multi dwelling housing – see the definition of that term in this dictionary.

Dual Occupancy Development (detached)

The new Code will permit various forms of dual occupancy development as complying development but only where it is permissible under a council’s LEP and it is located in the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential or RU5 Village zone. In particular, the new Code will permit both attached (both vertically and horizontally) and detached forms of dual occupancy as complying development.

North Sydney Local Environmental Plan (NSLEP 2013) only permits attached dual occupancies within the R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential and IN2 Light Industrial zones with development consent. Detached dual occupancies are prohibited outright through the entire North Sydney LGA under NSLEP 2013.

Therefore, it would appear that under the new Code, attached dual occupancies will be only permitted as complying development in the *R2 Low Density Residential* and *R3 Medium Density Residential* zones within the LGA and detached dual occupancies will not be able to be undertaken as complying development.

It is unclear if the actual provisions of the new Code could potentially override Council's planning controls. In particular, despite NSLEP 2013 only permitting attached dual occupancies, will the new Code automatically permit both attached and detached forms of dual occupancies to occur as complying development within the North Sydney LGA. Further clarification is therefore required to ensure that the new Code does not undermine Council's planning policies, which have been endorsed by the wider community.

Recommendation

The new Code should provide clarification as to whether the actual provisions of the new Code will directly override a council's permissibility of dual occupancies for each sub-type. In particular, it should be made clear that when dual occupancies are permitted as a group term as complying development under the new Code, a sub-type of dual occupancy will not be permitted if that sub-type is prohibited under a council's LEP.

Multi-Dwelling Housing (terraces)

The maximum permitted height of *multi dwelling housing (terraces)* under the new Code is proposed to increase from 8.5m to 9m. The justification for this increase in height is to allow for the provision of basement parking or an attic.

The proposed increase in height is not supported, as:

- All other housing types permitted under the Codes SEPP and proposed new Code may provide a basement for parking or an attic, yet are also restricted to a maximum of 8.5m in height; and
- Basements are deemed to be a storey (refer to clause 3.2A to the Codes SEPP) but attics are not (refer to clause 1.5(2) to the Codes SEPP and the definition of 'storey' under the SI LEP) and therefore an attic could easily be accommodated within the 8.5m height limit, given that basements can't project more than 1m above ground level.

Under the new Code, it is not proposed to allow terraces to be built to side boundaries. This is to ensure that there are breaks in the streetscape and to reduce the visual bulk of buildings. However, there is no limitation on the overall length of a set of terraces, which could counteract this argument.

It is therefore recommended that the street façade of a set of terraces not exceed between 40-50m in length to ensure adequate breaks are provided. This is generally consistent with the best practice for the erection of residential flat buildings.

Recommendation

- ***The maximum height of buildings for multi dwelling housing (terraces) be reduced from 9m to 8.5m under the new Code;***
- ***The length of terrace house developments on the same lot, prior to subdivision, of land be limited to 40-50m.***

Manor Houses

The new Code envisages manor houses to comprise either:

