



12 December 2016

The Director, Codes and Approval Pathways
NSW Department of Planning and Environment
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Dear Director

Submission on the Draft Medium Density Design Guide

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of eleven councils in the area south of Sydney harbour. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member Councils cover a population of over 1.6 million, or one third of the population of Sydney.

In order to make this submission within the timeframe of the review, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC: we will contact you further if any issues arise as it is reviewed.

The details of SSROC comments are as below.

GENERAL COMMENTS

SSROC welcomes the opportunity to contribute comments on the Draft Medium Density Design Guide (State Environmental Planning Policy - Exempt and Complying Development). SSROC broadly supports the aim of the Guide to improve design outcomes for medium density housing and the introduction of a Design Verification Statement to be required of a designer.

Whether or not the Medium Density Design Guide (MDDG) will help to increase housing supply in NSW is debatable, since it applies to zones where multi-dwelling housing is already permissible, and so some councils already allow medium density development. So, while the Guide could facilitate an increase medium density housing in some councils in metropolitan Sydney, it would have a limited effect in other councils, particularly in the eastern suburbs and inner west.

Furthermore, there is widely held misconception that the merit-based DA process is a barrier to increasing housing supply. In reality, this much more appropriate and flexible process is only slightly longer than a code-based approval, and certainly not significant enough to be a factor that inhibits housing supply.

The process for the review of the MDDG should be collaborative. An open-minded collaborative engagement and partnership with councils in the review exercise that goes beyond provision of comments, could lead to more responsive and generally accepted and respected Guide.

Local councils vary in geographical location and character. From inner city councils, to shires and regional councils, a one-size-fits-all approach to Medium Density Design needs to be reconsidered carefully to avoid mismatch and negative outcomes.

SPECIFIC COMMENTS

1. The Code should be introduced first as requiring a Development Application. This provides the opportunity to test and refine the new provisions before introducing these as complying development.
2. As one size does not fit all, considering the diversity of parts of Sydney and NSW, Councils should be allowed to choose in which zones the new development types such as manor houses will be permitted.
3. The proposal would permit private certifiers to approve subdivision, both Strata Title and Torrens Title. Controls are required so that new allotments are regular-shaped instead of providing awkward kinks or dog-legs around existing structures. Regular and sensible boundaries ensure the integrity of the subdivision pattern, and ensure that parcels may be re-developed easily at a later date.
4. Only one parking space is required per dwelling, even though it is reasonable to assume many duplexes or terraces would contain 3 or 4 bedrooms. Parking should be based on the number of bedrooms or proximity to a railway station. Further, while the Code proposes one parking space per dwelling, there is no requirement for each parking space to be associated with a single dwelling. This could create parking allocation issues.
5. The Guideline argues that all development types will be two storey, and similar to the scale of existing suburbs. However, the definition of 'storey' excludes mezzanine and attic levels. It is arguable that the proposed development types are more likely to present as three storey (two levels with attic). It is reasonable for councils to expect that neighbours and community members will feel they have been misled by the Guidelines, when complying development does not in fact provide the same scale as other houses in their street.
6. The definition of 'attic' in the Standard Instrument needs to be tightened-up. Some councils have found that some applicants misinterpret the attic definition and propose floor levels where the space is not entirely within the roof space.
7. The Manor House development type should not be permitted to include an attic. The manor house style is already expected to be large and bulky by virtue of its two-up-two-down design. Permitting an attic level will contribute additional bulk, and produce exceedingly poor design outcomes.
8. Some of the proposed controls will prove difficult. For instance, the rear setback control states an '*average setback from adjoining houses with height >4.5m*'. In reality, this provision would require a property surveyor to undertake an extensive survey before the development of architectural plans. The surveyor would require access to the adjoining properties to determine their ground level and roof level at the rear of that building. If the building's rear is not in the surveyor's line-of-site when surveying from the street, they will generally not be able to determine the height of adjoining buildings.
9. There is need to tighten terminologies and exactly what is meant. Many of the terms relied upon in the Code are open to interpretation and misuse: battle-axe lot, frontage to a road, storey, attic, mezzanine, lane, secondary or parallel road et cetera.
10. Once a dual occupancy dwelling is subdivided, it ceases to meet the definition of a dual occupancy, and instead is defined as a 'dwelling house'. The owner of this dwelling could then build a granny flat or studio as complying development on the same lot, with no more than one parking space required. These sorts of "loopholes" will be exploited and need to be resolved at this stage.

