



15 December 2016

Director, Codes and Approval Pathways  
NSW Department of Planning and Environment  
GPO Box 39, Sydney, NSW 2001  
via codes@planning.nsw.gov.au

Dear Madam/Sir

**Subject: Submission on the NSW Governments Proposed Medium Density Housing Code and the Associated Draft Medium Density Design Guide**

Lake Macquarie City Council (LMCC) thanks you for the opportunity to comment on the proposed planning changes for low rise, medium density housing. LMCC offers the following comments in response to the exhibited documents:

- Explanation of Intended Effects - Proposed Medium Density Housing Code
- Medium Density Housing Guide
- Medium Density Design guide FAQs

Council considers that the proposed changes will facilitate the delivery of a variety of low rise medium density housing types. It is noted that some of the concerns raised in Council's submission of 22 February 2016 have been addressed in the revised version exhibited in October to December this year.

This submission was endorsed by Council at its meeting held on 12 December 2016. The submission covers the following matters:

Council's comments are provided under the following headings:

1. The Complying Development Process,
2. Standard Instrument Principal Local Environmental Plan (Principal LEP),
3. Draft Medium Density Design Guide (the Draft Design Guide), and
4. The Proposed Medium Density Housing Code (Proposed Code).

## **1 The Complying Development Process**

The pathway for complying development is described as one involving a simple set of predefined measurable development standards, with minimal impact on adjoining properties, and predictable outcomes and impacts. Whilst the intent of the Draft Code and Design Guide is clear, the implementation of the design criteria set out in Part 3 of that Guide has the potential to be inconsistent, with the design criteria open to interpretation.

Our Ref: F2007/01473-02 Your Ref: Website codes@planning.nsw.gov.au

The Draft Design Guide offers most value as an evolving document for strategic purposes, and a reference for local controls. It may lose value without regular review based on built form outcomes. Unfortunately, this will be difficult without a means to gather local input.

LMCC recommends a new body or panel be established for local government areas (LGA) or Regions. This panel could provide initial advice on proposal design, endorse Design Verification Statements, and gauge the performance of Certifiers and the Draft Design Guide. This body could operate similarly to State Environmental Planning Policy (SEPP) 65 Panels. Alternatively, the state government could fund Council to undertake random audits of development approved as complying development to assess outcomes.

Council staff currently receive phone calls from people in the community reporting problems with complying development approvals and construction. It is reasonable to anticipate this number to increase with an increase in the number of complying development approvals issued. LMCC receive approximately 2000 development applications annually and at this stage, one tenth of those are complying development.

Existing concerns with the complying development process should be addressed, prior to increasing the number of complying applications.

## **2 Standard Instrument – Principal Local Environmental Plan (Principal LEP)**

The changes would introduce a new subdivision clause and three new definitions into the Principal LEP to support low rise, medium density development. The intent at this stage is for all LEPs to be changed to incorporate these changes.

### **2.1 Proposed Clause 4.1C Concurrent consent for development and subdivision**

The Proposed Code, on page 19 states:

“A new standard instrument clause would ensure a uniform approach across NSW. The new format will be required as council’s make amendments to their local environmental plans in the future.”

Council supports the proposed new subdivision clause as an optional clause and in particular the intent of the clause to ensure a coordinated approach for small lot subdivision. However, the clause should not be mandatory, as some councils, such as LMCC, already have in place a similar clause that achieves this intent.

Lake Macquarie Local Environmental Plan 2014 (LEP 2014) allows the creation of small lots provided the consent authority is satisfied that a particular type of development can be accommodated on the small lots. Refer to Attachment 1. Clauses 4.1A (1) – (3) of LEP 2014 are summarised below:

Development Type	Lots Size m <sup>2</sup> in R2 and R1 Zone	Lot Sizes m <sup>2</sup> in R3
Dwelling	300 – 450	200 - 450
Dual Occupancy	250	N/A
3 or more dwellings	300 – 450	200 - 450
Subdivision lot sizes	450	900

The draft clause that appears in the Proposed Code is a draft intended for local plans. However, LMLEP 2014 does not apply to complying development. The implementation is unclear in this instance.

The proposed clause refers to areas identified in the relevant lot size map. This is considered unnecessary. In the case where a local plan has a lot size map, it would be clearer to add more lot size choices to the map key and allow those extra choices to be used in appropriate areas on the map.

The wording of the proposed clause also appears unclear and incomplete. The clause ends in “or” and states “insert number more than less 60%”. It is proposed that the wording of the clause is reviewed to make it clear and complete.

