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

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Dear Ms Sheridan

DRAFT MEDIUM DENSITY DESIGN GUIDE AND EXPLANATION OF INTENDED EFFECT FOR THE NEW MEDIUM DENSITY HOUSING CODE

Reference is made to the current exhibition of the Draft Medium Density Design Guide, Explanation of Intended Effect for the new Medium Density Housing Code and associated exhibition materials. Thank you for the opportunity to make a submission on this significant proposal.

This submission was formally endorsed by Council at its meeting on 12 December 2016. The submission is divided into 'General Comments' and 'Specific Comments' on the proposals contained within the Medium Density Housing Code exhibition material.

GENERAL COMMENTS

The proposed Medium Density Housing Code and associated exhibition material represents a very significant policy shift for communities in NSW. The scale of development included being medium density housing, is considered well beyond the scope of "low risk/low impact" or "straightforward" development which was intended for the Complying Development pathway.

As development size and complexity increases, so does the need for a comprehensive assessment. The larger the site and development, the more issues that potentially need to be addressed. A "tick a box" approach is rarely appropriate.

In addition, private certifiers do not have in place adequate governance structures to manage conflicts of interest, keep appropriate records of decisions, and respond to community enquiries. Using the Complying Development Pathway for medium density housing development will undermine community confidence and trust in the planning system.

In short, Wollongong City Council does not support the expansion of the complying development provisions to include medium density housing as complying development throughout the State.

Key concerns with the Draft Medium Density Housing Code and associated exhibition materials are outlined below.

The Importance of Community Consultation

The planning system in NSW (rightly or wrongly) has established, at its core, the expectation that neighbours will be consulted (and their views considered) before development proposals in their immediate surroundings are determined.

At present, private certifiers, through the existing Complying Development process, do not operate equivalent systems to engage, inform, communicate and explain decisions with third parties. The community expectation to have a say on proposals which directly affect them is well established in Wollongong and the expansion of complying development to include the medium density housing code does not offer any level of community consultation. The proposed expansion is likely to create community distrust, confusion and ambiguity towards the planning system.

A more rigorous level of community consultation is required to be included in the assessment process for any medium density code assessed development. This may be supported by defined design criteria which the community may influence change in relation to e.g. streetscape, articulation, landscaping, overall appearance, colour, materials and finishes of the proposed development. This will ensure the community is able to have their say on the proposed development occurring in their neighbourhood, ensure the desired future character of the area is achieved and provide a level of accountability for certifying authorities assessing such development.

Many Councils, like Wollongong City Council, have established robust systems, such as Independent Hearing and Assessment Panels (IHAPs) for engaging with proponents and objectors to determine development applications in a rigorous, transparent and efficient manner.

Private Certifying Authorities

Private Certifiers, through the Complying Development process, do not operate equivalent systems to engage, inform, communicate and explain decisions with third parties. Removing these layers of scrutiny and transparency from the decision making process for medium density development is at odds with the expectations of neighbouring residents and communities and is likely to undermine the credibility of the Complying Development approval pathway.

Wollongong is classified as a "regional" area and neighbours are not required to be notified before a Complying Development Certificate is issued, and will only be given 2 days' notice prior to works commencing.

Private Certifying Authorities do not operate with similar governance and reporting structures to Councils or the perception of transparency. For example, Councils are required to ensure appropriate record keeping and access to information as required by the Government Information (Public Access) Act 2009. Many Councils like Wollongong City Council have online DA tracking systems to view information and make submissions. Such systems are not in place for Private Certifying Authorities, contributing to the perception of a lack of transparency and governance.

It is Council's experience Private Certifying Authorities are often reluctant to consider aspects of development outside the Building Code of Australia requirements when assessing Complying Development. This is a significant misalignment with community expectations which rightfully assume precise and comprehensive assessment of all issues relevant to the development.

Implementation of the exhibited Medium Density Housing Code

Although the intent of the Medium Density Housing Code (and associated exhibited material) is understood, the blanket introduction across all areas in New South Wales where such development is zoned and permissible is not supported. In the Wollongong LGA this approach is likely to undermine the viability of development occurring within and around city, town and village centres and other strategic locations which are well serviced. Existing land / property prices will likely see such Medium Density Housing Code development implemented in more distant and affordable locations away from such centres. Generally these areas are more remote from services such as public transport and lack the infrastructure required to support such growth. In Wollongong, many established residential / mixed use areas away from the city / town centres are affected by numerous site constraints e.g. slope, geotechnical issues, flood, biodiversity, bushfire. Implementation of medium density development in such areas without individual assessment of such constraints is not recommended.

