

## OUTCOMES COMMITTEE

Meeting Date 9 February 2016

Item Number. 6

**SUBJECT:** Expanding Complying Development to Include 1 and 2 Storey  
Medium Density Housing Types

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**FILE NUMBER:** 10/02884

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**REPORT BY:** Eber Butron, Manager Strategic Planning

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### RECOMMENDATION:

That Council endorse the issues and recommendations outlined in the report as the basis for making a submission to the Discussion Paper Options for Low Rise Medium Density Housing as Complying Development, prepared by the Department of Planning, dated November 2015.

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### SUPPORTING DOCUMENTS:

<b>AT-A</b>	Expanding Complying Development Discussion Paper	49 Pages
<b>AT-B</b>	Expanding Complying Development Background Paper	62 Pages

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### CITY PLAN

This report is linked to *Theme 2 Places and Infrastructure* in the Fairfield City Plan.

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### SUMMARY

The State Government has prepared a Background Paper and a Discussion Paper into Expanding Complying Development. The Paper looks at expanding complying development provisions to include various 1 and 2 storey medium density housing options, including dual occupancies, manor homes, townhouses and terraces as complying development.

The Paper discusses the following medium density housing types that could be carried out as complying development, depending on lot size:

- Development resulting in 2 dwellings (dual occupancies) on a single lot with a minimum lot size of 400m<sup>2</sup>;

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- Development resulting in 3-4 dwellings (manor homes) on a single lot with a minimum lot size of 500m<sup>2</sup>; and
- Development resulting in 3-10 dwellings on a single lot with a minimum lot size of 600m<sup>2</sup> (townhouses/terraces and/or a combination of development types resulting in 3-10 dwellings on a single lot).

The Paper recommends complying development standards for proposals that will result in between 2-10 dwellings being erected on a single parcel of land with a maximum height of 8.5m.

Depending on the type of medium density development these provisions may be applied to the R1, R2, R3 and R4 zones. (Dual Occupancy and Manor Homes R1, R2 and R3 zones, Townhouses/Terraces R1, R3 and R4 zones).

Officers have reviewed the Papers and identified some concerns relating to the state governments proposal to expand complying development provisions. Concerns raised include removal of Council planning powers, inconsistencies with Councils Local Environmental Plan (LEP) and Development Control Plan's (DCP), confidence in private certification, compliance and enforcement issues, impacts on Council operations, financial implications to Council, community consultation, qualitative assessment of development, flooding and stormwater issues. These issues are elaborated upon within this report.

These types of medium density housing are currently managed through Councils LEP, Citywide DCP and various site specific DCP's. These planning controls have been the subject of significant officer investigation, and analysis, community and stakeholder consultation, professional review and expert advice, and consultation with relevant state agencies. The existing design controls are comprehensive and correspond to the Fairfield City amenity and the areas natural and built environment. A number of inconsistencies have been identified between the proposed complying development controls and the planning controls with Councils LEP and DCP's.

The existing planning framework is capable of properly managing these types of medium density development in Fairfield. The Departments proposal to expand complying development is not considered to be an improvement to the current planning framework and will not provide for better development outcomes for Fairfield. Changing from current citywide and site specific development controls to broader state wide design controls and standards is not considered an improvement to planning in Fairfield.

It is recommended Council provide a submission to the public exhibition of the Discussion Paper raising the concerns expressed in this report.

### CONSULTATION

The Department of Planning and Environment (Department) is publicly exhibiting the Discussion Paper till 15 February 2016.

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Consultation has been undertaken internally with the Development Assessment and Building and Compliance sections.

### Introduction

The NSW Government is seeking feedback on a proposal to expand the range of low-rise residential development that can be undertaken as complying development across NSW. The Paper considers various 1 and 2 storey medium density housing options, including dual occupancies, manor homes, townhouses and terraces as complying development.

The State considers the proposed approach will provide clarity and certainty for relevant stakeholders including Council, industry and the community. The Department considers the proposal supports better design outcomes and streamlines the delivery of a range of 2 storey medium density housing types. The proposal is in response to the delivery of a range housing types to accommodate the forecast increasing Sydney population.

These types of medium density development are currently managed in accordance with Fairfield Local Environmental Plan 2013 (LEP), Fairfield Citywide Development Control Plan (FDCP) and various Site Specific Development Control Plans (DCP's). These planning documents have been the subject of significant investigation, stakeholder consultation, expert analysis and advice and have development controls specific to Fairfield City and various specific localities.

