

FOR ACTION

COUNCIL - DEVELOPMENT

12/12/2016

TO: Team Leader LUP (Kevin Kuo)

Subject: Submission on the Draft Medium Density Guide (Complying development and other standards for low rise medium density housing)
Target Date: 11/01/2017
Notes: Kevin for action please.
File Reference: <FOLDERNUMBER> D04517363


RESOLVED (Chadwick)

- (a) **That** Council note the significant resident feedback it has received in relation to the Draft Medium Density Design Guide and note the community's strong objections to the proposed changes which will expand Complying Development to include some forms of Medium Density Development. A copy of all submissions received by Council should accompany Council's submission as an appendix.
- (b) **That** Council highlight the following key concerns regarding the NSW Department of Planning and Environment's Draft Medium Density Design Guide:
- i. With the exception of dual occupancies, the Complying Development process is not considered appropriate for assessing most forms of medium density development because tailored design responses to site conditions are required.
 - ii. Manor houses or vertical dual occupancy (where there is a separate unit on the first and second floor) are only considered appropriate in R4 High Density Residential zones. This is due to the amenity and privacy impacts inherent in having primary living areas above one another in lower density areas.
 - iii. Given the content of the Design Guide and the need in some cases to make subjective design decisions, the certification of design principles should be undertaken by a Registered Architect.
 - iv. If the NSW Government resolves to continue with the current range of housing typologies proposed as Complying Development, Council recommends the introduction of a maximum threshold of six (6) consecutive terrace houses that can be delivered via certification be applied before they must be lodged and assessed as a Development Application (DA).
 - v. Some of the proposed Complying Development standards (eg inadequate minimum lot sizes for terrace housing, excessive floor space ratio for small sites, small side setback controls, lack of provisions for private open space, landscaped areas and deep soil zones) are not appropriate to the City of Parramatta Council context.
 - vi. The lack of community consultation for complying development is inappropriate given the intensity of the proposed medium density development typologies envisaged in the Design Guide and the associated impacts on privacy and amenity of adjoining residents.

- (c) **That** Council adopts the submission provided at **Attachment 5** of the Design Guide and it be forwarded to the NSW Department of Planning and Environment for their consideration.
- (d) **That** Council requests a meeting between Council officers and the DP&E to flag the community's significant objection to the proposed changes as well as to discuss the issues raised in its submission, with a particular focus on the workability of the controls to achieve the desired design outcomes for the Parramatta local government area (LGA).
- (e) **Further, that** Council write to the Minister for Planning and all local members of Parliament in the LGA advising of the potential impact and of Council's concerns and suggested improvements.

Open Item in Minutes

This action sheet has been automatically produced by the Governance Unit using
InfoCouncil, the agenda and minutes database.

**Please Update & Finalise this action by using the InfoCouncil Outstanding Actions key in
Microsoft Word.** 

**All Action Notes entered through the InfoCouncil Outstanding Actions Screen will
automatically appear in TRIM.**

ECONOMY

| | |
|--------------------|------------------------------------------------------------------------------------------------------------------------------|
| ITEM NUMBER | 8.7 |
| SUBJECT | Submission on the Draft Medium Density Guide (Complying development and other standards for low rise medium density housing) |
| REFERENCE | F2016/00024 - D04517363 |
| REPORT OF | Team Leader LUP |

PURPOSE:

To seek Council's endorsement of a submission to the NSW Department of Planning and Environment's Draft Medium Density Design Guide (Design Guide). When finalised, the Design Guide will facilitate the expansion of Complying Development to include low-rise medium density housing typologies such as town houses and dual occupancies within the planning framework of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

RECOMMENDATION

(a) That Council highlights the following key concerns regarding the the NSW Department of Planning and Environment's Draft Medium Density Design Guide (Design Guide):-

- i) With the exception of dual occupancies, the Complying Development process is not considered appropriate for assessing most forms of medium density development because tailored design responses to site conditions are required.
- ii) Manor houses or vertical dual occupancy (where there is a separate unit on the first and second floor) are only considered appropriate in R4 High Density Residential zones. This is due to the amenity and privacy impacts inherent in having primary living areas above one another in lower density areas.
- iii) Given the content of the Design Guide and the need in some cases to make subjective design decisions, the certification of design principles should be undertaken by a Registered Architect.
- iv) If the NSW Government resolves to continue with the current range of housing typologies proposed as Complying Development, Council recommends the introduction of a maximum threshold of six (6) consecutive terrace houses that can be delivered via certification be applied before they must be lodged and assessed as a Development Application (DA).
- v) Some of the proposed Complying Development standards (eg inadequate minimum lot sizes for terrace housing, excessive floor space ratio for small sites, small side setback controls, lack of provisions for private open space, landscaped areas and deep soil zones) are not appropriate to the City of Parramatta Council context.
- vi) The lack of community consultation for complying development is inappropriate given the intensity of the proposed medium density development typologies envisaged in the Design Guide and the

associated impacts on privacy and amenity of adjoining residents.

(b) That Council adopts the submission provided at **Attachment 5** on the Design Guide and it be forwarded to the NSW Department of Planning and Environment for their consideration.

(c) Further, that Council requests a meeting between Council officers and the DP&E to discuss the issues raised, with a particular focus on the workability of the controls to achieve the desired design outcomes for the Parramatta local government area (LGA).

BACKGROUND

What is complying development?

