

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

Cc: Dr Deborah Dearing  
District Commissioner Greater Sydney Commission

15 December 2016

Our Ref: URB/08/1/2/3

Dear Sir/Madam,

**City of Ryde's Submission - Draft Medium Density Housing Code (MDHC) and the Medium Density Design Guide (MDDG)**

Thank you for the opportunity to comment on the proposed changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* with respect to introduction of low rise medium density housing as complying development and the draft MDDG.

**Introduction**

The City of Ryde (CoR) is committed to providing sustainable and high quality housing choices to assist in accommodating necessary growth in Metropolitan Sydney and recognises the role of Medium Density Housing within this mix. This commitment is demonstrated in CoR's Local Environmental Plan which, unlike most metropolitan LEP's, permits appropriate Medium Density Housing in the R2 zone in conjunction with carefully devised controls, developed in consultation with the local community, to ensure the character and amenity of CoR's neighbourhoods.

The proposed changes undermine Council's efforts to provide balanced housing choices on appropriate sites, supplemented by greater density around centres and transport nodes.

Under the proposed amendments to the Codes SEPP the following new forms of development will be permitted in the largest zone within the City of Ryde, the R2 Low Density Residential Zone, as complying development:

- Manor houses
- Multi dwelling housing (terraces) and
- Torrens title subdivision of a minimum lot size of 200sqm and a 6m width.

Dual occupancy (attached), an existing permitted form of development in the R2 zone with development consent, will be permissible as complying development under the proposed amendments.

The key issues raised in this submission relate to the following:

1. Impact of the Proposed Changes on the Character of an Area
2. Increase in Density and Lack of Supporting Infrastructure
3. Inappropriate Development Standards
4. Issues with Complying Development System
5. Issues with the Proposed MDDG
6. Issues with the required changes to existing LEPs and DCPs.

## **1. Impact of Proposed Changes on the Character of an Area**

CoR has been highly proactive in ensuring that there has been housing choice available throughout the Local Government Area, and has sought to implement a housing strategy which balances the need for urban consolidation and urban renewal in a manner consistent with the values of the local community.

CoR's guiding principles for the provision of medium density housing has been to provide housing forms that are compatible and sympathetic with the conventional detached dwelling house while maintaining the existing character of residential neighbourhoods and preserving and enhancing the residential amenity of the City.

Since 1995, multi-dwelling housing and dual occupancy developments have been permitted within the R2 zone and more recently, Council has supported the Torrens title subdivision of dual occupancy developments. Successful integration of such development types in the R2 zone has been achieved through detailed consideration and community consultation of the required development controls needed to achieve high-quality design outcomes and the individual assessment of a site's suitability for such development. It has also been achieved through ensuring required infrastructure to support the changes had been available.

This proactive approach is far beyond that undertaken by most other local government areas and is successfully seeing the delivery of a mix of detached single dwellings, dual occupancies, and multi dwelling villa housing across the local government area. As a middle ring suburb of metropolitan Sydney, CoR is typified by larger allotments and buildings with larger setbacks in landscaped settings. The current LEP and DCP provisions are tailored to these characteristics to allow for the provision of medium density housing in significant numbers while still maintaining the overall character and amenity of existing neighbourhoods.

The proposed changes to the Codes SEPP to allow medium housing as complying development fail to protect the character and context of the R2 zone within the CoR which the proposed complying development would be permitted. This view is supported by the following comments.

## 2. Increase in Density and Lack of Supporting Infrastructure

The below table provides a comparison of sites in the R2 Zone within the CoR capable of being developed for multi dwelling housing and dual occupancy under the Ryde LEP 2014 and the number of sites that will be available for medium density housing under the proposed changes to the Codes SEPP.