It is considered Fairfield Councils LEP and DCP's are comprehensive, respond to the character of the locality and provide sound planning controls to properly manage development in Fairfield and deliver desirable development outcomes.

### REPORT

Officers support the concept of reviewing and implementing systems that improve the effectiveness and efficiency of the planning system that deliver better outcomes and provide clarity and certainty to the process. However the proposal, as presented by the Department, is not fully supported. There are various issues for concern and these are discussed below.

### Issues

#### 1. Removal of Council Powers

The Departments proposal to expand complying development provisions will remove Council powers to determine various 1 and 2 storey medium density housing types such as dual occupancies, townhouses and terraces. This appears another attempt by the state to further reduce Councils planning powers and impact its abilities to properly manage the future development of Fairfield City.

It is considered Council is best placed and professionally resourced to appropriately deal with these types of developments. These types of developments are assessed pursuant to legislation and community interests and are not influenced by competing, private and financial interests. The current planning framework to assess these applications, supported by Council's DCP's is comprehensive and more than capable of managing medium density development in Fairfield.

## **2. Council Planning Instruments**

Council currently manages medium density housing through its LEP, Citywide DCP and Site Specific DCP's.

The LEP went through a comprehensive preparation process. It was prepared over several years and was based on various land use studies, significant community and stakeholder consultation, and expert advice. Similarly Council's city wide DCP was developed by officers through a comprehensive process and this document is reviewed by officers twice a year to ensure it is responsive to changes in legislation and the planning environment. Site specific DCP's have also been developed through a thorough planning process based on background studies and investigations, community consultation, expert analysis and advice and the design controls are sympathetic of the characteristics and amenity of the locality.

The development controls are considered resilient and responsive to the character and amenity of Fairfield City. In comparison applying state wide controls versus citywide and site specific controls would appear a step backwards in good planning and delivering desirable development outcomes. It is not recommended that Council support generalised planning controls in exchange for development controls that have been professionally developed that are applicable to the amenity of Fairfield City and its localities.

Officers have identified various inconsistencies between the proposed complying planning controls including:

- Inconsistency with Minimum Lot size for Dual Occupancies (LEP and DCP);
- Introducing Manor Homes (not defined with the LEP and DCP. Council does not have controls for this type of development);
- Inconsistency with Building Height (LEP and DCP);
- Building and site design controls (DCP)

It is considered Fairfield development controls are comprehensive and should be retained to manage these types of medium density developments.

## **3. Manor Homes**

A Manor Home is defined as a 2 storey residential building comprising of up to 4 dwellings, where:

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- a. each storey contains 1 or 2 dwellings, and
- b. each dwelling is on its own lot (being a lot within a strata scheme or community title scheme), and
- c. access to each dwelling is provided through a common or individual entry at ground level, but does not include an apartment building or multi-dwelling housing.

Council officers have reservations about this proposed category of development. It is not a type of land use that is specifically defined within the Fairfield Local Environmental Plan 2013 (FLEP). It is not a type of development that has previously been developed in Fairfield City. It is not a type of development that is consistent with the character and amenity of the area and should not necessarily be supported in the area.

Without undertaking a detailed review of particular areas, and undertaking effective community consultation it is difficult to determine whether this type of development would be appropriate within Fairfield City. In the absence of detailed investigations and community consultation it is considered Council should not support this particular land use.

The discussion paper advises Manor Homes will not be complying development within the R4, R5, Rural and Environmental Living Zones. Given this, it implies they may be complying development within the R1, R2 and R3 zones.

As noted above Councils zoning controls were developed through a comprehensive process that also included consultation with state agencies. Pursuant to Councils LEP, multi dwelling housing is currently permitted with consent in zones R1, R3 and R4. Multi-dwelling housing is prohibited in the R2 zone which is predominantly characterised by single houses.

It is considered permitting manor homes as complying development in the R2 zone conflicts with the FLEP objective of the R2 zone which is *“to provide for the housing needs of the community within a low density residential environment”*. It is considered permitting Manor Homes in the R2 zone would negatively impact on the character and amenity of the R2 zone which is comprised of predominantly single dwellings.