1. The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) applies across NSW and allows certain types of development to be carried out as exempt (without approval), or complying development (through the issuing of a Complying Development Certificate (CDC) by a private certifier or Council).
2. Complying development is a combined planning and construction approval for straightforward residential, commercial and industrial development, that can be determined through a fast track assessment. Providing the development meets specific criteria as identified in the Codes SEPP then it can be approved by Council or an accredited certifier without the need for a full development application. Examples of complying development include:
 - Renovations to a home
 - Development of a granny flat
 - Building a swimming pool
 - Building a garage or car port
 - Alterations and additions to industrial and commercial buildings
 - The demolition of a building.
3. It should be noted that complying development is not permitted where a heritage item is involved, on certain land in a heritage conservation area, environmentally sensitive land, and on certain other land as listed in Part 1 of the Codes SEPP.
4. Complying Development must meet the principal development standards contained in the Codes SEPP including requirements for minimum setbacks, maximum building height, and site coverage and landscaping. The Codes SEPP also contains the general development provisions for development on bush fire prone land, flood prone land, for retaining walls and earthworks and other development requirements. As mentioned, if a development meets all the development standards and other requirements specified within the Codes SEPP, proponents will not need to obtain a development approval from Council and can commence development once they have obtained a CDC which can be issued by either Council or an accredited private certifier.
5. The consultation process for the issue of a CDC is limited. Also referred to as neighbour notification, adjoining owners are required to be notified when an

application for Complying Development is lodged and when construction is about to commence. Adjoining owners or other interested persons cannot make a submission on a complying development. The justification for this position by the State Government is that complying development must comply 100% with the development standards in the Codes SEPP. Examples of complying development types requiring neighbour notification (but not consultation) include:

- the construction of a new dwelling or addition to an existing dwelling
- the construction of a granny flat
- the demolition of a building.

Discussion Paper and Background Paper ‘Options for low rise medium density housing as complying development’ (November 2015)

6. The DP&E released a Discussion Paper in November 2015 proposing to expand the range of residential development that could be undertaken as Complying Development in NSW within the Codes SEPP framework to include medium density development.
7. Medium density development currently includes multi dwelling housing (or commonly referred to as town houses and villas) and dual occupancy (attached and detached) and are defined as follows:

Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building).

Dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling [i.e. granny flat]

Dual occupancy (detached) means 2 dwellings on one lot of land, but does not include a secondary dwelling [i.e. granny flat] [Parramatta LEP 2011]
8. Currently, no medium density style development can be undertaken as complying development. The Discussion paper proposed to allow for medium density residential development in the R1 General Residential, R2 Low Density Residential and R3 Medium Density Residential zones as complying development. The proposed changes also included the introduction of a new development type – *Manor Homes* (2 storey residential flat building) with 3 to 4 dwellings.
9. The overall aim of the proposal was to increase the variety of housing choice, provide an efficient mode of delivery, remove existing ‘obstacles’ to delivering this form of housing, and help address future housing demand across NSW in areas zoned for medium density housing.
10. Council prepared a submission responding to the Discussion Paper in February 2016 (**Attachment 4**) which in summary raised the following concerns:
 - Any new provisions in the Codes SEPP should not permit dual occupancy in R2 zones on lots less than 600m² as this is inconsistent with the current PLEP provisions
 - Design and increased intensity of development of allowing Manor Homes and town houses/villas/terrace housing in existing low density residential zones is inconsistent with the objectives of the R2 Low Density Residential zone
 - Complying development process is not considered appropriate for assessing these forms of development and ensuring a high quality outcome

- Concerns regarding the lack of notification requirements given the immediate amenity and visual impacts that could result from allowing medium density development in low density residential zones.

Release of the Medium Density Design Guide 2016 ('The Missing Middle')

11. After considering the responses received from stakeholders on the Discussion Paper, the DP&E has subsequently released the Draft Medium Density Design Guide (**Attachment 1**) and an Explanation of Intended Effects - Proposed Medium Density Housing Code (**Attachment 2**) which was available for comment until 12 December 2016. A FAQ sheet has also been published (refer to **Attachment 3**).
12. **Attachment 5** summarises the proposed development standards contained in the Draft Medium Density Design Guide. It includes specific analysis provided by the City of Parramatta Council's Urban Design and Development Services teams and is an attachment to Council's submission.
13. While some of the concerns raised by Council in its February 2016 submission on the Discussion Paper have been addressed, many issues remain. This includes the potential impact of the proposal on existing amenity, the blurring of residential zones in the City of Parramatta LGA due to lack of contextual consideration, and the lack of community consultation that occurs with Complying Development.
14. Public feedback was also sought for the purposes informing Council's submission to the proposed changes. Advertisements were placed in the local newspapers (Parramatta Advertiser, Northern District Times, Hills Shire Times and Auburn Review) as well as inclusion in the Administrators Column, information provided on Council's website, and notified through Council's Facebook and Twitter feed. Details of community feedback are detailed further in this report.
15. The following section provides an overview of the proposed changes including Council officer's assessment of the implication of these changes. Full details of the issues are dealt with in the submission shown in **Attachment 5** of this report.

INTRODUCTION TO THE DESIGN GUIDE

16. The Design Guide has been developed for both development applications (DA) and complying developments.
17. The Design Guide will support the proposed changes to the Codes SEPP to allow the following medium-density development to be carried out as Complying Development (discussed in further detail under **Proposed Changes**):
 - Two dwellings side by side
 - Terrace houses
 - Manor houses (a new development type being 2 storey built form comprising of 3-4 dwellings) and dual occupancies (attached – one above the other).
18. The above housing types can only be assessed as complying development where the use is permitted in the LEP (i.e. in the R1, R2, R3 and RU5 land use zones). Manor houses are to be identified as a new land use and the State Government is preparing to change the planning controls so they will be permitted where multi-dwelling housing or a residential flat building is permitted.