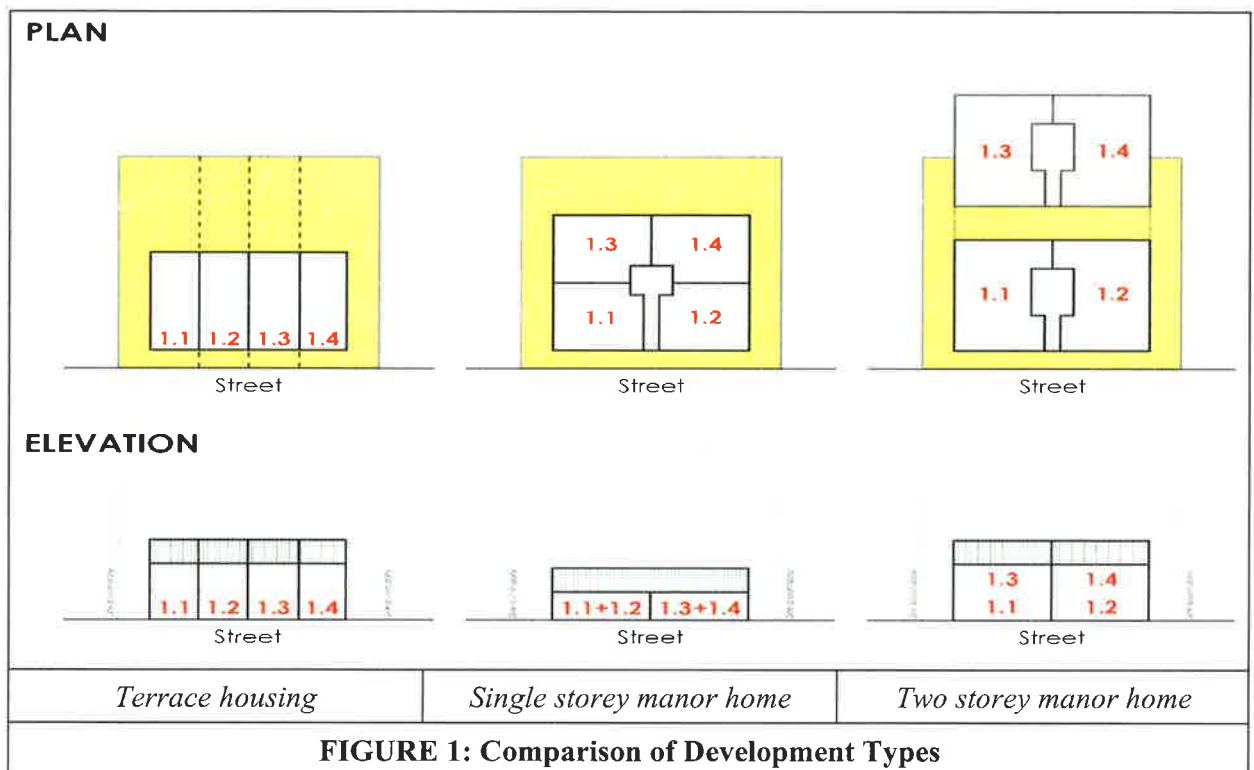
- one dwelling on the ground floor with two dwellings above; or
- two dwellings on the ground floor with two dwellings above.

However, the proposed definition of a manor house could technically permit three or four dwellings to be constructed at the ground level. As there are no specific controls proposed requiring a manor house to comprise a two storey built form, there is some confusion as to what could be permitted (refer to Figure 1).

Accordingly, further clarification is required to determine if a manor house can comprise four dwellings in a single storey form.

Recommendation

The new Code should provide clarification as to whether manor houses can comprise four dwellings in a single storey form.



Development Standards

The new Code contains a number of development standards which are to be applied to the various new development types. However, sometimes it is not entirely clear as to whether the proposed development controls (e.g. minimum lot size) should apply to the development site (i.e. the subject land before any development occurs) or to an area of land upon which an individual proposed dwelling is to be located under the new Code and will form a new lot under a potential future subdivision.

Furthermore, given that there is no mandate to subdivide the complying development once it is finished, it will therefore be difficult to apply some of the development standards where they relate to a potential future subdivision. The issue is further exacerbated by apparent conflicting requirements throughout the EIE.

To remove any confusion, the proposed controls should be simplified, such that they specifically and clearly relate to the original site allotment size and/or the number of dwellings proposed to be provided. This would remove any doubt if the proposed properties are not to be subdivided. It is suggested that a new term and definition, such as 'dwelling lot', could be created to provide increased clarity in the application of the proposed development controls.

Furthermore, in Section 3 of the EIE, the new Code proposes development standards relating to the size and widths of strata lots, but is silent with regard to lots within a Torrens title subdivision. This would appear to prevent the Torrens title subdivision of land which is contrary to one of the intents of the EIE. If it is proposed to restrict the area and width of strata lots, the development standards would need to be amended to cater for those instances where basement parking is to be provided and a lot is spread over multiple levels and not necessarily over the same ground plane.

Accordingly, the new Code needs to be revised to greatly improve clarity as to when development standards apply.

Recommendation

- *The proposed development standards should be amended such that they apply to the original lot of the land or proposed dwelling lot;*
- *Incorporate a new definition within the SI LEP or new Code for 'dwelling lots', as follows:*

dwelling lot means the land to which a dwelling has sole occupation, prior to its subdivision.

Design Verification Statement

If the MDDG is adopted in its entirety by a council, proposals for medium density housing will be required to be accompanied by a Design Verification Statement, demonstrating the proposal's compliance with the MDDG.