**Table 1 – Potential Development Sites**

	<b>Ryde LEP 2014 – R2 Zone</b>	<b>Codes SEPP – R2 Zone</b>
<i>Potential number of allotments capable of dual occupancy development</i>	3,290	<b>14,535</b>
<i>Potential number of allotments capable of multi dwelling housing developments</i>	876 (also capable of being developed for dual occupancy)	<b>4,727</b> (also capable of being developed for dual occupancy and manor houses)
<i>Potential number of allotments capable manor house developments</i>	0 - Not permitted	<b>10,444</b> (also capable of being developed for dual occupancy)
<i>Total number of sites capable of medium density housing development</i>	3,290	<b>14,535</b>

The figures provided above exclude any R2 land that has been recently developed and strata subdivided.

Table 1 indicates an increase in the number of allotments capable of being developed for medium density housing in the R2 zone from 3,290 to 14,495 sites. This represents approximately 62.5% of all land zoned R2 in the City of Ryde (the total number of all sites zoned R2 is 23,255). These allotments are spread across the LGA and are not strategically located to accommodate medium density housing.

Even if this land was only developed for dual occupancies (regardless of its capability to be developed for manor homes or multi dwelling terrace housing) this represents an increase in potential population of approximately 32,000.

Insufficient consideration has been made to the volume of development that will result from the proposed changes to the SEPP Code and the impact on traffic, open space, waste services provision and all other forms of required infrastructure need to support the resultant increase in population. Moreover, large portions of the R2 Zone consist of areas where the local road and drainage networks have not been designed to accommodate the proposed levels of density.

The proposed changes to the SEPP and blanket provision of medium density housing is grossly inconsistent with other key State Government planning policies,

such as the Draft District Plans, which seek to align increased density with transport systems to reduce car dependency and encourage alternate forms of travel modes. The proposed increase of density in the R2 zones which are generally located outside of the pedestrian catchment of major transport nodes such as train stations will result in increased traffic issues and a reduction in amenity to many areas that have existing congestion issues.

### 3. Inappropriate Development Standards

The below provides a comparison table of controls currently in Ryde LEP 2014 and DCP 2014 relating to the permitted forms of medium density residential development and those proposed under the Codes SEPP amendment.

**Table 2 – Development Standards**

<b>Development Standard</b>	<b>Ryde LEP 2014/Ryde DCP 2014</b>	<b>Codes SEPP</b>
<b>Dual Occupancy (attached)</b>	<i>Min area – 580sqm Min road frontage – 20m Max FSR – 0.5:1</i>	<b>(Two Dwellings Side by Side)</b> <i>Min area – 200sqm per dwelling Min width – 6m per dwelling Maximum FSR for each lot: 200-300 sqm - 0.75:1 &gt;300-400 sqm - 0.70:1 &gt;400-500 sqm - 0.65:1 &gt;500+ - 0.60:1</i>
<b>Multi dwelling housing (terraces)</b>	<b>Not permitted</b> <i>Controls for mews developments</i>  <i>Min area – 900sqm Min road frontage – 20m Site Coverage – 40%</i>	<i>Min area – 200sqm per dwelling Min width – 6m each dwelling Maximum FSR for each lot: 200-300 sqm - 0.80:1 &gt;300-400 sqm - 0.75:1 &gt;400-500 sqm - 0.75:1 &gt;500+ - 0.70:1</i>
<b>Manor houses</b>	<b>Not permitted</b>	<i>Min area – 600sqm Min width – 15m Maximum FSR for the site: &gt;600 – 700sqm - 0.60:1 &gt;700 – 920sqm - 0.50:1 &gt;920sqm - 0.40:1</i>
<b>Subdivision pattern</b>	<i>Min area – 580sqm Min road frontage – 20m</i>  <i>Dual Occupancy Min area for each resulting lot – 290sqm Min road frontage for each resulting lot – 10m</i>	<i>Min area – 200sqm Min road frontage – 6m</i>



CoR's current controls for both dual occupancy (attached) and multi dwelling housing such as lot size, density, site coverage, and FSR create a balanced relationship between the site area, dwelling size, and residential population living on the site. The controls ensure that the character of an area will be maintained by promoting a balance between built and unbuilt areas to allow for sufficient landscaping, retention of significant vegetation and trees, pervious areas, and internal amenity to the development. These controls have been developed and updated through detailed consultation with community and iterative evolution of controls to address emergent issues and improve design and amenity standards.