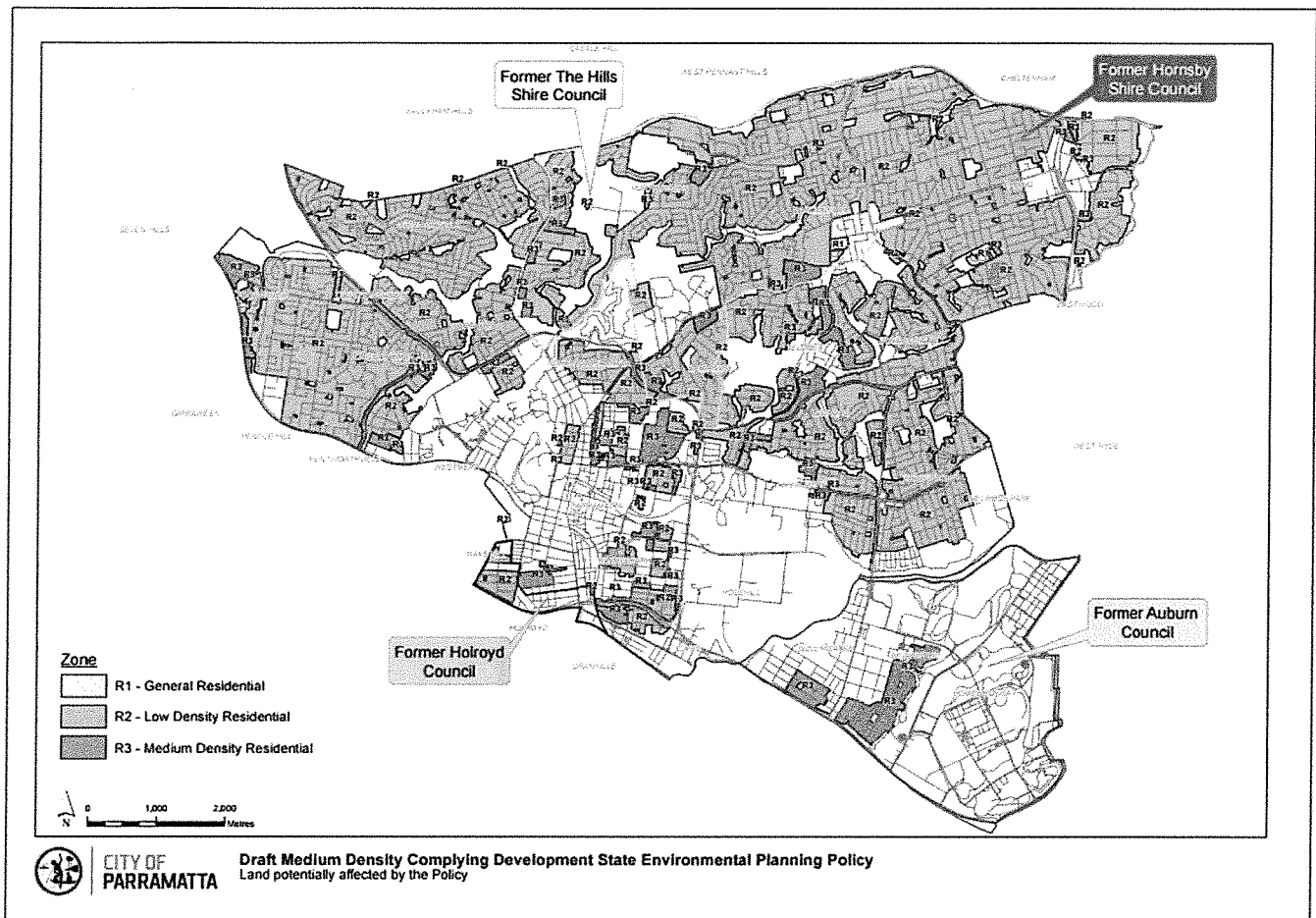
The following table outlines the permissibility of the medium density housing typologies in the stated zones in the LGA. Figure 2 outlines the location of these zones.

Table 1: Permissibility of medium density development in R1, R2, and R3 in the City of Parramatta Council area

| LEP | Zones | Medium density development currently permitted with consent | Zones where State Government is introducing Manor Homes as a new permitted use |
|---------------------|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Auburn LEP 2010 | Zone R2 Low Density Residential | Dual occupancies, Semi-detached dwellings | |
| | Zone R3 Medium Density Residential | Attached dwellings, Semi-detached dwellings; Dual occupancies, Multi dwelling housing | Manor House |
| Holroyd LEP 2013 | Zone R2 Low Density Residential | Dual occupancies, Semi-detached dwellings | |
| | Zone R3 Medium Density Residential | Attached dwellings, Dual occupancies, Multi dwelling housing, Semi-detached dwellings | Manor House |
| Hornsby LEP 2013 | Zone R2 Low Density Residential | N/A | |
| | Zone R3 Medium Density Residential | Attached dwellings, Multi dwelling housing, Residential Flat Buildings* (Manor house), Semi-detached dwellings | |
| Parramatta LEP 2011 | Zone R1 General Residential | Attached dwellings, Multi dwelling housing, Residential Flat Buildings (Manor house), Semi-detached dwellings | |
| | Zone R2 Low Density Residential | Dual occupancies | |
| | Zone R3 Medium Density Residential | Attached dwellings, Dual occupancies, Multi dwelling housing, Semi-detached dwellings | Manor House |
| The Hills LEP 2012 | Zone R1 General Residential | Attached dwellings, Dual occupancies, Multi dwelling housing, Residential Flat Buildings (Manor house), Semi-detached dwellings | |
| | Zone R2 Low Density Residential | Dual occupancies | |
| | Zone R3 Medium Density Residential | Attached dwellings, Dual occupancies, Multi dwelling housing | Manor House |

***Note:** *Manor houses* are a new definition proposed by the State Government changes however this would fall under the definition of *Residential Flats Buildings* under current planning controls.