## **2.2 Standard Instrument – Principal Local Environmental Plan – New Definitions**

Council supports the three new definitions for manor house, multi dwelling housing and multi dwelling housing (terraces). These proposed definitions will assist in enabling a variety of housing types and in providing clarity. Council supports terraces that have frontage to a public road and direct access to the dwelling and private open space at ground level, being complying development.

**3 Draft Medium Density Design Guide (the Draft Guide)** Council embraces the use of the Design Quality Principles in the Apartment Design Guide for the new Draft Design Guide. The similarity to the Apartment Design Guide is helpful and clear in its consistency.

### **3.1 Design Principles**

The document offers a much needed guide for councils to use as a reference document. It is considered helpful in guiding local controls that are relevant and effective. However, two important design principles, connectivity and topography are not given adequate weight.

**Note:** Suggested changes to the Draft Design Guide are represented by *grey highlight* for added text and ~~strike through~~ for deleted text.

The following changes are proposed:

#### **Design Principle No. 2 Built Form and Scale**

“Good design achieves a scale, bulk, ~~and~~ height *and setting* appropriate to the existing or desired future character of the street, *the topography* and ~~the~~ surrounding buildings.

An appropriate built form for a site and the building’s purpose is achieved *by having* regard to *topography*, building alignments, proportions, building type, articulation and the manipulation of building elements. The space between buildings should be a scale and character that is defined and suited to purpose.

Appropriate built form defines the public domain, *reflects the landform*, contributes to the character of streetscape and parks, including their views and vistas, and provides internal amenity and outlook.”

Topography could alternatively fit within the principles for context, landscape or sustainability.

The summary table of Section 1.5 Design Principles shows pictures of bicycles (potentially demonstrating connectivity). However, connectivity is not mentioned at all in the Principle. Connectivity better aligns with Principle 3, which should recognise the importance of locating low rise, medium density close to well-connected places – i.e. shops, parks, footpaths, cycle ways, public transport, foreshore areas etc. Some changes to Principle 3, Density are suggested below:

**Design Principle No. 3. Density** – with suggested changes *highlighted*

“Good design *is well connected and* achieves a high level of amenity for residents and each dwelling, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area’s existing or projected population. ~~Appropriate densities can~~ *They need to be* sustained by existing or proposed, infrastructure, *active transport* and public transport *links*, access to jobs, community facilities and the environment.”

**Part 2 Principle Development Controls 2A – 2C**

Defining the building envelope and landscaping as design elements that underpin the design process for complying development is supported. However, the design criteria in Part 3 of the draft Design Guide do not adequately translate the landscaping guidance from Part 2 of that Guide and thus the implementation is not likely to reflect the intent of the Guide for this element.

**Part 2 Siting the Development 2D – 2H**

Council supports the design elements that influence the siting of a development as provided:

- local character and context,
- public domain interface,
- internal streets – pedestrian and vehicle access,
- orientation and siting, and
- building separation.

However, within part 2D “Local Character and Context” the first element should be the site and context analysis to inform the design and later form the Design Verification Statement.

This section describes the need to understand the site, but this is only beneficial if the analysis informs the design. Landscaping should be included as part of the contextual appreciation and local character as built form sites within a landscape setting. Patterns and rhythms in street elements should also be detailed such as landscaping and building types, e.g. terrace houses, medium density, manor houses etc.

Site analysis should include maximising solar access to dwellings. The site analysis should also include connectivity – links to footpaths, cycle paths and important features such as a beach, shops, parks, public transport, lake etc. It should also recognise the importance/opportunities of corner lots.

**Part 2 Amenity 2I – 2R**

This section is supported.

## **Part 2 Configuration 2S – 2W**

The elements in this section are generally supported, however, there is no requirement for a mix of dwelling sizes. This can be a problem where proponents are comfortable providing dwellings of three or more bedrooms only (for example in regional areas). Low rise, medium density residential development plays significant role in the delivery of affordable housing, so losing current requirements for a mix of dwelling sizes could unintentionally reduce the range of dwelling types.