In relation to site constraints, much of Wollongong is affected by steep slopes, instability and geotechnical constraints. The introduction of medium density via Complying Development should be limited to sites which have less than 5 degree slope in any direction in the affected building envelope.

The Medium Density Housing Code (and associated exhibited material) creates further discrepancy between local planning controls and development assessed via the Complying Developing process. The allowance in the exhibited code for increasing the Floor Space Ratio (FSR) above the allowable limits in the Wollongong Local Environment Plan LEP 2009 (LEP) should be removed. These provisions relate to two dwellings side by side, terraces and townhouses. The proposed new provisions would override the Wollongong LEP FSR controls that have been defined through a transparent community engagement process. Other larger differences between the exhibited Medium Density Housing Code and local planning provisions in Wollongong relate to solar and daylight access (both for the subject development and adjacent dwellings), building setbacks, building articulation and the public domain interface. Such differences ignore

the views of the local community and will likely cause apprehension, discontent, and distrust in the community.

The introduction of any Medium Density Housing Code is likely better positioned in designated areas closer to Wollongong City Centre, around regional and / or town centres, and / or in close proximity to transport nodes (e.g. within 800m of train stations). Adoption of this approach may support the viability of existing local town and village centres where density is desired and better utilize areas which have appropriate transport and local services.

It is recommended that Local Councils be given the task of identifying suitable locations for the application of the Medium Density Housing Code provisions. This may include designated sections of new release housing estates. Such introduction would enable upfront consultation and education with the future property owners / investors, and allow development outcomes to be transparently communicated.

S94/ 94A contributions

The draft Code and Guide do not mention Section 94/94A development contributions. It is unclear how Section 94/94A contributions are to be levied. For dwelling house CDCs, Council has found that certifiers have issued CDCs without Section 94A contributions being paid, or have included a vague condition indicating that it is the owners' responsibility to pay any required contribution to the Council. It is difficult for Council to chase up payment from an unsuspecting owner. This situation is anticipated to become worse with the expansion of the Code to medium density development, as a larger number of contribution payments from possibly multiple owners will be required.

Local Character

Whilst the draft code contains a large amount of content related to preservation of local character and includes a range of "Design Guidelines", it is not reasonable to anticipate that a single private certifier can adequately consider and comprehend the full complexity of these matters without the benefit of community consultation processes and broader community input. Further, the code is heavily reliant upon Councils having defined very clearly a wide range of local character matters. Whilst Councils have often defined broad local character statements at a suburb level, this does not allow for careful consideration of localised street character and precincts that create unique environments within places and at a smaller local scale.

Heritage

It is noted that the Medium Density Housing Code is not proposed to apply to Heritage Items, nor to Heritage Conservation Areas. However, this would not prevent the application of the Code, through private certification on land immediately adjacent to a heritage item or area. These developments may also potentially impact on the significance of heritage items. Consideration should be given to removing the application of the Code from properties immediately adjacent to heritage items.

Removal of trees and clearing of vegetation

It is understood that biodiversity issues are not a consideration in the context of the Medium Density Housing Code and exhibited material. An assessment of the immediate and cumulative impacts of the removal and clearing of trees and vegetation requires careful consideration. This is currently enabled through the development assessment process but will be reduced if the Code is adopted as exhibited. There will be increased potential for diminished regulation of the management or removal of trees through the application of clause 3.6A 'removal or pruning of trees and vegetation' through complying development.

SPECIFIC COMMENTS

Comments relating to the exhibited Draft Medium Density Design Guide Part 3.1 Two Dwellings side by side

Minimum lot size - Comments relate to Design Criteria: 3.1A

It is noted the minimum lot size for each dwelling is noted as 200m² or 6m.

Clarification is required to determine if the 6m is a minimum frontage for each dwelling? Or is this a minimum 6m at the building line? Or is this a minimum 6m dimension for the entire building envelope?

It is also unclear whether the lot areas specified for setbacks and floor space ratio are referring to the parent lot or the proposed lot. If individual lots are proposed to have a minimum area of 200m², the parent lot will need to have an area of at least 400m².