11. This Code would place immense responsibility on a private certifier, who would typically not be closely acquainted with a Council's LEP. The certifier is expected to determine if the use is permissible in the zone (bearing in mind the difficulty of understanding inclusionary /exclusionary zoning, higher-order land use terms and interpreting definitions); determine the minimum site area for a dual occupancy; determine the relevant FSR (bearing in mind that many LEPs now have exceptions to FSR); and confirm that design statements are complete and thorough. This needs to be thought through carefully and collaborative engagement with councils on this is important.
12. Significant emphasis is placed on the Design Verification Statement (DVS) as part of complying development to justify the built form in relation to the local character. However, certifiers are not planners or urban designers and therefore lack the necessary experience and knowledge to assess any strategic planning outcomes.
13. The subjective elements of the MDDG are to be evaluated through the requirement of a DVS. The non-subjective elements (Part 3) are to be evaluated through a certifier's interpretation. The draft Guide proposes that simply the designer of the building be able to create a DVS. If it is the Certifiers responsibility to ensure that a DVS is accurate then there could be serious issues regarding their ability to assess such subjective matters, especially matters related to urban design to which they are not qualified. To avert confusion and risks of unprofessional work, only Registered Architects should be able to prepare such statements, or at least sign off on them in collaboration with the building's designer.
14. The Code should give due consideration to the cumulative impact of multiple complying development types being permitted on one lot. The Code allows a studio, or even a granny flat to be combined with a medium-density dwelling type. There is a concern that complying development lacks order and control over a longer-term.
15. There is need for the Department of Planning and Environment to collaboratively engage with councils in a meaningful way. Many councils have special character areas or have identified cohesive streetscapes. Allowing 6m wide subdivisions of terraces (with a scale of three-storeys) will negatively affect these streetscapes. The Guide also requires Manor Homes to have similar controls to those that cover General Housing (under Part 3 of the Codes SEPP). Many lots in some councils have traditional 40 foot frontages (12 metres) and are too narrow for the Guides to apply, unless lots are amalgamated. It is arguable that in high land value lots such as in Waverley, amalgamation of lots to construct dwellings with low yields such as those specified in the Guide is unlikely.
16. There is some confusion with the existing definition of 'dual occupancy' which refers to two dwellings on one lot. By allowing the subdivision of dual occupancies, the developments cease to be dual occupancies by definition. The legalities and semantics of this definition need to be resolved.
17. The definition of Manor House does not provide enough clarity. It is doubtful if a *building containing 3 or 4 dwellings on one lot of land, where "each dwelling is attached to another dwelling by a common wall and/or floor, and "the building contains no more than two storeys, excluding any basement storey"* will achieve the outcome of "one big house". For example, there can be variations where part of a dwelling one is attached to dwelling two, whilst the other parts of dwelling one are not attached to dwellings two, and so dwellings one to four can have all sorts of relationships to "common walls". It is doubtful whether one would be able to produce a 3D diagram relying on the above wording and "guarantee the result" as "one big house".

The Design Guide controls do not guarantee that a Manor House, being four dwellings, will appear as one big house, and also be set between front and back gardens. It is critical that the Department check this fundamental technical issue and have the Design Guide corrected

to have the required controls. This will be assisted by having the Manor House definition include the requirement for each dwelling to have a frontage to a primary road, as measured at the front building line.