## **Part 3 Design Criteria and the Explanation in Part 2 Relating to Landscape**

### **Landscaping 3.1C, 3.2C, 3.3C and 3.4C and Siting the Development 3.1D Local Character and Context**

The guidance for landscaping provided in Part 2 of the Draft Design Guide are generally supported, with the following suggestions:

- Section 2C Landscaped Area describes the reliance on the public domain to plant trees in areas of higher density. This statement over simplifies the situation and does not offer a solution.
- Figure 2-13, on page 23 of the Draft Design Guide indicates areas excluded from 'landscaped area'. Areas excluded from landscaping should also include above ground tanks, clothes lines that do not fold away, and bin storage areas. This figure identifies areas with 'A', 'B' or 'C' - some explanation is needed in this respect.
- Section 3.1C of the Draft Design Code needs a definition of landscape e.g. trees, shrub, possibly turf etc. Landscape does not mean left over spaces containing service elements such as bin storage. Landscaping should also be mentioned in Section 3.1D Local Character and Context – as the landscape elements contribute significantly to the local character – patterns and rhythms in the street elements, vegetation etc. Similarly, patterns and rhythms in the street elements should be detailed such as building types terrace houses, medium density, manor houses etc.
- Further description is also required in the design criteria under Section 3.3C-2 Landscape. A large tree (up to 18m) is specified however, such a tree cannot be grown in the narrow setbacks proposed. An accompanying table outlining root volumes and canopy volumes for deep soil planting is required similar to that on page 24 that addresses planting on structures (and gives subsequent earth and air volumes for in ground).

### **Water Management and Conservation 3.1Y, 3.2Y, 3.3Y and 3.4Y**

The guidance given in Part 2 of the Draft Design Guide for water management and conservation is supported, with a request for a control as provided below:

*Stormwater management for new development must incorporate on-site stormwater detention and water quality controls.*

### Waste Management 3.1Z, 3.2Z, 3.3Z and 3.4Z

Council supports the guidance given in Part 2 of the Draft Design Guide for waste management and requests a control as provided below:

*Provide a Waste Management Plan in accordance with Council's Waste Management Guidelines with the following detail for waste collection:*

- *The proposed rating structure for the development and subsequent waste package including the number, size of bins, and service frequency for each waste type.*
- *Details of where bins are to be stored.*
- *Details of where bins are presented for collection. If at kerbside, demonstrate that sufficient unrestricted kerb space is available to present the bins. If an onsite collection is proposed, demonstrate that a collection vehicle can access (and exit) the collection point (preferably in a forward direction) including road widths, truck turning paths, heights of undercover areas etc. An indemnity agreement will be required to be completed for Council to provide an onsite collection service.*
- *Demonstrate that the bins can be manoeuvred from the storage area to the collection area (grades, distances, gates, compounds, steps etc)*
- *The intended waste collection service provider (Council, private contractor)*

This would be recommended for all new development types to be incorporated in the Proposed Code.

## 4 State Environmental Planning Policy (Exempt and Complying Development Code) (Proposed Code)

The Proposed Code provides for the following as complying development:

- i. Dual occupancy 1-2 storey (attached and detached)
- ii. Dual occupancy 2 storey (attached one above the other)
- iii. Multi dwelling housing (terraces)
- iv. Manor house – 3-4 dwellings in one building

### 4.1 Expansion of Code for Complying Development

Council supports the proposed inclusion of dual occupancies, three dwellings and manor houses as development types listed as complying development. Council supports the exclusion of multi dwelling housing from complying development.

Developments involving more than two dwellings (or 500m<sup>2</sup> in floor area) should be required to be notified to adjoining owners. Situations that are difficult to resolve could be taken to the suggested new design panel as discussed in this submission under Section 1 Complying Development Process.

## Part 6 Subdivision Code

Council supports the expansion of the Subdivision Code to allow the strata subdivision of dual occupancies where a complying development certificate was issued under the Medium Density Housing Code in the Codes SEPP.

The Proposed Code under the heading of Torrens title subdivision states that the creation of any street, road or lane or lot for any other purpose other than a dwelling house is not

development specified for this Code. Council supports this exclusion. Council also supports the proposed inclusion of Torrens title subdivision as a concurrent development, with the addition to the design criteria as follows:

*Any development that adjoins a road frontage that does not yet have kerb, gutter, or footpaths must include construction of kerb, gutter, and footpath for the width of the development site (consequently requiring Council approval under the Roads Act 1919).*

#### **4.2 Design Verification Statement**

Council supports the introduction of a Design Verification Statement. The intent is to have the design process consider the context of a site up front. The description of the Design Verification Statement (DVS) in the last two pages of the document, as part of the submission requirements, signifies that the DVS is part of the final stage of the process, unintentionally encouraging this done as an after-thought.