Figure 2: Map of R1, R2 and R3 zones and the applicable LEPs in the Parramatta LGA



19. The development proposed as complying development is intended to be of a similar scale as a dwelling house that can be currently carried out as complying development under the Codes SEPP (for example the DPEs' Statement of Intended Effects shown in Attachment 2 considers that a dwelling house carried out under the Codes SEPP will be of a similar scale to terrace house proposed under these changes, and a manor house containing 3 or 4 dwellings will also be of a similar scale to a dwelling house carried out under the SEPP)
20. The DPE advise that the development propose generally has significant similarities with a single dwelling house in that:
 - Each dwelling has a frontage to a street
 - Each dwelling has a front and rear setback
 - Private open space is typically located at ground level
21. The following development is not currently being considered for inclusion in the complying development provisions:

Figure 3: Not recommended to be carried out as complying development

| Development Type | Description |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Dual occupancies (attached) | Where one dwelling has a frontage to a primary road and the other is directly behind. |
| Dual occupancies (detached) | Where the dwelling does not have a frontage to a road. |
| Multi-dwelling housing | Mews style, townhouses, villas where each dwelling does not have a frontage to the street. |
| Multi-dwelling housing (terraces) | Dwellings have a frontage to the street but the width of each dwelling is less than 6m, and the lot is less than 200m ² . |

22. Dual occupancies, Manor houses and Terrace style multi dwelling houses where each terrace faces the street and the site is greater than 200m² are the forms where complying development provisions are proposed to be introduced. The proposed complying development standards for these forms of development is discussed in more detail in a following part of this report.
23. The Design Guide will be legally enforceable for Complying Development and any certifier that assesses a development will also need to ensure the development standards and design principles are met.
24. Where a medium density development does not meet the criteria or standards to be assessed as complying development, a DA will be required.

Medium density housing assessed via a development application

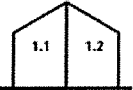
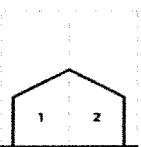
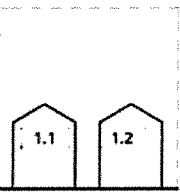
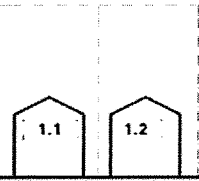
25. The Design Guide provides controls and requirements applying to a whole range of medium density development including those shown in *Figure 3: Not recommended to be carried out as complying development*.
26. The application of the Design Guide on medium density development requiring a DA is intended to be optional.
27. It is not proposed that it would automatically override Council's current controls as Council would need to adopt the Design Guide by reference within a development control plan. If Council does not adopt the Design Guide there are no changes to Council's current planning controls.
28. However, where Council does adopt the Design Guide, it must be adopted in its entirety and the requirements for submission including the Design Verification Statement (a statement by the designer explaining how compliance with the Design Criteria within the Design Guide has been achieved) will apply.
29. Council officers currently have concerns with the multi-dwelling housing typologies identified in the Design Guide and its inconsistency with Council's current planning controls relating to the same development. In particular, Council officers raise concerns with regards to the following:
 - a. Lack of a minimum frontage provided in the Design Guide to guide appropriate access to basement car parking or access to a site containing a significant number of dwellings
 - b. Smaller side setbacks that currently identified in the PDGP 2011 creating privacy issues and reducing the ability to achieve vegetation/planting along the edges of development as a screening measure
 - c. Lack of a specific quantum of Deep Soil area.

30. Accordingly, given the above deficiencies with the Design Guide relating to medium density housing requiring a DA, it is recommended that Council retain its current controls until such time that Council consolidates the range of planning controls currently applying to the CoP when the matter can be reviewed again.

PROPOSED COMPLYING DEVELOPMENT CHANGES - DEVELOPMENT STANDARDS

31. A summary of the development types and requirements that are recommended for inclusion in the Codes SEPP as Complying Development is provided below.
32. Further details of the standards contained in the Design Guide are outlined with accompanying Council comments at **Attachment 5**.

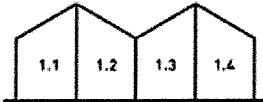
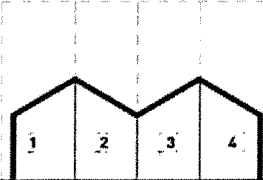
Two Dwellings Side by Side

| Development Type | Requirements | Comments |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Two dwelling side by side (attached) | Min lot size for development – as specified in an LEP so long as each dwelling has a completed lot area >200m ² and minimum frontage to the road of 6m. | Same bulk and scale as a dwelling house under the Codes SEPP. |
|  | Each dwelling must have a frontage to a primary road. | Provisions for greater lot width where the garage is accessed from a primary road. |
| Dual Occupancy (Strata) | Maximum Floor Area: Same as dwelling house for same size block of land. | |
|  | Can be strata or Torrens titled subdivided. | |
| Torrens titled | | |
| Two dwellings (detached) | Min lot size for development – as specified in an LEP so long as each dwelling has a completed area >200m ² and minimum frontage to the road of 6m. | Ensures each dwelling has adequate amenity and privacy and allows landscaping between the dwellings. |
|  | Each dwelling must have a frontage to a primary, secondary or parallel road. | It would only be permitted on a corner lot or side by side. |
| Dual Occupancy (Strata) | Minimum building separation provisions apply. | Reduces impacts of dwellings in the rear gardens of existing subdivisions. |
|  | If a dwelling does not have a frontage to a primary road it is limited in height to 4.8m and single storey. | Both houses together would have the same bulk and scale as a dwelling house under the Codes SEPP. |
| Torrens titled | Maximum Floor Area: Same as dwelling house for same size block of land. | Provisions for greater lot width where the garage is accessed from a primary road. |
| | Can be strata or Torrens titled subdivided. | |