However, there does not appear to be a legal requirement to do this under the current proposed set of documents so it is unclear as to how this will be enforced. Further clarification is required in this respect. One potential solution would be to mandate the requirement for a Design Verification Statement under the SI LEP. This would ensure that all medium density housing would be designed in accordance with the design principles set out in the MDDG, without having the need to address the individual design controls within the document.

Recommendations

A requirement should be mandated through the new Code or SI LEP for proposals for medium density housing to be accompanied by a Design Verification Statement demonstrating the proposals compliance with the MDDG.

CONCLUSION

At its meeting of 5 December 2016, Council considered the implications of the new Code and MDDG.

Whilst Council is generally supportive of the proposed amendments to the Codes SEPP, it resolved to lodge a submission identifying a number of issues that still need to be resolved from its previous submissions to the *Discussion Paper* and additional issues that require further investigation or further amendment arising from the currently established documents.

Amendments should be made to the new Code prior to finalisation to ensure that the policy is appropriately applied.

Council would again like to thank the DPE for its involvement to date and welcomes the opportunity for continued involvement in the review of the Codes SEPP.

If you have any further queries please contact Ben Boyd of Council's Strategic Planning Department on 9936-8100.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Occhuzzi', with a small 'per' written below it.

MARCELO OCCHUZZI
MANAGER STRATEGIC PLANNING

Original signed by Marcelo Occhiuzzi on 11/2/2016

Codes and Approvals Pathways
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

KP(CIS)

11 February 2016

Dear Sir/ Madam,

**RE: EXPANDING COMPLYING DEVELOPMENT TO INCLUDE TWO STOREY
MEDIUM DENSITY HOUSING TYPES**

North Sydney Council (Council) would like to thank the Department of Planning & Environment (DPE) for the opportunity to provide comments in response to the proposed expansion of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) to enable 2-storey medium density housing types to be approved as complying development.

Whilst generally supportive of the proposed amendments to the Codes SEPP, Council has identified a number of issues which require further investigation or further amendment.

DUAL OCCUPANCIES

The proposal to allow attached dual occupancy development to be undertaken as complying development is generally supported by Council. However, the following issues require further investigation or amendment prior to incorporation within the Codes SEPP.

Zoning

The proposed zoning controls would not enable attached dual occupancies to be undertaken as complying development within the R4, R5, Rural zones and Environmental Living zones. However, the proposed controls would enable attached dual occupancies to be undertaken as complying development within business, industrial, recreational, special uses and some waterways zones and environmental zones, if permitted with consent. This does not appear to be the original intent of the proposed controls and therefore, should be amended to ensure that attached dual occupancies as complying development are only permissible in the R1, R2 and R3 residential zones.

Recommendation:

The proposed zoning control should be rewritten to ensure that attached dual occupancies can only be carried out as complying development in the R1, R2 and R3 zones.

Lot Size

The proposed minimum lot size requirement for dual occupancies does not consider the inclusion of any access handles or rights of carriageways which can effectively reduce the amount of land available upon which a dual occupancy development may be carried out. It is therefore recommended that the proposed minimum lot size requirement should exclude any access handles or rights of carriageways to ensure suitable amenity is achieved.

Recommendation:

An additional requirement should be added to the proposed lot size control to exclude any access handles or rights of carriageways from the calculation of lot size.

Rear Setback

The proposed rear setback controls for dual occupancies is generally supported by Council. However, it is noted that there are no alternative requirements for sites that have rear lane access and specific controls may be required to ensure that laneway streetscapes are not adversely affected.

Recommendations

An additional rear setback control should be developed for where a site has rear lane access.

Side Setback

The proposed minimum side setback controls for dual occupancies is 900mm with a building envelope measured at a height of 5.5m at the side boundary and projected at 45 degrees.

Building height planes are often difficult to interpret and implement, especially on sloping sites. For this particular reason, Council recently removed its building height plane requirements and replaced them with minimum distance setback controls to provide increased clarity. The setbacks that Council adopted generally reflected the minimum Building Code of Australia (BCA) requirements, where additional fire safety measures are not required. It is therefore recommended that a simpler two step setback requirement, dependent upon the number of storeys, be adopted to provide greater certainty for proponents and adjoining residents.

Recommendations

The proposed side setback controls should be amended such that a minimum setback of 900mm is required for the first storey (ground level) and 1500mm above the first storey (first floor level).