Front setbacks - Comments relate to Design Criteria: 3.1A

The front setbacks for smaller lot sizes as proposed for primary road / front setback are not supported. These setbacks are small, and coupled with the articulation zone proposed, will result in haphazard development likely to affect line of sight, amenity, and the overall streetscape in the immediate vicinity. In the longer term this will also enable dwellings on larger lots to creep forward and reduce the front setback to be similar to those developed under this Code. Additionally, the perceived bulk and scale of such developments is likely to increase if inadequately articulated.

A more uniform and consistent approach, regardless of lot size is recommended for adoption in this Code e.g. Wollongong Development Control Plan 2009 (DCP) adopts a uniform approach, generally being either 6m for infill development (or the average of dwellings within 40m of either side of the development) or 4.5m for development in greenfield sites.

Additionally, car parking requirements in the Wollongong DCP require 2 spaces for dual occupancy dwellings over 125m². For side by side dual occupancy this is often designed so that each dwelling has one garage space, and each meet a 5.5m clearance from the front boundary to enable cars to be parked off-street.

Side setbacks - Comments relating to Design Criteria 3.1A

Regarding the provision relating to the rear half of the lot, or distance >15m from front boundary: Building envelope defined by 45 degree plan projected from a height of 3.6m above the boundary. It is not clear to the average reader how the clause 'Building envelope defined by 45 degree plan projected from a height of 3.6m above the boundary' is calculated. It is recommended this criteria be reworded or an equation inserted to more effectively communicate the application and intent of the clause.

Maximum FSR for each lot - Comments relating to Design Criteria 3.1B

The maximum FSR applied to medium density housing as per Wollongong Local Environment Plan 2009 (LEP) in R2 zones is generally 0.5:1.

The proposed FSR per dwelling for all lot sizes, particularly smaller lots 200-300m² and 300-400m², is significantly higher than Wollongong LEP and is not supported. This provision has been developed without community consultation and may result in development out of character with many streets as well as overlooking and overshadowing impacts. This will also result in further disparity between the scale permissible to be built via complying development under this proposed Design Guide when compared to Wollongong LEP.

It is recommended the maximum FSR for each lot be reduced and brought back into line with the FSR contained in the relevant local environment plans.

Landscaped area - Comments relating to Design Criteria 3.1C

The combined maximum FSR and landscape area requirements are likely to push development to double storey. Is this the intent of the Design Criteria?

Support is provided for Design Criteria which relate to tree planting onsite. Further amendment is recommended to require trees to be planted a minimum of 3m from the dwellings or any other proposed or existing structure on site. In accordance with Wollongong LEP trees may be removed without consent if less than 3m from development. If the intent is to 'green' these new development areas, the recommended amendment will ensure these trees have a better chance of survival.

It is recommended a minimum qualification level be introduced for those persons preparing a landscape plan. Wollongong DCP has recently increased the qualification level for those persons preparing landscape plans due to longer term issues with inexperienced persons preparing such plans. Such qualification may be a landscape architect or landscape designer with a minimum of 3 years' experience.

The inclusion of a planting list is recommended, or reference the applicable Council DCP's (if they include recommended planting lists) to encourage the planting of suitable local native vegetation.

Local character and context - Comments relating to Design Criteria 3.1D

Providing a design verification statement will not ensure development has regard for the character or desired future character of the area. It is recommended this criteria be strengthened to ensure development is actually required to respond to the desired future character as sought by the local community.

Public domain interface - Comments relating to Design Criteria 3.1 E

Provision relating to the height of front fencing exceeds that in Wollongong DCP and the existing provisions of the Codes SEPP. Maximum height as per Wollongong DCP is 1.2m as opposed to that maximum proposed in the design criteria being 1.5m with an average no greater than 1.2m.

Orientation and Siting - Comments relating to Design Criteria 3.1G

Design Criteria relating to solar access to adjacent properties living rooms requiring a minimum of 2hr solar access is not supported. It is recommended this minimum be increased to include a minimum of 3hr continuous solar access to living areas (similar to Wollongong DCP), and consideration be given to overshadowing impacts resulting on areas of private open space (POS).

In relation to Design Criteria 26, *Every wall that faces the street has a window to a habitable room at each level*, further specification is recommended to ensure such windows are transparent.

Solar and daylight access - Comments relating to Design Criteria 3.1I

Design criteria 34 and 35 which allow sunlight access to be discontinuous are not supported. The provision of continuous access to sunlight is recommended as a minimum requirement. It is recommended such draft criteria be further refined to ensure a minimum of 3hr direct sunlight access be required per dwelling, and in POS and living areas of adjacent dwellings, and not the proposed 2 hrs (discontinuous) direct sunlight.