Council Officer comment

33. With the exception of Hornby's R2 zone, the new areas forming part of the CoP permit dual occupancy within their R2 Low Density and R3 High Density Residential zones.
34. It is also noted that while the minimum lot size for dual occupancy development vary slightly among the various LEPs applicable to CoP (between 600m²-700m²), the minimum lot size for two dwellings side by side (dual occupancy) identified in the Design Guide will not affect these existing LEP provisions as long as each dwelling has a completed lot area greater than 200m² and have a minimum frontage of 6m.
35. It is noted that the Auburn and Holroyd LEPs currently do not include minimum lots sizes for dual occupancy development (as they are detailed in their DCP). This is likely to mean that the minimum standards identified in the Design Guide will prevail and potentially enable dual occupancy development on sites smaller than that specified in the relevant DCPs. For example the Auburn DCP currently permits attached dual occupancy on lots greater than 450m² and detached dual occupancy on lots greater than 600m²; and Holroyd permitting dual occupancy (both attached and detached) on sites greater than 500m². Given the lack of LEP provisions relating to minimum lot size for dual occupancy, it is anticipated that the proposed Code SEPP amendment associated with the implementation of the Design Guide could enable dual occupancy development on sites as small as 400m² (minimum of 200m² per lot). This issue is discussed further in this report under Subdivision.

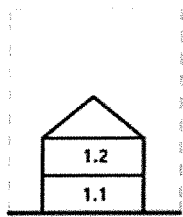
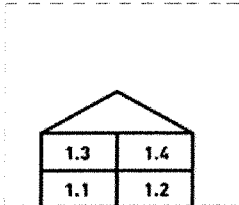
Multi Dwelling Housing (terraces)

| Development Type | Requirements | Comments |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Multi Dwelling housing (terraces) <i>3 or more dwellings (whether attached or detached)</i> | Minimum strata lot: 200m ² Minimum lot width: 6m Maximum Floor Area: Varies based on size of completed lots. Maximum height 9m Maximum number of storeys: 2, excluding basement ² Each dwelling must have a frontage to a primary road. The development must not result in one dwelling being located over or partly over another dwelling. | This enables terrace houses that may not be able to be carried out as a dwelling house or abutting dwelling (above) and need strata titling as a result of minimum lot size. Torren or Strata subdivision. Provisions for greater lot width where the garage is accessed from a primary road. The restrictions to the configuration ensure that all dwellings are side by side. |
|  Strata titled | | |
|  Torrens titled | | |

Council Officer comment

36. Under the current LEP definitions, Multi dwelling housing (terraces) is most similarly defined as an *attached dwelling* (3 or more dwellings, where each dwelling is attached to another dwelling by a common wall, and each of the dwellings is on its own lot of land (Torrens title), and none of the dwellings is located above any part of another dwelling). However, the proposed changes will also permit more than 2 attached dwellings on 1 lot of land as part of strata titled development.
37. The previous Discussion Paper 2015 proposed complying development standards that would permit terrace housing up to a maximum of 10 dwellings above which the development would require a DA. The Design Guide currently does not include a quantity control relating to the number of terrace houses that can be permitted via complying development. This raises potential issues regarding the intensity of what is potentially a large scale development with significant amenity, design and traffic impacts within a suburban context that could be assessed by a private certifier and without the need for community consultation. This issue is discussed in further detail below.

Manor Houses and Dual Occupancy (attached – one above the other)

| | | |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dual Occupancy (attached - one above the other) | Min lot size – as specified in an LEP, or 600m ² . | Strata subdivision only. |
| Manor Houses (3-4 dwellings) | Min lot width (at any point): 15m. | New definition of manor house to be included in Standard Instrument Local Environmental Plan. |
|  | Maximum Floor Area: Same as dwelling house for same size block of land. | Class 2 development – BCA requires min 3m boundary setback without fire protection. Additional side setbacks needed to mitigate against privacy impacts. |
| | Maximum height 8.5m | |
| | Maximum number of storeys: 2 (excluding basement) | Same bulk and scale as a dwelling house under the Codes SEPP. |
|  | | |

38. The land use 'manor homes' is not separately defined within the LEP and existing development of this nature is classified as a residential flat building (RFB) despite being limited to a maximum height of 2 storeys. Currently RFBs are only permitted within the R4 High Density Residential zones (except Hornsby LEP which permits RFBs within R3 Medium Density Residential zones) and some business zones.
39. It is proposed that a new definition will be included in the Standard Instrument LEP for 'manor homes' (3-4 dwellings within one building with one or more dwellings is over another).

40. Due to the requirement to provide parking on site, the Design Guide acknowledges that such developments are best located on corner sites or where there is rear lane access.
41. Dual occupancy (attached – one above the other) on the other hand seeks to introduce another form of dual occupancy which is not preferred given the site and frontage requirements to carry out such a development would mean that a developer could construct a detached dual occupancy where both dwellings would have ground floor access to their own private open space and better manage amenity and privacy concerns associated with having one or more dwellings directly above another.
42. It is considered that dual occupancy (attached – one above the other) would only be an option where a developer would be seeking to retrofit the 1st floor of an existing dwellings order to accommodate the additional dwelling i.e installation of kitchen and potential reconfiguration of rooms to accommodate living area, toilets etc.
43. Given the common areas associated with the above building typologies they would need to be strata titled which is currently complying development under the Codes SEPP.