Private Open Space

The proposed minimum private open space requirements for dual occupancies is 24m² (with a minimum dimension of 4m) at the ground level and 12m² (with a minimum dimension of 2.4m) if provided as a balcony. It is noted that the proposed controls allows a dwelling located above the ground level to have less open space than those located at the ground level. Both dwellings should be required to provide at least 24m² of private open space to ensure reasonable levels of amenity. This is especially important given that dual occupancy dwellings typically contain 3-4 bedrooms.

Recommendations

The proposed minimum private open space requirements for dual occupancies should be amended such that both dwellings within a dual occupancy development be required to provide a minimum of 24m² of private open space.

Subdivision

The proposed minimum lot size requirement for a Torrens title subdivision is generally supported by Council. However, the minimum lot size requirement should exclude the area of any access handles or rights of carriageway, to ensure that appropriate amenity is achieved to both dwellings as previously discussed.

Furthermore, subdivisions should also be limited to horizontally attached dwellings due to complexities in addressing vertical separation.

Recommendations

The proposed minimum lot size requirement for a Torrens title subdivision should be amended to exclude the area of any rights of carriageways and access handles from the calculation of lot size. An additional control should also be developed to limit Torrens title subdivisions to horizontally attached dwellings.

SPECIFIC DISCUSSION PAPER QUESTIONS

Table 1 below outlines Council's response to a number of questions posed by the Discussion Paper in relation to permitting dual occupancy development as complying development.

TABLE 1: Response to Dual Occupancy Questions	
Question	Council comment
Should the development of dual occupancies on a single lot as complying development be permitted in R1, R2 and R3 zones?	YES This accords with the permissibility of development under NSLEP 2013, ensuring that such development occurs in lower density residential zones and maintains higher density residential zones for more orderly economic development.
Should the minimum frontage be reduced to 14m so that the construction of 2 dwellings on a single lot can be carried out as complying development on more existing lots?	NO A quick analysis of the proposed controls shows that it would be difficult to accommodate a dwelling with a single car garage (3m), access corridor / front door (1.2m) and an adequately sized habitable room (2.3m – 3m is desirable) across the front of both lots at the ground floor level, whilst also considering setback requirements, when the minimum site width is used. Further reducing the minimum setback would compromise the inclusion of a habitable room fronting the street at the ground level.
Should the height be limited to 8.5m?	YES This is generally consistent with Council's height requirements for development in low density areas in other council areas.

TABLE 1: Response to Dual Occupancy Questions	
Question	Council comment
Should attic rooms be permitted?	<p>NO</p> <p>Given the restrictions on overall building height and the minimum floor to ceiling heights, it would not be possible to accommodate a habitable room within the roof space. If such development is sought, nothing prevents a proponent from obtaining development consent via lodgement of a DA.</p>
Should 2.7m floor to ceiling heights be imposed?	<p>YES</p> <p>This accords with current best practice to provide better amenity within dwellings.</p>
Should eaves and roof overhangs be required to comply with the envelope control?	<p>YES</p> <p>That is the original intent of the building height plane.</p>
Would the application of a 1.2m setback and no building envelope be easier to implement?	<p>YES</p> <p>It is agreed that setback controls are easier to implement than a building envelope. However, it is requested that a minimum 1.5m setback is required for 2 storey buildings to ensure that BCA requirements can be met without having to obtain costly performance based solutions.</p>
Should Torrens title subdivision of 2 dwellings on a single lot be permitted as complying development?	<p>YES</p> <p>However, it should be limited to instances where the dwellings are attached horizontally and where no access handles or rights of carriageway are required to be created for access to each property.</p>
Should subdivision be permitted only after the buildings are completed?	<p>YES</p> <p>This would ensure that the subdivision would accurately relate to the buildings that were constructed, rather than need to rectify issues due to unlawful construction or wrongly located buildings. It would also remove the need for speculative subdivision.</p>

MANOR HOUSES

The proposal to allow manor house development to be undertaken as complying development is generally supported by Council. However the following issues require further investigation or amendment prior to incorporation within the Codes SEPP.

Form

The proposed form controls for a manor house is generally supported by Council. However, a definition should be added to the Standard Instrument LEP to provide additional clarity and increased housing options with development consent.

Recommendations

A definition of 'manor house' should be added to the Standard Instrument LEP.