The inclusion of new land use definitions in the LEP and alteration of land use permissibility provisions of the R2 zone, should go through an LEP Amendment process entailing justification, background supporting studies, and community consultation. It wouldn't suffice to simply include this land use as complying development without undertaking proper community consultation, relevant local area studies and plans to fully comprehend the impact of the changes to the amenity of a locality.

Advice received from the Building Control and Compliance section states:

*“Given that when you have one dwelling on top of another dwelling it is classified under the BCA as a class 2 building (as opposed to a single dwelling Class 1a) which invokes greater fire resistance levels, separation and requirements.*

*It is suggested that a control for Manor homes to observe a minimum side setback of 1.5 metres to comply with the Building Code of Australia (BCA) Deemed to Satisfy (DTS) Provisions for fire resistance levels applying to walls and openings in walls for a Class 2 building, so to eliminate and or limit the need for installation and reliance on active fire safety measures for protection of openings in walls etc.*

*Such active fire safety measures require an rigorous and disciplined ongoing maintenance regime to be in place, coupled with annual inspection, testing and certification.*

*The local experience has been that once the fire safety measures have been initially installed, tested and certified and then with the ongoing responsibility passing on to the owner / owners corporation, maintenance regimes are not effectively put in place and in some cases are none existent, resulting in operational failure of the fire safety measures which leads to the deterioration of the level of fire safety afforded to the occupants of the building."*

#### **4. Qualitative Assessment of Development**

Council has developed a number of Development Control Plans (DCP's) general and site specific. These design controls have been developed overtime through considerable site review, analysis, expert advice and consultation with the community and stakeholders. It is considered the development controls provided by Council respond to the characteristics of a specific locality. The DCP's are based on a qualitative assessment of an area and are considered comprehensive to appropriately manage future development of an area.

The proposed development complying provisions are general, apply to the whole of the state of NSW and are not based on site specific qualitative assessments.

Fairfield City Council has been diligent in the development of a planning framework to manage development. It is considered the proposed expanded complying development provisions should be applied to Councils and to areas where Councils have not developed effective development controls to properly manage development in their local government area.

It is considered Councils development controls are more responsive and better equipped to manage future development within Fairfield City than the state wide provisions proposed by the Department.

#### **5. Community Consultation**

The Discussion Paper proposes to implement various development controls inconsistent with Councils planning controls (LEP and DCP). As stipulated previously Council expended considerable time and resources to develop these documents. They were subject of significant community and stakeholder consultation, including State agencies,

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and are considered sound planning documents consistent with the desirable amenity of the area. It is considered any amendments to these development controls should be the subject of community consultation and justified through expert reviews and studies specific to the Fairfield locality.

The types of development proposed to be included in the expanded complying development provisions are currently subject to Council's Citywide DCP and are required to be notified. Comments received by Council during this notification period are taken into consideration in the formal assessment of a development application.

Complying development provisions do not require the owner or certifier to consider or address any submission or, to modify if the relevant requirements are met.

Whilst this generally provides for a quicker approval process, it does take away effective community consultation and participation for stakeholders that may be impacted by the proposed development. From a community involvement and engagement perspective, this is undesirable.

### **6. Impacts on Council operations**

It is anticipated the expansion of complying development to include greater variety medium density housing will have an impact on Council's operations and resourcing.

For Council's Compliance Officers the impact would be greater workloads associated with responding to complaints which involve undertaking comprehensive and prolonged investigations into issues raised, in an already existing environment in which unauthorised building work is on the increase. Leading to a decline in service level and response times to complaints, coupled with delays in pursuing compliance and enforcement action.

It has yet to be determined whether the on-site stormwater certification is to be undertaken by Council or whether it is to be privately certified by a qualified specialist.

If it is proposed to retain Council certification it is unclear whether a particular time limit will be placed on Council to process these applications. It is unclear as to whether there will be deemed approval or refusal implications if engineering certification is not provided within a specified time. Regardless, this will place greater pressure on Council's development engineering resources. Operations will need to be reviewed to accommodate engineering certification applications. It is unclear whether this will mean greater resourcing, or changing operations to prioritise these applications, or a combination of both.

If it is determined to allow on-site stormwater to be privately certified it is envisaged this will further impact resourcing of the Council's compliance section.