Subdivision

44. Strata subdivision of multi dwelling housing or building (excluding dual occupancy development) is already permissible as complying development under the Codes SEPP. However, the proposed changes also seek to expand provisions within the SEPP to enable strata subdivisions of dual occupancy where a CDC was issued under the Design Guide (strata subdivision of other dual occupancies will still require a DA – see Figure 3) as well as Torrens Title subdivision as part of implementing the above changes.
45. The development standards proposed as part of the Subdivision section of the Codes SEPP relating to Torrens Title subdivision are detailed below:
 - (a) *that a subdivision certificate is not be issued until the dwelling is suitable for occupation or use in accordance with its classification under the Building Code of Australia and an interim occupation certificate has been issued*
 - (b) *each lot must have a frontage to primary, secondary or parallel road.*
 - (c) *Any lot created must have a minimum dimension of at least 6m*
 - (d) *Any lot created must have an area of at least:*
 - a. *50% of the minimum lot area specified for a dual occupancy in an environmental planning instrument that applies to the land; or*
 - b. *where there is no minimum lot size for dual occupancy specified in an environmental planning instrument 60% of the minimum lot size or 200m² whatever is the greater*

Note: for the purpose of this Part, a battle axe lot is not considered to have a frontage to a road even if the access handle has a width of 6m

Figure 4: Impact of proposed changes to Torrens Title subdivision as Complying Development

| Planning Instrument | LEP Provisions relating to Subdivision/Dual Occupancy | Proposed Subdivision Code Impacts (Torrens Title – lot size) |
|---------------------|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Parramatta LEP | Min lot size for dual occupancy – 600m² | Dual occupancy/terrace housing can be subdivided at 300m² (50%) per lot |
| The Hills LEP | Min lot size for dual occupancy– 700m² (subdivision of dual occupancy prohibited in LEP*) | Dual occupancy/terrace housing can be subdivided at 350m² (50%) per lot |
| Auburn LEP | Nil (no R2 land falls within the new CoP boundary and R3 zoned land currently has no minimum lot size in LEP) | Dual occupancy /terrace housing can be subdivided at the minimum 200m² per lot. |
| Hornsby LEP | Min lot size for subdivision – 500m² | Dual occupancy /terrace housing can be subdivided at 300m² (60%) per lot (R3 zones only). |
| Holroyd LEP | Min lot size for subdivision – 450m² | Dual occupancy/terrace housing can be subdivided at 270m² (60%) per lot. |

*Note – Clause 4.1C of The Hills LEP prohibits subdivision of dual occupancy

46. Despite not having any controls within the LEP relating to dual occupancy, the Auburn DCP specifies a minimum site area of 450m² for 2 attached dwellings and 600 for 2 attached dwellings. The lack of subdivision provisions relating to dual occupancy contained in the Auburn LEP means that notwithstanding the current DCP controls, the minimum lots sizes identified in the Design Guide and proposed subdivision code will apply (200m² per lot) resulting in a reduction in lot sizes.
47. Furthermore, The Hills LEP currently prohibits the subdivision of dual occupancy. It is expected that the proposed changes will override existing provisions and enable the subdivision of these types of development within an area that had not previously permitted it. This will also ensure consistency with the position of wider CoP area with regards to subdivision of dual occupancy.
48. In terms of specific development standards for medium density style residential development there are still inconsistencies with the built form that would be allowed under the LEP and DCP controls which could have adverse impacts on residential amenity, particularly in the R2 Low Density Residential zone. These changes will have implications for development within the City of Parramatta should they proceed and are discussed in more detail later in this report.

STATUTORY PROCESS

49. As mentioned previously the Design Guide will support proposed changes to the Codes SEPP to allow a range of low rise medium density housing types namely **dual occupancies, manor homes and multi unit housing (terraces)** to be carried out as complying development.
50. The Codes SEPP will require compliance with the Design Criteria contained in the relevant section of Part 3 of the Design Guide, aimed at addressing issues such as layout, private open space, sunlight, natural ventilation and privacy. It contains a development standard that will require a design verification statement to be prepared by the person who designed the development which must:
 - explain how the Design Quality Principles are achieved;
 - illustrate how the development is suited to the context;
 - for complying development – demonstrate how the Design Criteria have been achieved; and
 - for a Development Application – demonstrate how the objectives have been achieved using the Design Criteria as a measure of the development's performance
51. To support the NSW Government's proposal, the Standard Instrument Local Environment Plan (the LEP template for NSW) will be amended introducing *manor house*, and *multi dwelling housing (terraces)* to the dictionary and changing the existing definition of *multi dwelling housing* in the following manner:
 - *multi dwelling housing* means 3 or more dwellings (whether attached or detached) on one lot of land, each with direct access at ground level, ~~but does not include a residential flat building~~ and no other dwellings area above or below. [wording in blue – proposed new addition]
 - *manor house* means a building containing 3 or 4 dwellings on one lot of land, where:
 - (a) each dwelling is attached to another dwelling by a common wall and/or floor, and
 - (b) the building contains no more than two storey, excluding any basement storey.
 - *multi-unit housing (terraces)* means 3 or more dwellings (whether attached or detached) on one lot of land, each dwelling has a frontage to a public road and no other dwellings are above or below. [*Multi dwelling housing (terraces)* will be a type of multi-dwelling housing].
52. The Design Guide also includes development standards that apply to other medium density housing (refer to Figure 3) that are not recommended to be included as complying development and will continue to require a DA.
53. In this case, the Design Guide is not legally enforceable for medium density housing developments assessed as a DA unless adopted by Council in its entirety by reference within a DCP, in which case the requirement for the Design Verification Statement will apply. Otherwise, it is intended that the Design Guide can be used by the Consent Authority as a reference document to guide design outcomes.