Zoning

The proposed zoning controls prohibit manor houses from being undertaken as complying development in the R4, R5, Rural zones and Environmental Living zones. However, the proposed controls would enable manor houses to be undertaken as complying development within business, industrial, recreational, special uses and some waterways zones and environmental zones, if permitted with consent. This does not appear to be the original intent of the proposed controls and therefore should be amended to state that manor houses as complying development is only permissible in the R1, R2 and R3 residential zones.

Recommendation:

The proposed zoning controls should be rewritten to ensure that manor houses can only be carried out as complying development in the R1, R2 and R3 zones.

Side Setback

The proposed minimum side setback controls for dual occupancies is 1200mm with a building envelope measured at a height of 5.5m at the side boundary and projected at 45 degrees. It is noted that a setback of 1200mm would require a BCA performance based fire safety solution for window and door openings at the second storey. Imposing a 1500mm setback for at least the second storey would remove the need to impose costly BCA performance based solutions.

Furthermore, Council has removed requirements for a building height plane due to issues with its application on sloping sites. It is therefore recommended that a simpler two step setback requirement, dependent on the number of storeys, be adopted to provide greater certainty for proponents and adjoining residents.

Recommendations

The proposed side setback controls for manor houses should be amended such that a minimum setback of 900mm is required for the first storey (ground level) and 1500mm above the first storey (first floor level).

Excavation Setbacks

The proposed excavation setback controls for manor houses, which requires compliance with all applicable building setbacks, is generally supported by Council. However, it is questioned why there is no depth control similar to that proposed for multi-dwelling housing? It is recommended that a depth restriction of 4m be applied for excavation.

Recommendation:

The proposed excavation setback control for manor houses should be amended to include a depth restriction of 4m for excavation.

SPECIFIC DISCUSSION PAPER QUESTIONS

Table 2 below outlines Council's response to a number of questions posed by the Discussion Paper in relation to permitting manor houses as complying development.

TABLE 2: Response to Manor House Questions	
Question	Council comment
Which zones would be appropriate for manor homes?	The R1, R2 and R3 zones are considered to be acceptable zones within which to permit manor houses. Such development will generally maintain a low scale single built form, which would generally comply with the objectives of the relevant zones.
Should manor homes only be permitted on corner lots or lots with dual street access?	<p>YES</p> <p>Imposing such a control would ensure that streetscape and amenity impacts are minimised especially within the R2 zone where low density residential development is typically found.</p> <p>Whilst such development could also be located along the length of a street block, it is considered inappropriate to locate such housing on battle axe allotments, or on sites that do not have a full frontage to a public road.</p> <p>Consideration could also be given to limiting the location of such housing to sites that are within 800m of a rail station or 400m to a bus stop with frequently running services, similar to the controls for affordable housing under the Affordable Rental Housing SEPP.</p>
Should manor homes on lots that do not have rear lane access be required to have a basement car park?	<p>NO</p> <p>The location of parking should be optional, as long as it does not dominate the street frontage. The mandating of basement parking can significantly increase the cost of housing which is contrary to meeting current demands for more affordable housing. The prevailing topography will also usually determine if the provision of basement parking is achievable. In particular, where the land falls down from the primary street frontage, it is difficult to provide basement parking. Therefore, the actual location should be able to be determined on merit.</p>
Instead of council certification of On-Site Stormwater Detention (OSD) and waste, could certification by appropriately qualified specialists be provided?	<p>NO.</p> <p>All domestic waste and stormwater disposal has direct implications for council infrastructure. Therefore councils should remain the certification authority for these matters.</p>

TABLE 2: Response to Manor House Questions	
Question	Council comment
How should the proposed car parking controls be designed to ensure that adverse impacts on the transport network (including on-street parking) are minimised and active transport options are encouraged?	The proposed controls are generally supported as they already seek to reduce private car dependency.
Should subdivision only be permitted after the buildings have been completed?	YES This would ensure that the subdivision would accurately relate to the buildings that were constructed, rather than need to rectify issues due to unlawful construction or wrongly located buildings.

MULTI-DWELLING HOUSING

The proposal to allow multi-dwelling housing development to be undertaken as complying development is generally supported by Council. However, the following issues require further investigation or amendment prior to incorporation within the Codes SEPP.

Form

The proposed form controls for multi-dwelling housing would enable 3-10 dwellings on a single lot of land regardless of configuration (e.g. two manor homes, a dual occupancy and a manor home, villas and town houses). There is insufficient clarity as to what mix of development housing types could be proposed on a single allotment under the Discussion Paper. Having a mix of development housing types on a single site is likely to result in the need to resolve complex amenity issues between the different housing types that cannot be simply resolved through standardised development controls.