The following comments are made in relation to each of the proposed housing types and the key controls.

#### Dual Occupancy

Ryde has recently undergone a revision of its development standards for dual occupancy (attached) developments to ensure they remain part of the housing mix within the CoR, to address a range of issues expressed by the community around such development, and to reduce impacts on the local character and amenity. CoR recently increased the minimum road frontage for dual occupancy (attached) from 15m to 20m to improve issues such as streetscape presentation, extent of hard-paved surfaces and amenity issues for the dwellings comprising the dual occupancy development and adjoining properties (a 580sqm minimum lot size has been maintained). The proposed reduction and design standards would break faith with the community, transforming the local character and delivering poorer quality streetscapes.

#### Multi dwelling housing

As well as the controls identified Table 2 for multi dwelling housing *Ryde LEP 2014* provides a density requirement of 300sqm for each 1,2, or 3 bedroom dwelling and 365sqm for each 4 or more bedroom dwelling.

Under the proposed amendments to the Codes SEPP the density requirement will be reduced to 200sqm per dwelling regardless of size. This will result in insufficient provision of on-site open space, significant reduction in off-street parking to accommodate site access, inadequate retention of mature vegetation, and a detrimental impact on amenity and privacy.

#### Manor homes and Multi dwelling housing (terraces)

Manor houses and terrace housing are prohibited in the R2 zone in the City of Ryde. As part of the Ryde Local Planning Study (2010), which formed the basis of Ryde LEP 2014 extensive community consultation confirmed that this type of development is considered to be entirely inconsistent with the existing character of neighbourhood

areas in the CoR. The study also found that such development types were more suited to zones where residential flat buildings were permitted as these zones could better sustain the increased density and deliver the required supporting infrastructure and services.

### Subdivision

The proposed Torrens titling of dual occupancy and multi dwelling housing at a lot size of 200sqm and 6m width will undermine the consistent approach Council has taken since 1979 to ensuring a minimum lot size of 580m and road frontage of 20m (or 10m for each resulting lot). In permitting the Torrens titling of dual occupancy developments, Council considered the precedent that would be set and the impact upon LEP 2014 minimum subdivision requirements for residential lot sizes. The CoR's requirements (10m minimum road frontage and combined area of 580sqm for the two newly created lots) have been based on a detailed understanding of the character, current allotment profile in the CoR, and the level of development that can be sustainably provided within Low Density areas of the LGA. It is considered that the creation of lots of 200sqm and 6m road frontage will set a precedent that will result in undermining the subdivision controls within Ryde LEP 2014 and completely transform the character of low density neighbourhoods.

### Floor space

Under Ryde LEP 2014 the maximum FSR permitted is 0.5:1. Currently the gross floor area (GFA) for a dual occupancy (attached) development on a 580sqm allotment is 290sqm. Under the development standards within the MDHC, the GFA for a 580sqm allotment could be increased to 435sqm, representing an FSR of 0.75:1. This is a 50% increase in FSR that will be widely available to developers across the low density residential areas of the CoR. This increase is not commensurate with infrastructure levels available and the increased needs have not been envisaged in existing Section 94 Contributions Plans or Council Delivery Plans.

The existing controls in Ryde DCP 2014 result in multi-dwelling housing developments typically having a FSR at or below the maximum FSR of 0.5:1 FSR permitted under the LEP. Under the proposed complying development standards, FSRs of up to 0.8:1 could be experienced within the R2 Low Density Residential zone. This represents a 60% increase in the 0.5:1 FSR currently permitted.

With respect to Manor Houses the, gross floor area under the MDHC on a 600sqm allotment could be 360sqm, representing an FSR of 0.6:1 for manor houses or dual occupancy (attached – one dwelling over the other). This is a 20% increase in FSR that will be widely available to developers across the low density residential areas of the CoR.

This will not result in a balanced mix of housing typologies and opportunities. The impact of the FSR increases will transform the R2 zone to a medium density environment, leaving the CoR with no distinguishable low density neighbourhoods.