18. Some development types (e.g. dual occupancy) are not permitted within R1, R2, R3 and RU5 zones in current LEPs. It has not been made clear whether a mandatory amendment of LEPs is required to ensure consistent Land Use Tables across all of NSW, or whether Councils will have that choice available.
19. The proposed development standards are very prescriptive and are unlikely to be compatible with the local context across all R1, R2, R3 and RU5 zones in all LGAs. This approach is likely to produce 'cookie-cutter' developments that are disengaged from the streetscape character and cause a sterile built environment purely in the name of expediting medium density development.
20. The scale of earthworks and drainage for medium density developments should be regarded as significant works compared to those permitted for single dwelling houses in the current Codes SEPP. Basement car parking should be reviewed as to whether it is appropriate to be included in complying development. More proactive investigations (e.g. dilapidation reports of adjacent properties) should be required to ensure major excavation provisions like basement car parking will not impact surrounding sites.
21. Consideration should be given to removal of Complying Development Design Criteria in *MDDG Part 3.3*. This is because "Multi-dwelling Housing and Master Planned Communities" cannot be carried out as complying development.
22. To provide a diversity of housing, a minimum number of adaptable housing compliance with AS1428.1 is required to be specified in the Complying Development Design Criteria. The introduction of Liveable Housing Design does not replace the need for adaptable housing.
23. The Design Criteria for Complying Development prescribe many controls that are not in alignment with Council DCPs. For example, the Design Criteria for private open space and dwelling floor areas are significantly less generous than those outlined in the DCP, which have been derived from the prevailing character of some council areas. In many cases, complying development will deliver outcomes that are have significantly reduced amenity in comparison to the development's surroundings.
24. Adjacent context and usage type requires consideration for setback controls. For example, greater setback will be required if the adjacent site is a business or industrial property.
25. The design criteria should not be uniform across metropolitan Sydney. Provision should be made for Complying Development design criteria that facilitate local character. Although the MDDG encourages councils to determine the "desired future character", the tools needed to set the character (FSR, landscaping, setback) are set in Complying Development. Some SSROC councils have concerns that the FSRs and heights proposed do not reflect local character. It is important that the FSRs set as complying development reflect the local character. The Guide itself emphasises that development should consider local character (page 26), "A well-designed scheme will respond to the context appropriately and sensitively and form a positive contribution to the predominant character of the existing area." However the FSRs proposed are at odds with some exhibited and adopted local standards for development. A good solution could be for Complying Development to refer to Council's LEP controls for FSR and landscaped area such as permissibility and lot size.
26. There are concerns that the reduced design criteria side setbacks do not reflect local character in some councils including Shires. The reduced design criteria landscaped requirement for front setbacks does not reflect local character. The local character in

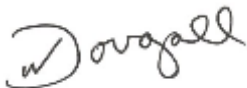
Sutherland Shire is often dwellings in a landscaped setting. Sutherland Shire Council currently require 50% landscaping in the front setback and what is proposed in the Design Guide is significantly less. The Design Guide even states that an area such as the shire councils that is defined by tree canopy should have greater landscaping: *The extent of the site to be landscaped is linked to the character of the area. An area defined by tree canopies with buildings set in a landscaped setting will have a larger landscaped area (40-60%) compared to an urban area where the tree canopy is largely in the public domain (10-20%)* (page 23). This is arguably an inconsistency that needs to be resolved.

27. In new release areas where there are no existing dwellings, the possibly 4.5m front setbacks will be contrary to the adopted stands of some councils some of who have up to 7.5m setbacks. This could result in adverse streetscape impacts and changes in the local character. Setback for car parking is important. Some SSROC member councils do not have many residential lots with laneways. Forcing laneways through is problematic and could require land acquisition by Councils. For this reason, terraced housing is more likely to have basement car parking. This in turn will mean further controls are required to ensure the treatment of basement driveway access fits in with the streetscape.
28. Design criteria controls are required for studio-type dwellings in all development types to ensure occupant amenity is achieved.

Conclusion

Thank you for the opportunity to provide comments on the Draft Medium Density Design Guide. If you have any queries please contact SSROC Strategic Planning Manager, Vincent Ogu, on 8396 3800 or ssroc@ssroc.nsw.gov.au .

Yours sincerely,



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