To improve clarity, it is recommended that the proposed form controls be limited to 'multi-dwelling housing' only (i.e. villas and townhouses – dwellings which have access made at the ground level).

Recommendation:

The proposed form controls should be rewritten to ensure development is limited to 'multi-dwelling housing' only.

Zoning

The proposed zoning controls would not enable multi-dwelling housing to be undertaken as complying development within the R4, R5, Rural zones and Environmental Living zones. However, the proposed controls would enable multi-dwelling housing to be undertaken as complying development within business, industrial, recreational, special uses and some waterways zones and environmental zones, if permitted with consent. This does not appear to be the original intent of the proposed controls and therefore, should be amended to state that multi-dwelling housing as complying development is only permissible in residential zones except in the aforementioned residential zones.

Furthermore, it is recommended that multi-dwelling housing should not be permitted in the R2 zone which is reserved for low density development, as it is a type of medium density development.

Recommendation:

The proposed zoning controls should be rewritten to ensure multi-dwelling housing can only be carried out as complying development in the R1 and R3 zones.

Rear Setback

Council generally supports the proposed minimum rear setback controls for multi-dwelling housing, which is 6m or 25% of the average length of the side boundaries, whichever is greater (except to rear lanes). However, it is noted that there are no alternative requirements for sites that have rear lane access. Specific controls may be required to ensure that laneway streetscapes are not adversely affected.

Recommendation:

The proposed rear setback controls for multi-dwelling housing should be amended to include rear setback controls for sites that have rear lane access.

Side Setback

The proposed minimum side setback controls for dual occupancies is 2,000mm with a building envelope measured at a height of 5.5m at the side boundary and projected at 45 degrees.

Building height planes are often difficult to interpret and implement, especially on sloping sites. For this reason, Council removed building height plane requirements and replaced them with setback controls to provide increased clarity. The setbacks that Council adopted reflected the minimum requirements under the Building Code of Australia (BCA) where additional fire safety measures are not required. It is therefore recommended that a simpler two step setback requirement, dependent upon the number of storeys, be adopted to provide greater certainty for proponents and adjoining residents.

Recommendation:

The proposed side setback control for multi-dwelling housing be amended such that the control relating to the building height plane be removed.

Private Open Space

Council generally supports the proposed minimum private open space requirements for multi-dwelling housing, which is 24m² (and minimum dimension of 4m) at the ground level and 12m² (and minimum dimension of 2.4m) if provided as a balcony. However, if the proposed form control for multi-dwelling housing is rewritten to limit development to 'multi-dwelling' housing types only such as villas and townhouses, a balcony control would become redundant and could therefore be removed.

Recommendations

The proposed minimum private open space requirement for multi-dwelling housing should be amended such that a balcony control be removed.

Internal Building Separation

A review of the Discussion Paper's analysis of building separation controls (from 13 other councils) shows that one Council required a minimum of 5m, another Council required a minimum of 10m, and all other Council's did not impose such a control. When averaged, this does not equate to the proposed minimum building separation control for multi-dwelling housing which is 6.5m. Given the lack of proper analysis, it is recommended that a minimum separation of 10m be imposed. Alternatively, wider research is required to be undertaken to determine a properly grounded building separation control.

Recommendations

The proposed internal building separation requirement should be amended such that a minimum building separation of 10m be adopted or a control based on more robust analysis.

SPECIFIC DISCUSSION PAPER QUESTIONS

Table 3 below outlines Council's response to a number of questions posed by the Discussion Paper in relation to permitting multi-dwelling housing development as complying development.

TABLE 3: Response to Multi-dwelling Housing Questions	
Question	Council comment
In which zones should the development of 3-10 dwellings be permitted?	The R1 and R3 zones are considered to be the most acceptable zones within which to permit multi-dwelling housing. Permitting such development in the R2 zone is considered to be contrary to the objective of the zone.
Instead of council certification of On-Site Stormwater Detention (OSD) and waste, could certification by appropriately qualified specialists be provided?	NO. All domestic waste and stormwater disposal has direct implications for council infrastructure. Therefore councils should remain the certification authority for these matters.
The proposed controls do not permit the use of attic rooms. Should attic rooms in the roof be permitted to be carried out as complying development?	NO. Given the restrictions on overall building height and the minimum floor to ceiling heights, it would not be possible to accommodate a habitable room within the roof space. If such development is sought, nothing prevents a proponent from obtaining development consent via lodgement of a DA.
Is the building envelope necessary in this instance? A minimum 2.0m setback already dictates a maximum height of 7.5 above ground level before the building envelope would be breached. As development is limited to 8.5m (2 storeys), is it necessary to also have an envelope control? Is the building envelope control as	NO Building height planes are difficult to apply, especially on sites with steep topography. It is far simpler to apply rigid setback controls, which provide higher levels of certainty for proponents and neighbouring residents.