### Landscaping

The development standards under the MDHC for dual occupancy (attached) developments will require only a 20% landscaped area, with landscaping forward of the building line being only 25%. These rates are less than half of what is typically required under CoR's current planning provisions, and as such will transform the existing landscape character of the low density areas and streetscapes. For example, little opportunity will be available for mature tree planting to support continuity of vegetation corridors along rear setback areas, and impacts on microclimatic conditions and rainwater percolation are also envisaged with such low levels of landscaping.

Similar concerns are also held with the development standards for multi-dwelling housing (terrace) developments. For example, only 25% of the area forward of the building line is required to be landscaped for multi dwelling housing (terrace) developments, whereas under the current development controls in the R2 zone, development's typically include 60% of the front setback area as landscaped area.

With regard to Manor Houses the development standards under the MDHC require a 50% minimum landscaping forward of the building line. Given the existing provisions under RDCP 2014 generally prescribe a minimum 60% landscaped area forward of the building line, this change will permit a greater level of hard surface areas within the front setback. This is considered to be to the detriment of many streetscapes within the low density residential area which are characterised by dwellings located in a landscape setting that includes a clearly defined front garden and capability for mature tree growth.

Further, the overall landscaped area for this type of development can be as low as 30% under the complying development provisions of the MDHC. Given the minimum requirements under RDCP 2014 are 35%, this represents a 14% variation of CoR's current provisions.

This lower level of landscaping would exacerbate the result imbalance between built and unbuilt areas created by the proposed blanket increase in density.

### Setbacks

Most existing areas in the CoR have 6m street frontage setbacks, changing the setback requirements would significantly affect the overall character and aesthetic of established low-scale areas. A consistent build-to line is preferred (where existing dwellings are within 40m, minimum of 6m or the average of two closest dwellings, if surrounding setbacks are less than or more than 6m) to maintain the existing landscape character of low density areas within the City.

#### 4. Issues with the Complying Development System

The proposed changes affect each Council differently and therefore do not ensure a consistent approach throughout the Metropolitan Area. It is unclear how any reasonable strategic argument can be made for the appropriateness of medium density housing and grossly inflated levels in just a handful of LGAs (i.e. The LGAs where medium density housing is an established part of the housing mix and permitted in R2 zones<sup>1</sup>), while the majority of Metropolitan Sydney will see the proposed changes limited to smaller areas. The intended improvements to the mix of housing will therefore be the worst of both worlds, that is, beyond sustainable for those Councils already providing medium density housing across their LGAs and insubstantial for those Councils who currently limit the provision of medium density to higher density zones.

Low density residential area (R2 zone) within the City and Inner Suburbs is inherently different to the low density residential areas within Sydney's middle ring and outer suburbs. As noted above, in the middle ring LGAs such as CoR the low density residential areas are typified by larger allotments and buildings with larger setbacks in landscaped settings while in the inner areas comparable smaller allotments with denser built forms are commonplace. The proposed expansion of the Codes SEPP makes no regard for this significant difference.

The inclusion of these provisions in the Codes SEPP with existing permissibility used as the only mechanism for the strategic increase in delivery of medium density housing is not appropriate for those LGAs that already permit medium density in R2 zones and consideration should be given to either reviewing this mechanism or excluding those LGAs detrimentally affected such as CoR.

In addition, the CoR has a comparatively high take-up of complying development against inner and middle ring metropolitan Councils. This experience with the SEPP and with the private certification system upon which it relies, suggests that the

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<sup>1</sup> Multi dwelling Housing is a permissible use within the R2 Zone in only 9 (out of 40) Local Environmental Plans in Metropolitan Sydney, which include:

1. Bankstown LEP 2015
2. Botany Bay LEP 2013 (only in special circumstances)
3. Campbelltown LEP 2015
4. Hurstville LEP 2012
5. Lane Cove LEP 2009
6. Manly LEP 2013
7. Marrickville LEP 2011 (only in special circumstances)
8. Ryde LEP 2014
9. Sutherland LEP 2015



addition of medium density housing to the SEPP extends the risk profile beyond the mitigation capacity of the current system. In particular the following issues are raised.