Private Open Space - Comments relating to Design Criteria 3.1M

The provision of 16m² private open space is small particularly as lot sizes increase. The provision of POS in Wollongong DCP is 24m². It is recommended private open space increase with increasing lot e.g., 450m² or larger the requirement for minimum POS being 24m² is recommended for each dwelling.

Additionally, the provision recommending private open space should be 50% covered may work to enclose, or suggest to the occupant they may enclose this space.

Storage - Comments relating to Design Criteria 3.1N

Are there any setback requirements from neighbouring properties, or design requirements for such storage e.g. for bike storage?

Car and bicycle parking - Comments relating to Design Criteria 3.1 O

Regarding Design Criteria 62 – Question: Can the covered parking space for a bicycle also be integrated with (or is there a separate requirement for) storage requirements as per design criteria 57? This is not clear and should be clarified either way.

Design Criteria 63 – Comment: It is assumed the design criteria for dwellings setback 4.5-5.5m is not complete and requires review.

At grade car parking provisions (e.g. as per Design Criteria 63) will not allow a car to be parked off the road with a clear pedestrian footpath to minimise pedestrian interference. It is recommended this be reviewed to ensure all car parking required for the development, be off street and minimise such interference e.g. setback 5.5m.

Design Criteria 64 – recommend this provision is amended to ensure garage width is not more than 50% of the dwelling frontage, not based on lot width.

Design Criteria 64 – recommend strengthening wording for lots less than 7.5m in width to state car parking must be provided via a secondary road, parallel road or lane ... rather than current wording which states *where the lot width is <7.5m, the car space and/ or garage is provided from a secondary road parallel road or lane*.

Recommend additional information be included relating to access / driveway requirements e.g. driveway widths.

Architectural form and roof design - Comments relating to Design Criteria 3.1U

Design Criteria 77 are unclear and re-wording is recommended to provide further clarity around this issue.

Visual appearance and articulation - Comments relating to Design Criteria 3.1V

The importance and need of an articulation zone is supported however an articulation zone of 1.5m forward of the building line is not supported. This is viewed as excessive and likely to increase bulk and scale of the dwelling from the street. This articulation zone coupled with front setback proposed e.g. for a 200m² lot (3.5m setback) will enable development to occur within 2m from the front boundary. It is recommended this be revised and a smaller articulation zone permitted.

Pools and ancillary development - Comments relating to Design Criteria 3.1W

Recommend specification to clarify swimming pools are not included as part of the required landscaped area or POS requirements.

Water management and conservation – Comments relating to Design Criteria 3.1Y

An additional objective should be included to ensure that new developments do not increase stormwater flows downstream when compared to the existing scenario and do not adversely impact on downstream properties as a result of stormwater.

With respect to the design criteria relating to stormwater disposal and detention tank locations require amendment as outlined below:

- Stormwater disposal to a Council or interallotment drainage system under a charged system should be removed from the design criteria for medium density development as this proposal can lead to greater chance of pipe blockages, increased maintenance for owners, less opportunity to capture runoff in surface pits if the outlet is higher than surface pits, and redirection of runoff away from the natural flow path (thereby increasing flows downstream and placing additional pressure on the receiving drainage systems).
- The disposal of stormwater from a medium density development via a charged system is contrary to Wollongong DCP 2009 provisions and is not supported.
- Stormwater disposal to an on-site disposal system should be removed from the design criteria as this proposal has a greater potential for stormwater impacts to surrounding properties due to increased impervious areas and less space to locate the large disposal system on site when compared to a single dwelling disposal system.
- The disposal of stormwater from a medium density development to an on-site disposal system is contrary to Wollongong DCP 2009 provisions and is not supported.

Waste Management Plans – Comments relating to Design Criteria 3.1Z

The requirement for a waste management plan was integrated into many local government area DCPs for use during demolition and construction works. This is an existing provision in many Council DCPs and something that is recommended for inclusion in any expansion for the complying development codes in relation to medium density development.

**Comments relating to the exhibited Draft Medium Density Design Guide
Part 3.2 Terraces**

Minimum lot size - Comments relate to Design Criteria: 3.2A

Comment - same as specified for two dwellings side by side applied to terrace development.

Front setbacks - Comments relate to Design Criteria: 3.2A

Comment - same as specified for two dwellings side by side applied to terrace development.