TABLE 3: Response to Multi-dwelling Housing Questions	
Question	Council comment
proposed easy to apply?	
Should the proposed car parking controls be consistent with the requirements of the Guide to Traffic Generating Developments or should the relevant council controls for parking apply?	The proposed controls are considered acceptable in terms of minimising traffic implications.

IMPLEMENTATION ISSUES

Table 4 below outlines Council's response to a number of questions posed by the Discussion Paper in relation to implementation issues.

TABLE 4: Response to Implementation Issues		
	Issue	Council comment
Design Guidelines	Should consideration be given to the preparation of a Design Guide for medium density housing that would support better design and a more consistent built form outcome for medium density housing development in NSW.	YES. This proposal is strongly supported and will ultimately lead to better design outcomes.
Permissibility	Whilst the proposed controls stipulate which zones dual occupancy should be permitted, community feedback is sought with regard to where other forms of medium density housing should be located.	These issues are addressed in detail elsewhere in this submission.
Excavation	Is it appropriate to permit excavation for basement car parking as complying development?	There is no issue with regard to the provision of basement car parking. However, it should be restricted to ensure that minimal impacts occur on adjoining properties.
	What provisions or controls should be in place and information required to accompany an application?	Application of the minimum setback controls is considered reasonable if a limit is also placed on the depth of the excavation as proposed. The excavation itself should comply with the setback controls and not just the location of the walls to any basement structures. It is also suggested that excavation in areas of landslip, acid sulphate soils or

TABLE 4: Response to Implementation Issues		
Issue		Council comment
		other natural hazards should not be permitted as complying development.
On site Stormwater Detention	Is up-front certification by council for On-Site Stormwater Detention (OSD) appropriate?	YES This issue is addressed in detail elsewhere in this submission.
	Is it acceptable to have independent certification of OSD against council's policies?	NO This issue is addressed in detail elsewhere in this submission.
Waste Management	Should proposed waste management facilities be certified by councils as part of the process?	YES This issue is addressed in detail elsewhere in this submission.
	Could independent certification of compliance with a council's waste management provisions in their DCP be the appropriate mechanism?	NO This issue is addressed in detail elsewhere in this submission.
Adaptable housing	What proportion of new housing should be adaptable housing?	Council's DCP currently requires developments containing more than 5 dwellings to provide 15% of all dwellings as adaptable dwellings. This is 5% higher than the typical requirement across Sydney (10%). It is recommended that multi-dwelling housing that provide between 5 and 10 dwellings should provide at least 1 adaptable dwelling, enabling more of the population to age in place.
Building Envelope Control	How easy is the envelope control to understand?	Council has removed the application of its building height plane for the majority of instances partially due to the complexity of applying it, especially to steeply sloping sites.
	Is an envelope control necessary given the combination of controls proposed?	NO. The imposition of appropriate setbacks and building height control can minimise any potential amenity impacts to adjoining properties.
	For development involving 2 dwellings, should the side setback control simply be mandated at 1.2m for ease of implementation and assessment?	Whilst this can improve certainty, there would be an additional need to address BCA performance issues with regard to fire separation of window and door openings. A setback of 1.5m for 2-storey development would remove the need for costly BCA performance based solutions to be implemented.

TABLE 4: Response to Implementation Issues		
	Issue	Council comment
	Should the setback be 1.5m for easier BCA compliance?	YES. Refer to the above comments.

TABLE 4: Response to Implementation Issues		
Issue		Council comment
Dwelling Size	Should guidance on dwelling size be provided?	There is no real requirement to control the size of dwellings within a dual occupancy or a multi-dwelling housing form. However, given that a manor house is essentially a residential flat building, it is suggested that the minimum sizes for apartments under the Apartment Design Code be imposed for manor houses, to maximise amenity for occupants.
Supporting information	The Discussion Paper suggests a number of documents that should be submitted with the proposed complying development types. Are there other forms of supporting information that may be required?	None that can be readily identified.
Conditions	A range of conditions will be required to be imposed upon any CDC. Are there other matters that should be addressed as conditions of consent?	None that can be readily identified.