However, the following points are suggested to ensure maximum benefit from the process.

- i. This requirement needs to be part of a clear process that requires the analysis of the site, and its opportunities, to be the starting point to inform the development planned for the site. It is important the Design Verification process occurs early and is not a 'tick a box' requirement, i.e. done after design is completed to defend a position.
- ii. Under the template heading "Context Analysis" consider inserting the words "illustrate how the development addresses and is suited to the context" to replace "Insert context analysis including aerial photo with development in a 200m radius"
- iii. Context analysis should include pedestrian links and cycleway links.
- iv. The Design Verification Statement should verify that the design process was sound and adequate. The draftsman of a complying development is not the best person to check this.

#### **4.3 Proposed Code: Section 94 of the Environmental Planning and Assessment Act 1979 (EP&A Act)**

Contributions plans require certifiers to impose conditions requiring payment of development contributions. However, Certifiers often provide a general statement on the approval to the effect that a contribution may or may not apply and advice should be sought from the local council. Complying development certificates often quote Section 136K of the *Environmental Planning and Assessment Regulation 2000*, and do not provide the necessary contribution information. This leads to confusion and delays for builders and landowners, and the likelihood of loss of contributions in some cases. On a regular basis, Council receives cheques for contributions without prior consultation about the project. This can lead to owners thinking contributions requirements are fulfilled, and proceed with the project when this may not be the case.

It is recommended a mandatory requirement for certifiers to confirm with council, whether a section 94 contribution applies, and to include the required amount in the approval. Thus imposing the same requirement on private certifiers as applies to Councils under Section 101 of the EP&A Act.

**"Section 101** (Additional particulars with respect to section 94 and 94A conditions) requires:

*(1) The notice to an applicant concerning a development consent the subject of a section 94 condition must include the following particulars in addition to any other particulars it is required to contain:*



- a) the specific public amenity or service in respect of which the condition is imposed,
  - b) the contributions plan under which the condition is imposed,
  - c) the address of the places where a copy of the contributions plan may be inspected.
- (2) The notice to an applicant concerning a development consent the subject of a section 94A condition must include the following particulars in addition to any other particulars it is required to contain:
- (a) the contributions plan under which the condition is imposed,
  - (b) the address of the places where a copy of the contributions plan may be inspected.”

#### **Section 94 Contributions: Recommendations:**

1. Amended legislation to require certificates to include:
  - a. the specific public amenity or service in respect of which the condition is imposed,
  - b. the amount of the contribution,
  - c. indexation provisions,
  - d. timing of payment,
  - e. the contributions plan under which the condition is imposed,
  - f. the address of the places where a copy of the contributions plan may be inspected.
2. A mandatory requirement for certifiers to confirm with council whether a Section 94 contribution applies.
3. Financial compensation to Council for the costs of any additional contribution administration associated with servicing certifiers.
4. Certainty of receipt of contributions by Council if contributions are not levied by a certifier, due to breach of Section 136K(2) of the EP&Act.
5. A process or requirement for land acquisitions or works identified in contributions plans.

#### **4.4 Sea Level Rise and Reducing Risk for all three development types**

LMCC Development Control Plan 2014 contains controls relating to Sea Level Rise (SLR) for land adjacent to the Lake Macquarie waterway, that is below 3.0m AHD in elevation, and vulnerable to changes in flood depths and flood frequency as sea level rise occurs. These controls:

- Allow reduced street set-backs to locate development on the safest part of a property;
- Restrict development in areas predicted to be permanently inundated during the life of the asset;
- Provide special consideration for increased fill allowances provided additional fill does not adversely affect stormwater management, water flows or adjoining properties, and that the filled area maintains functional connections to adjoining land and infrastructure;
- consider SLR in flood planning levels; and
- restrict the subdivision of development on land affected by SLR, below 3.0m AHD.

Council is preparing local adaptation plans for land affected by SLR and has undertaken extensive community engagement, , to work with communities to develop plans to manage long-term risks from projected rises in lake levels. The plans will inform local planning controls to manage risk from SLR, and until developed, the controls mentioned above are necessary for land affected by SLR.



Council recommends that the proposed changes to the Codes SEPP exclude development for all three development types, in areas vulnerable to SLR as complying development. In the event such vulnerable land is included in the expansion of the Codes SEPP, a reference should be made to SLR, and the related risks. Part 3 of the General Housing Code could include this, under its own heading. The reference should require development to meet any Council SLR requirements.