SUBMISSION ISSUES

54. Currently, to undertake development as complying development under the Codes SEPP, the proposed use must be permissible within the relevant zone of Council's LEP. The previous Discussion Paper and Background Paper 2015 raised the possibility of amending the SEPP to override an LEP and therefore allow uses to occur in a zone that may not otherwise be permitted by Council. The Design Guide and proposed amendments to the Codes SEPP clarifies this position by ensuring that the proposed medium density development will only occur in zones that currently permit them. This approach is supported by Council.
55. Notwithstanding the above, the following submission issues are raised with regards to the proposed changes to complying development and associated Design Guide:

'Standardisation' via Complying Development versus 'Site Specific Assessment' through the DA process

56. While the initiative to improve design outcomes for medium density housing in NSW is supported, it is imperative that this occurs in a way that meaningfully takes account of the different characteristics, land values, densities and infrastructure that occurs across urban areas.
57. As is generally the case when trying to standardise development controls, the room for flexibility based on context, as well as quality control, is substantially reduced.
58. It is Council's contention that the proposed forms of medium density development as complying development would result in much poorer design outcomes than would occur through the existing DA system.
59. Council currently applies significant resources to assisting designers to ensure the design quality of their proposal is as high as possible. The expansion of complying development to include low rise residential housing (i.e manor houses) would remove the opportunity for Council to offer an advisory service to improve design standards to ensure development appropriately responds characteristics of the site and surrounding context.
60. Complying Development applies state-wide standards that have limited consideration for Council's local strategic intentions. A blanket approach to density and development types that can be undertaken with inadequate consultation/notification will not facilitate a positive outcome for the community.

Urban Design Issues

61. Specific concerns with the Design Guide development standards are highlighted at **Attachment 4** to this report. However in summary the following key issues are raised:
 - a. The development form under the Design Guide proposes an inadequate minimum allotment size and an excessive floor space ratio (FSR) for smaller sites, which will inevitably remove the ability for a landscaped setting to be provided. This will result in less undeveloped space between buildings for the planting of significant trees and an urban canopy. This

canopy is essential in the warm climate of Western Sydney, where vegetation is the best available measure to reduce the urban heat island effect. In addition, the proposed allotment sizes are insufficient to provide appropriate levels of resident amenity to ensure the development is consistent with the local character.

- b. The introduction of manor houses and dual occupancy development where units are permitted on the second floor (i.e. vertical dual occupancy) are of particular concern. One feature of the forms of development currently permitted in Council's R2 Low Density Residential and R3 Medium Density Residential zones is that they promote design responses where the primary living areas (kitchen, dining and living areas) are on the ground floor.

Manor houses and vertical dual occupancy would result in primary living areas being located on second storey levels (due to additional dwelling/s being located on the first floor), which is likely to result in more concerns being raised by adjoining residents/landowners about overlooking/privacy and other amenity impacts. It is recommended that Manor houses or vertical dual occupancy (where there is a separate unit on the first and second floor) are only considered appropriate in R4 High Density Residential zones. This is due to the amenity and privacy impacts inherent in having primary living areas above one another in lower density areas.

- c. Concerns around the small side setback controls, and the number of people in these developments that are potentially impacted by the proposed standards.
- d. The Design Guide makes insufficient provision for private open space, landscaped areas and deep soil zones.
- e. Allows designers to adopt defensive approaches such as privacy screens and highlight windows in order to meet privacy and separation outcomes, which can be easily altered and removed post construction.
- f. The Design Guide indicates that '*building separation may need to be increased to provide adequate privacy*' despite proposed development standards for primary living area windows allowing a living area window to be located a maximum of 3m from a boundary. This is likely to lead to the overlooking of adjoining properties private open space with certifiers having to make subjective assessments about what is considered to be 'adequate'.
- g. Where multi dwelling housing (terraces) are permitted as complying development that a maximum threshold of 6 be applied before they must be lodged and assessed as a DA.

Subdivision

- 62. At this stage, Council still has fundamental concerns with Design Guide and proposed amendments to the Codes SEPP and therefore is not supportive of the proposed changes to the subdivision of these types of development as complying development.
- 63. Complying development currently applies to simple types of development where the end-user is commonly the occupant who has a direct relationship with the certifier or building. As result, more emphasis is placed on producing a

quality development. It is expected that expanding complying development to include larger development in general, the quality control may be sacrificed due to the loss of personal attachment to the development resulting in a poor urban design outcome. Subsequently, expanding the Codes SEPP to also include the subdivision as complying development will further remove the end-user from the builder/certifier exacerbating the above issue.

64. In addition, there will be a longer term impact of the DPE changes on the ability to amalgamate appropriate development sites that will be caused by subdivision of the proposed development as complying development. The following issues should be considered:
- If the proposed changes are intended to increase housing supply then consideration should be given to prohibiting dual occupancy development in the R3 Medium Density Residential zones to increase the availability of appropriately sized lots for multi-unit type development.
 - Some R2 and R3 zoned areas within the CoP may experience upgrading of existing infrastructure or the provision of new infrastructure (ie Light Rail) that may result in these areas being identified for increased densities. At that time, a local development pattern fragmented by subdivided dual occupancy, manor homes and multi-unit housing (terraces) may limit the opportunity to achieve appropriate densities at that time.