OTHER ISSUES

Review of Council Controls

It is noted that the review of Council controls identified in the Discussion and Background Papers focused on those in high growth areas only. This represents a very small sample from which to develop controls that are proposed to apply to the entire state. A more diverse sample comprising of equal numbers of Council's from each of the three Council category areas should have been considered, including a mixture of Council's experiencing both high growth and slow growth. A revised analysis would provide a more realistic account of what can be built across the state.

Scope of Review

It is noted that no analysis or review has been undertaken of planning controls or policies from other states in Australia. Such a review may have identified where certain controls may be working or not or where alternative thinking has been implemented and resulted in improved planning outcomes.

Analysis of Approvals and Testing of Controls

The Background Paper drew upon the analysis of 6 approved dual occupancy and 6 approved town house developments. This represents a very small proportion of such developments and

may potentially present a skewed set of outcomes that is unlikely to reflect the primary issues of concern.

A wider sample set of DA's should have been considered, including multiple approvals from each of the 13 councils whose controls were reviewed. By comparison, Council analysed 220 DA's before it set controls for building height, landscaped area and site coverage for all residential development during its preparation of NSLEP 2013 and NSDCP 2013.

Furthermore, one of the sites chosen for testing (cluster housing – section 6.3 on page 46) should have been excluded, given the constraints placed on the site. Better and more examples should have been illustrated. In addition, the testing should have considered a number of site configurations with varying attributes, including:

- Typical rectangular sites;
- Battleaxe sites;
- Corner lots;
- Sites with rear lane access; and
- Triangulated sites.

Such analysis may have resulted in the identification of additional controls being considered for varying situations or the need to exclude some types of sites from being undertaken as complying development. Such sites include landlocked development parcels and sites that do not have direct access to public roads or are reliant on rights of carriageways or access handles to public roads, as the complexity of addressing amenity issues to surrounding sites cannot be easily addressed via standardised controls.

Garages and Streetscape

There is potential for the proposed controls to result in streetscapes being dominated by garages at the ground level. It is best planning practice to limit the amount of garage/car parking facing the street to a maximum of 50% of a building's frontage to a street. This requirement should be incorporated into any future controls for all proposed development types.

CONCLUSION

Council would again like to thank the DPE for its involvement to date and welcomes the opportunity for continued involvement in the review of the Codes SEPP.

If you have any further queries please contact Ben Boyd of Council's Strategic Planning Department on 9936-8100.

Yours faithfully,

MARCELO OCCHIUZZI
MANAGER STRATEGIC PLANNING

Original signed by Marcelo Occhiuzzi on 24/2/2016

Codes and Approvals Pathways
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

MO4(CIS)

25 February 2015

Dear Sir/Madam,

**RE: EXPANDING COMPLYING DEVELOPMENT TO INCLUDE TWO
STOREY MEDIUM DENSITY HOUSING TYPES**

I refer to Council's previous letter dated 11 February 2016 regarding comments in response to the proposed expansion of State Environmental Planning Policy (Exempt and Complying Development Codes), 2008 (Codes SEPP), to enable 2-storey medium density housing types to be approved as complying development.

A subsequent review of that letter has identified that there is an error in Council's submission. In particular, the submission indicates that Council would be prepared to consider "manor housing" in the R2 – Low Density Residential zone.

Council has a good mix of R2, R3 and R4 zones throughout the local government area and the R2 zone is generally characterised by a level of sensitivity that would preclude a greater level of density than represented by dual occupancy development. This is consistent with Council's residential development strategy and accounts for topographical, traffic, views and service constraints. Council's higher residential density areas are identified as the R3 and R4 zones which enjoy far less constrained environments and have greater access to services, transport and amenities.

It would be appreciated if you correct the error as this is an important policy position for Council to retain consistency with. Therefore, Council only supports the erection of manor homes within the R1, R3 and R4 residential zones and not within the R2 zone for the reasons outlined above.

Please call me on 9938 8302 if you would like to discuss this further.

Yours sincerely,

MARCELO OCCHIUZZI
MANAGER STRATEGIC PLANNING