Side setbacks - Comments relate to Design Criteria: 3.2A

Comment - same as specified for two dwellings side by side applied to terrace development.

Maximum FSR for each lot - Comments relating to Design Criteria 3.2B

Comment - same as specified for two dwellings side by side applied to terrace development.

Landscaped area - Comments relating to Design Criteria 3.2C

Comment - same as specified for two dwellings side by side applied to terrace development.

Local character and context - Comments relating to Design Criteria 3.2D

Comment - same as specified for two dwellings side by side applied to terrace development.

Orientation and Siting - Comments relating to Design Criteria 3.2G

Comment - same as specified for two dwellings side by side applied to terrace development.

Solar and daylight access - Comments relating to Design Criteria 3.2I

Comment - same as specified for two dwellings side by side applied to terrace development.

Private Open Space - Comments relating to Design Criteria 3.2M

Comment - same as specified for two dwellings side by side applied to terrace development.

Car and bicycle parking - Comments relating to Design Criteria 3.2O

Comment - same as specified for two dwellings side by side applied to terrace development.

Visual appearance and articulation - Comments relating to Design Criteria 3.2V

Comment - same as specified for two dwellings side by side applied to terrace development.

Water management and conservation – Comments relating to Design Criteria 3.2Y

Comment - same as specified for two dwellings side by side applied to terrace development.

Waste Management Plans – Comments relating to Design Criteria 3.2Z

Comment - same as specified for two dwellings side by side applied to terrace development.

Comments relating to the exhibited Draft Medium Density Design Guide

Part 3.3 Multi Dwelling Housing

Landscaped area - Comments relating to Design Criteria 3.3C

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Local character and context - Comments relating to Design Criteria 3.3D

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Orientation and Siting - Comments relating to Design Criteria 3.3G

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Solar and daylight access - Comments relating to Design Criteria 3.3I

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Car and bicycle parking - Comments relating to Design Criteria 3.3O

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Visual appearance and articulation - Comments relating to Design Criteria 3.3V

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Water management and conservation – Comments relating to Design Criteria 3.3Y

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Waste Management Plans – Comments relating to Design Criteria 3.3Z

Comment - same as specified for two dwellings side by side applied to multi dwelling housing.

Comments relating to the exhibited Draft Medium Density Design Guide

Part 3.4 Manor Houses

The term "Manor Houses" is a misnomer and is not supported. According to the Macquarie Dictionary, "a manor is the main house on a country estate". Wikipedia notes that "a manor house is a large country house, which was historically the capital residence within a manor, in which dwelled the lord of the manor" (edited). The use of the term to describe 2, 3 or 4 dwellings within a large building is confusing, and has likely originated from the marketing of a particular housing product. The term / definition in the SEPP Sydney Region Growth Centres 2006, should be amended, rather than making that definition apply across the State.

Front setbacks - Comments relate to Design Criteria: 3.4A

Comment - same as specified for two dwellings side by side applied to Manor houses.

Side setbacks - Comments relating to Design Criteria 3.4A

Comment - same as specified for two dwellings side by side applied to Manor houses.

Landscaped area - Comments relating to Design Criteria 3.4C

Comment - same as specified for two dwellings side by side applied to Manor houses.

Local character and context - Comments relating to Design Criteria 3.4D

Comment - same as specified for two dwellings side by side applied to Manor houses.

Orientation and Siting - Comments relating to Design Criteria 3.4G

Comment - same as specified for two dwellings side by side applied to Manor houses.

Solar and daylight access - Comments relating to Design Criteria 3.4I

Comment - same as specified for two dwellings side by side applied to Manor houses.

Private Open Space - Comments relating to Design Criteria 3.4M

Comment - same as specified for two dwellings side by side applied to Manor houses.

Car and bicycle parking - Comments relating to Design Criteria 3.4O

Comment - same as specified for two dwellings side by side applied to Manor houses.

Visual appearance and articulation - Comments relating to Design Criteria 3.4V

Comment - same as specified for two dwellings side by side applied to Manor houses.

Water management and conservation - Comments relating to Design Criteria 3.4Y

Comment - same as specified for two dwellings side by side applied to Manor houses.

Waste Management Plans - Comments relating to Design Criteria 3.4Z

Comment - same as specified for two dwellings side by side applied to Manor houses.

Please contact Andrew Carfield, Director Planning & Environment – Future City & Neighbourhoods, on telephone 4227 7284 should you require further information.

Yours faithfully



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