Suitability of Private Certifiers and Building Designers

65. Private certifiers, who generally have backgrounds in building surveying are often insufficiently qualified to assess subdivision, dual occupancies, manor houses and multi-unit developments.
66. As mentioned previously, complying development currently applies to simple types of development where the end-user is commonly the occupant who has a direct relationship with the certifier or building. This leads to a better quality development as there is a sense of personal attachment to the development. By expanding complying development to include medium density development where there are multiple owners/end-users and the ability for these development to be subdivided as part of the same complying development application, it is likely that the resulting built form/design quality may be compromised.
67. The Design Guide will enable certifiers to make subjective design decisions (see building separation issue detailed above) where they do not necessarily have the training required to do so. There is little market incentive for private certifiers to engage the necessary expertise to allow for a thorough assessment of the development proposal.
68. To this end, it is important that the types of assessment that could be complying development be strictly limited to those that are relatively simple and numeric, so as to prevent misapplication of the guide.
69. Likewise there is also not much clarity provided around the skill levels of the 'designer' who is responsible for sign off on the Design Verification Statement.
70. To ensure they are able to determine that a medium density development achieves the Design Quality Principles and that the relevant Design Criteria have been achieved, it is recommended that a Registered Architect be required to certify these developments.

Consultation issues

71. As mentioned previously, complying development is subject to very limited form of consultation, namely notification of neighbours, when the complying development application is lodged and prior to construction. There is no opportunity for the community/neighbours to make a submission that is considered as part of the complying development assessment process.
72. This would result in the community not having a say on development where they currently have the opportunity to make a submission. For example, the Notification section of the Parramatta DCP 2011 outlines the following notification/consultation requirements:

| Development | Notification Requirements | Notification Period |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Dual Occupancy | Letter to adjoining land owners and occupiers | 14 days |
| Multi-dwelling housing and Residential Flat Buildings (or Manor Houses) | Letter to adjoining land owners and occupiers of 5 properties either side of the development site, any properties on the opposite side of the street, and any surrounding land owners and occupiers whose enjoyment of their land may be detrimentally effected by the development. | 21 days |
| | Notice in local newspaper | |
| | Notice on Council website | |
| | Exhibited at Central Library and branch library closest to development site | |
| | Letter to public authorities which may have an interest | |

73. Council officers raise significant objection to the proposal to substantially reduce the current standard of consultation currently experienced by residents for these development types. Not only will the community no longer have a chance to shape or inform a development outcome/solution but they will also be subject to a more intensive use of land with accompanying overlooking, privacy and other amenity impacts.

RESULTS FROM COMMUNITY FEEDBACK

74. In response to the release of the State Government's Design Guide and Statement of Intended Effects for public exhibition, Council also sought feedback from the community on the proposed changes in order to inform Council's submission. The following was carried out advising the community of the proposed changes as well as inviting their feedback on the matter:
 - Advertisements placed in the local newspapers (Parramatta Advertiser, Northern District Times, Hills Shire Times and Auburn Review) and inclusion in the Administrators Column

- Information provided on Council's website including links to the consultation materials
 - Hard copies of the consultation materials made available at the City of Parramatta Council Administration Centre
 - Notification of the proposal on Council's Facebook and Twitter Feed
75. The community was provided with 2 weeks to provide their feedback (which ends on the Wednesday 30 November 2016).
76. At the time of finalising the business paper, three (3) submissions have been received from residents raising significant objection to any proposal that would result in medium density development occurring within the R2 Low Density Residential zone and supports Council previous position on State Government's Discussion and Background Paper in February 2016. However, as mentioned in this report the State Government has confirmed its position that the medium density housing types detailed in the proposed changes can only be assessed as complying development where the use is permitted in the LEP. In other words this means that multi-dwelling housing (terraces/manor houses for example) will not be permissible within the R2 zone.
77. Four (4) comments were also received in response to Council's Facebook post raising the following concerns:
- the lack of consultation associated with complying development, and
 - the State Government proceeding with changes prior to elected Councillors being in place to consider such changes

It is noted that the above comments had not yet resulted in formal submissions despite responses to the posters requesting they go to Council's website and make a formal submission.

78. Any further submissions received following finalisation of this report, will be provided to Council via memo prior to considering the matter on the 12 December 2016.

CONCLUSION

79. A review of the Draft Medium Density Design Guide has been undertaken with numerous concerns raised over proposed development standards, impact on the character of existing areas as well as the lack of community consultation. These concerns are detailed in the attached submission at **Attachment 5** along with a series of Council recommendations.
80. More intense building forms still require setbacks and separation that allow for the landscape to contribute to amenity, building presentation and streetscape. The accommodation of more people needs to occur without adversely affecting the quality of life of the people that currently live within these areas. This goes to the core of the creation of sustainable, amenable and livable places for future generations within the City of Parramatta.
81. It is recommended that Council **adopt** the prepared submission and it be forwarded to the DP&E for their consideration.

Kevin Kuo
Team Leader – Land Use Planning

Robert Cologna
Service Manager – Land Use Planning

Sue Weatherley
Director Strategic Outcomes & Development

Sue Coleman
Director City Services

ATTACHMENTS:

| | | |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 1 | Draft Medium Density Design Guide | 212 |
| | | Pages |
| 2 | Explanation of Intended Effects - Proposed Medium Density Housing Code | 41 |
| | | Pages |
| 3 | Medium Density Design Guide and Medium Density Housing Code - FAQs | 6 |
| | | Pages |
| 4 | Council Submission to Discussion Paper and Background Paper Options for Low Rise Medium Density Housing as Complying Development (February 2016) | 8 |
| | | Pages |
| 5 | Council Submission and Detailed Comments on Draft Medium Density Design Guide and Proposed Amendment to the Housing Code (December 2016) | 29 |
| | | Pages |

REFERENCE MATERIAL