Should you require further information, please contact me on 4921 0767 or by email at [scahill@lakemac.nsw.gov.au](mailto:scahill@lakemac.nsw.gov.au)

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Shane Cahill'.

Shane Cahill  
**Senior Strategic Landuse Planner**  
**Integrated Planning Department**

## Attachment 1

Extract from

**Lake Macquarie City Council Local Environmental Plan 2016** *from legislation website 10 November 2016*

### Part 4 Principal development standards

#### 4.1 Minimum subdivision lot size

1. The objectives of this clause are as follows:
  - a) to promote the efficient use of land in accordance with this Plan,
  - b) to ensure that subdivision does not prevent the orderly development of land in accordance with this Plan,
  - c) to require adequate street frontages and dimensions for standard, battle-axe and irregular shaped lots,
  - d) to ensure that the intensity of the development is appropriate to the land's environmental capability.
2. This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
3. The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.
4. This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

#### 4.1AA Minimum subdivision lot size for community title schemes

1. The objectives of this clause are as follows:
  - a) to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements or result in lots that would be unsuitable for their intended use.
2. This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 of land in any of the following zones:
  - a) Zone RU2 Rural Landscape,
  - b) Zone RU6 Transition,
  - c) Zone R1 General Residential,
  - d) Zone R2 Low Density Residential,
  - e) Zone R3 Medium Density Residential,
  - f) Zone B7 Business Park,
  - g) Zone IN1 General Industrial,
  - h) Zone IN2 Light Industrial,
  - i) Zone E2 Environmental Conservation.

Note. Land in any other zone may be subdivided under the Community Land Development Act 1989 to create lots that are less than the minimum size shown on the Lot Size Map in relation to that land.

3. The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the Community Land Development Act 1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

#### **4.1A Exceptions to minimum subdivision lot sizes for certain residential development**

1. The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.
2. Despite clause 4.1, development consent may be granted to development on land in Zone R1 General Residential or Zone R2 Low Density Residential that is both of the following:
  - a) the erection of a dual occupancy,
  - b) the subdivision of the land into 2 lots if the size of each lot resulting from the subdivision is at least 250 square metres.
3. Despite clause 4.1, development consent may be granted to development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential that is both of the following:
  - a) the subdivision of land into 3 or more lots that each have frontage to a road,
  - b) the erection of:
    - (i) a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential if the size of each lot resulting from the subdivision is at least 300 square metres but no more than 450 square metres, or
    - (ii) a dwelling house or an attached dwelling on land in Zone R3 Medium Density Residential if the size of each lot resulting from the subdivision is at least 200 square metres but no more than 450 square metres.
4. Despite subclause (3), development consent may be granted for development under subclause (3) (a), but only if the consent authority is satisfied that:
  - a) an attached dwelling, dwelling house or semi-detached dwelling could be appropriately located on each lot, or
  - b) the subdivision would be consistent with a development control plan prepared specifically for the site.

#### **4.1B Exceptions to minimum subdivision lot sizes for certain residential development in urban release areas**

1. The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.
2. This clause applies to development on land in Zone R2 Low Density Residential in an urban release area.
3. Development consent may be granted to development to which this clause applies if the development is a subdivision of land that creates 10 or more lots and at least 10% of those lots (but not more than 50% of those lots) are:
  - a) equal to or greater than 300 square metres, but not greater than 450 square metres, and
  - b) for development for the purposes of a dwelling house or semi-detached dwelling.
4. Despite subclause (3), development consent may be granted for development under this clause, but only if the consent authority is satisfied that the development would be consistent with a development control plan prepared specifically for the site.

#### **4.1C Exceptions for subdivisions involving battle-axe lots or corner lots in certain zones**

1. If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

2. Despite clause 4.1, if a subdivision of land creates a battle-axe lot, the lot must have an area of at least:
  - a) if the lot is in Zone R2 Low Density Residential—600 square metres, or
  - b) if the lot is in Zone R3 Medium Density Residential—1,500 square metres.
3. Despite clause 4.1, if a subdivision of land creates a corner lot, the lot must have an area of at least:
  - a) if the lot is in Zone R2 Low Density Residential—500 square metres, or
  - b) if the lot is in Zone R3 Medium Density Residential—1,200 square metres.
4. Despite subclauses (2) and (3), development consent must not be granted to a subdivision that would result in more than 2 battle-axe lots with the same access handle as the only means of vehicular access to the road.
5. This clause does not apply to the subdivision of land under clause 4.1A or 4.1B.