### Individual Site Issues

To ensure that Council's permitted housing forms in the R2 Low Density Zone are of high quality and sensitive to their environment, the site layout and building design must consider the existing characteristics, opportunities, and constraints of both the site and its surrounds. This is done through the submission of a site analysis that must show in particular how future dwellings relate to their immediate surrounding and how the design minimises the negative impact on the amenity of adjoining developments and the street/neighbourhood.

The introduction into the Codes SEPP of new forms of medium density housing with standardised development controls does not take into consideration the unique issues or characteristics that may exist with the land being developed or the surrounding area such as:

- Topography
- Established views
- Steep slopes (including landslip and slope instability)
- Bushland and bushfire risk
- Poor residential amenity to the development
- Overland flow
- Foreshore impacts
- Architectural characteristic of an area
- Significant and threatened vegetation
- Traffic issues
- Proximity to heritage items and conservation areas

Medium density housing has the potential for significant impacts upon the environment and community. Existing Council controls around such development have been developed in consultation with the local community in order to adequately consider these impacts through the development application process. Furthermore, within the Council areas themselves there are specific precincts and specific land parcels which differ in character and are impacted upon by different constraints and need to be able to be assessed on a lot by lot basis.

In particular it is considered that basement parking in any form of complying development is undesirable because of the issues associated with levels, drainage and topography.

There is great concern that the proposed changes to the Codes SEPP will result in the application of blanket numerical controls. The Codes SEPP makes no provisions for a merit based assessment to allow for the consideration and protection of diversity.

### Current problems with implementation of Complying Development

There is no consideration of the problems with complying development as it currently operates, and the impact of these deficiencies will exponentially increase given the proposed increase in the number of developments as well as the increased intensity of impact associated with the proposed development types. All too often, Council is required to pick up the pieces of a complying development application or construction certificate that has gone wrong. Some of these issues are identified below:

- *Construction not in accordance with Complying Development Requirements.*  
Many private certifiers need to be pressed by Council to take action where developments do not accord with the CDC approval. This then requires additional Council resources to investigate and take enforcement action.
- *Payment of Section 94 contributions and other Council requirements.*  
Council currently has difficulty in collecting payment of Section 94 contributions and other bonds and infrastructure payments as there are gaps in the CDC certification process that often requires significant resources to police by Council due to the legislation not being rigorous enough in this area.

Furthermore, certifiers often do not provide clear and detailed information with respect to the Section 94 liability associated with proposed and approved complying developments. This leaves a number of owners surprised by the amount payable and unprepared to pay the required contributions to Council. This will be exacerbated significantly with the addition of medium density housing types.

- *Communication with the public and consultation.*  
The notification process for complying development applications is often inadequate, with neighbours regularly seeking information from Council. Inadequate notice of commencement to adjoining neighbours as well as tardy submission of CDC's to Council, this will be exacerbated with the expansion of the CDC process and the increased intensity of impacts associated with medium density developments.
- *Inspections and compliance of approved CDC sites.*  
Many private certifiers do not regularly inspect construction sites to ensure compliance with their CDC and often do not respond to customers in a timely manner leaving additional workloads with Council's compliance teams. The Building Professionals Board is under resourced and unable to provide the required oversight to prevent underperformance of private certifiers.
- *Misinterpretation of the CDC legislation and combination of multiple CDC approvals.*  
Often certifiers misinterpret the requirements of complying development as a one size fits all approach does not cover all possible scenarios of development sites. Council has also had experiences where certifiers have

issued approvals under combined areas of the SEPP, that is, a dwelling may be approved under the Exempt and Complying Development Codes SEPP (Housing Provisions), while at the same time an approval is issued under the Affordable Housing Code SEPP for a secondary dwelling. Often these approvals comply with the technical provisions of the relevant individual SEPPs, however, the cumulative impact and negative amenity impacts were never envisaged under the legislation.

- *Occupation of developments under complying development.*  
Private certifiers often issue interim occupation certificates on completion of developments even if there are outstanding matters to be resolved. The increased requirements associated with medium density housing significantly increases the risk associated with this practice. Again, the Building Professionals Board is not resourced to adequately deal with current issues in this area and the proposed increase will unacceptably exacerbate issues.
- *Site controls.*  
Insufficient on-site sediment and erosion controls are often provided by private certifiers, this will only be exacerbated with more complex developments.
- *Site constraints.*  
CDCs issued by private certifiers do not address filling of sites and required retention measures. The issuing of occupation certificates without considering these measures requires considerable Council resources to resolve issues specifically relating to such sites.

The unfunded burden on Council of dealing with compliance and enforcement work (to the levels expected by the community) will substantially increase. It is anticipated that the complexity and impact of the issues arising from practical deficiencies in the private certification system will increase with the increase in the number and intensity of development under the SEPP.

## 5. Issues with the Draft Medium Density Design Guide (MDDG)

The Explanation of Intended Effects with respect to the Medium Density Design Guide (MDDG) states:

*"Part 3 contains objectives and design criteria. The design criteria set a clear and measurable standard of how each objective can be practically achieved. The proposed development can comply with the design criteria or use an alternate solution that satisfies the objective. The development application will be required to include a Design Verification Statement from the person that designed the development that confirms that the design of the proposed development is consistent with the design principles and objectives in the MDDG and provide evidence of how the objectives have been achieved".*

The MDDG states the following with respect to complying development:

*"Where the Design Criteria are not met, the statement should describe how an alternate solution achieves the Objectives, in some instances this may require supporting reports or diagrams".*

The MDDG also states that the assessment of complying development can be carried out by a Council or private certifier and must comply with all the standards and Design Criteria.

A third party such as a qualified architect should be required to undertake the Design Verification Statement to ensure that all requirements have been met or that any alternate solution is adequate. To permit a certifier to ensure the Statement is a true reflection of what has been proposed is to open to abuse. The following issues are raised with respect to development standards proposed under the MDHC.

#### Basement Car Parking

The complying development provisions under the MDHC prescribe that dual occupancy (attached - two dwellings side by side) developments may contain a basement for the purpose of car parking and access to that car parking.

While basement car parking is allowable under the provisions of the Ryde Development Control Plan 2014 (RDCP 2014) for dwelling houses and dual occupancy (attached) developments, its utilisation for such developments is limited under RDCP 2014 to only those sites where it is appropriate with regard to the topography of the land. This appropriate responsive application of controls is possible under the merit based assessment process. It is not possible under the codes SEPP and private certification system.

The complying development provisions, and the provisions of the MDDG would allow for basement excavation up to 3m in depth for the purposes of basement car parking as close as 1m from a boundary. Given the significant number of development sites across the low density residential zone which could accommodate a dual occupancy (attached - two dwellings side by side) development, significant concerns are raised over the following:

- The ability to retain natural ground levels and existing landforms in the low density residential zone given basement car parking for such development is permitted to protrude up to 1m above the existing ground level.
- The poor streetscape presentation that could result from the proliferation of basement garages protruding up to 1m above existing ground level, and within 1m of boundaries.
- The geotechnical risks associated with the proliferation of such basement excavation through the CoR's low density residential areas, particularly with the inherent constraints the CoR experiences with undulating topography, areas of slope instability and steeply sloping waterfront land.



- Water table impacts from the prolific basement excavations that could be possible across the low density residential areas.
- Given basement parking is permitted to within a metre of boundaries, concerns are raised over the ability to achieve deep soil areas that are consistent with the prevailing character of the low density residential environment.
- Compromised deep soil areas and the reduced ability for landscaping to soften the appearance and improve the amenity of development.

### Car Parking Numbers

Currently, under Ryde DCP 2014 at least one visitor parking space is required per four (4) multi dwelling house dwellings. Given fractions of numbers are required to be rounded up under RDCP 2014, this means at least one visitor parking space is provided for each multi dwelling house development constructed.

Under the provisions of the MDDG, development for the purposes of multi dwelling housing (terraces) is only required to provide visitor parking where a basement car park serves more than 10 dwellings. In which case, visitor parking is to be provided at 1 space per 5 dwellings.

Parking impacts are typically a key concern with DAs for multi dwelling housing developments in the low density R2 zone. This significant reduction in visitor parking permitted by the MDDG will have a negative impact on available on-street parking within the low density residential areas. This is in addition to the impact of reduced on street parking provision resulting from the reduced minimum street frontages and lot sizes proposed and the loss of parking as a result of driveways and access arrangements.

### Waste

Specific design criteria on Waste Management relating to collection point locations, vertical clearances, circulation spaces, storage and the like, should be in accordance with individual Council policies. Some of the proposed provisions may also be difficult to monitor resulting in poor outcomes. These issues are raised in addition to the potential collection issues that are likely to occur as a result of increased density in areas where the existing infrastructure limits the size of service vehicles.

### Additional provisions

Additional provisions are required to address the following matters:

- Retention of tree canopy, habitation value, preservation of green networks and WSUD (Water Sensitive Urban Design).
- Increase in setback distances where minimum soil standards and areas cannot be achieved for tree types as outlined in Table 1 Section 2C.
- Guiding principles for street and footpath planting and coordination with Council to be included.

## 6. Issues with the Required Changes to existing LEPs and DCPs

The Explanation of Intended Effects Proposed Medium Density Housing Code states that the development type must be permissible on the subject land to be carried out as complying development. For example, to construct a dual occupancy as complying development, dual occupancies must be a permitted development in the zone that applies to the land. The only exception to this is the manor house, which is proposed to be inserted as a defined term in the Standard Instrument LEP. It is proposed to allow a manor house as a new complying development type on any land where multi-dwelling housing or residential flat building is permitted.

The Ryde Local Environmental Plan 2014 is one of only 9 planning instruments of the 40 (refer to footnote in Page 8 of this document) that relate to the Sydney Metropolitan Area that permit multi dwelling housing in the R2 zone. As such only a small group of Council's will in fact be under the SEPP (Exempt and Complying Development Codes) 2008 provisions as it applies to manor houses and multi dwelling housing (terraces).

As previously noted the strategic merit of this approach is unclear given the effect of the proposed changes will be such that Councils that have already been proactive in their approach to housing diversity will have inappropriate densities and dwelling types introduced into R2 zones, breaking faith with those communities who have engaged in the effort to deliver housing and housing choice, whilst other areas that have not embraced dwelling choice and urban consolidation will be exempt from the required changes to improve delivery and choice.

### *Amendments to existing LEPs and DCPs*

The Explanation of Intended Effects states that *"It is not proposed that the MDDG would automatically override council controls. Council would need to adopt the MDDG by reference within a development control plan.....Where a council does adopt the MDDG it is to be adopted in its entirety.....Where council does adopt the MDDG it will still need (to) prepare the principal development standards that include height, floor space ratio, landscaped area and setbacks."* (pages 7 and 8)

The MDDG states that:

*"The purpose of this Design Guide is intended to inform the strategic planning of a local area and assist councils and communities to determine the future form of development in the area. Part 2 provides specific guidance for developing local controls....."*

*The future character of an area is to be determined by the local council and community. The Design Guide encourages a design-led strategic planning process to determine the type, scale and built form of medium density housing permitted in an area.*

*The development controls established as a result of this process will be expressed in the Local Environmental Plan (LEP) and Development Control Plan (DCP) that applies to the site”.*

Principal development standards relating to height and floor space ratio are contained within environmental planning instruments. A planning proposal would be required to make any amendments to those development standards.

Adopting the MDDG by reference within a development control plan would require an amendment to be made to that DCP. Amendments to DCPs are required to follow the procedures as outlined in the Environmental Planning and Assessment Act.

Making amendments to a Council’s planning controls are complex, resource intensive and time consuming endeavours requiring considerable community consultation, particularly in light of the specific changes proposed. There would be a considerable time gap required between the amended SEPP coming into effect and any changes to an LEP or DCP to introduce the required new controls.

The Explanation of Intended Effects states that:

*“It is proposed to amend the Standard Instrument LEP to add the manor house, which is currently not a defined term.*

*As a new development type, to enable it across NSW it is proposed to allow a manor house as complying development on any land where multi-dwelling housing or a residential flat building is permitted.*

*Further it is proposed to restrict complying development to R1, R2, R3 and RU5 land use zones. R4 zoned land is excluded as typically larger scale residential flat buildings are anticipated in this zone.” (page 16)*

It is unclear from the Explanation of Intended Effects as to how the Department intends to make “*manor houses*” a type of development “*Permitted with consent*” on all “*land where multi-dwelling housing or a residential flat building is permitted.*”

A manor house, “*being a building containing 3 or more dwellings*” and not being an “*attached dwelling*” or “*multi dwelling housing*”, would constitute a “*residential flat building*” under the definitions currently contained within the Standard Instrument. “*Residential flat buildings*” are a type of development that is “*Prohibited*” in the R2 Low Density Residential zone in all 39 environmental planning instruments that apply to land in the Sydney metropolitan area that contain the R2 zone.

Apart from stating that “*It is proposed to amend the Standard Instrument LEP to add the manor house, which is currently not a defined term*”, the Explanation of Intended Effects does not include specific details as to how the relevant planning legislation is proposed to be amended to address permissibility issues.

The Explanation of Intended Effects does not give any indication as to whether any amendments are proposed to be made to the Land Use Tables of environmental planning instruments. It is contended that in the case of most environmental planning instruments where the Land Use Table for the zone is a “closed zone” as opposed to an “open zone”, that a “*manor house*” would not “*be permissible, with consent, under an environmental planning instrument applying to the land*”, and as such would not be able to be carried out as “*complying development*”.

It is considered inappropriate “*to publicise an explanation of the intended effect of the proposed instrument and to seek and consider submissions from the public on the matter*” when the “Explanation of Intended Effects” does not provide a clear indication or understanding as to how the amendments proposed are to be implemented. To have any meaningful public consultation, the Explanation of Intended Effects needs to be clearer and outline what amendments are proposed to the state policy on exempt and complying development, the Standard Instrument, and if any consequently amendments are proposed to environmental planning instrument(s) made under the Standard Instrument, what those amendments are.

## **Conclusion**

Medium density housing, if designed and implemented correctly can lead to vibrant connected and thriving communities. The locations considered most suited to medium density development are those with appropriate infrastructure in close proximity to public transport, commercial areas, public open space and other community facilities.

While Council agrees such forms of medium density residential development are a key part of the required housing mix to accommodate Sydney’s growth Council sees little benefit in including them in the Complying Development system, which is better suited to lower impact developments.

It is considered that insufficient consideration has been made to:

- Impact of the Proposed Changes on the Character of an Area;
- Increase in Density and Lack of Supporting Infrastructure;
- Inappropriate Development Standards;
- Issues with Complying Development System;
- Issues with the Draft MDDG; and
- Issues with the required changes to existing LEPs and DCPs.



The City of Ryde has a proud tradition of housing provision stretching back to the post-war Ryde Housing Scheme. Over the years, Council has always met and has even exceeded all housing targets set by the State Government. Recent changes to its controls for dual occupancy have opened new opportunities for that form of medium density development in Ryde. These changes are an exemplar for carefully considered strategic planning combined with dedicated community consultation and engagement as it is necessary to ensure that such development is sympathetically integrated into the existing urban fabric so that amenity of both existing and future residents is genuinely protected. Thorough and careful assessment is required because of the variety of contexts that arise including the characteristics of the land and local community interests. Local Council controls are designed specifically to provide appropriate and timely provision of medium density options. Complying Development only works effectively for simple and uncomplicated developments. The City of Ryde sees no benefit in expanding complying development to include the much more complex style of proposal that is manifested in medium density development.

For all of the above reasons, Council strongly opposes the introduction of medium density residential development as complying development and proposes that the approach be reconsidered entirely having regard to local planning instruments and controls already delivering sufficient medium density housing options to the community.

If you have any questions, please do not hesitate to contact Dyalan Govender, Acting Manager – Strategic City on 9952 8188.



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