### **7. Budgetary implications for Council**

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The potential budgetary implications of the proposal to expand the complying development provisions are varied. It has potential to impact various items including:

- Reducing Council revenue (reduction in DA's received and hence a corresponding reduction in DA Fee revenue);
- Council resources (potential impact on Compliance and Development Engineers resourcing);
- Compliance expenses (Increased costs associated with undertaking investigations and pursuing compliance. This in some matters results in costly legal action to achieve compliance, with currently little opportunity to recover the costs involved with the investigation and ancillary matters).

### 8. Flooding, Overland Flow and Stormwater

Council officers have concern with expanding complying development to include a variety of medium density housing that involve and impact on flooding and stormwater management. In relation to current complying development, Council officers have identified issues where stormwater and flood issues have not properly being considered and addressed. Examples of this include complying development certificates issued for structures approved on allotments with unquantified overland flows and on flood control lots.

An underlying issue with regards to flooding and stormwater is the confidence in private certifiers to properly consider, assess, address and implement flooding and stormwater considerations. The private sectors ability to apply Councils flooding and stormwater controls has at times been incorrect and less than adequate.

Through experience, a significant issue in delaying assessment of development applications has been the inability of applicants/developers to properly satisfy flooding and stormwater engineering controls as stipulated within Council's DCP's.

The discussion paper has raised the issue of the potential private certification of On-Site Stormwater Detention (OSD). Council has spent considerable time, finances and resources in appropriately managing flooding in Fairfield City. This has included the development of various studies across the catchments in Fairfield City including Flood Studies, Flood Risk Management Plans, Flood Mitigation Plans and undertaking flood mitigation infrastructure and works etc. Council has invested considerable funds in the upgrading and construction of assets to mitigate flooding. It is considered critical Council maintains management of flooding and stormwater issues to ensure the effectiveness of its strategies, implementation of controls and protection of its assets.

For these reasons, and due to the lack of confidence in private certification above, it is recommended that the certification of OSD for these types of developments remain with Council.

### 9. Private Certification



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Issues pertaining to private certification in NSW have been well documented across the state over the years. Issues stem from a lack of regulatory clout and inadequate oversight of the entire process by the regulator. The private certification system is considered to have an inconsistent track record and with regulators demonstrating lack of disciplinary action in response to complaints of private certifiers. For private certification to operate effectively it requires a tighter regulatory regime than that which is current.

The effectiveness of private certifiers within Fairfield City is questionable with Council compliance officers having to address issues that have arisen from ineffective private certification, ineffective interpretation and implementation of development controls.

The local experience has been that there is an increase in detection of building work certified as complying development that falls outside of the SEPP guidelines. Most commonly involving the method of stormwater disposal not being carried out in compliance with Council's policy and structures approved on allotments with unquantified overland flows and on flood control lots.

Further many developments approved as complying development, although initially technically complying with the SEPP provisions are designed to be easily altered or added to, once the occupation certificate has been issued, resulting in a non-compliant structure. Anecdotal evidence suggests that some private certifiers are complicit in this practice. Such proposals are not subjected to the close scrutiny that would generally be associated with a DA submission.

Once the unauthorised work is detected, generally as a result of a complaint from the public, it becomes a compliance and enforcement issue for Council, which involves a prolonged and expensive resource consuming process.

### **10. Compliance and Enforcement**

Placing a greater emphasis on private certification will lead to a greater demand on Councils compliance resources.

There is currently a significant and alarming trend with increase in the detection of unauthorised work associated with complying developments that have been privately certified. This has resulted in the need to shift resources from Certification functions to that of Compliance. However, given the level of unauthorised work that is prevalent it is anticipated that further resources may need to be dedicated to ensure the timely response to complaints and instigation of appropriated enforcement action to bring about compliance.

As mentioned previously, primarily unauthorised work is detected through complaints received from the general public and once Council is made aware and instigates an

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investigation into the matter it leads to a prolonged and expensive resource consuming process.

It is estimated a great deal of unauthorised work goes undetected for lengthy periods in many cases over a number of years, in which time the property ownership may have changed. In this scenario, when the unauthorised work is eventually detected, it places an expensive and emotional strain on the current owner and certainly further contributes to the compliance and enforcement complications for Council's Officers.

Officers estimate that 20-25% of current compliance matters being dealt with stem from private certification issues. It is considered that any expansion of CDC provision will lead to a greater compliance and enforcement burden, coupled with the financial implications for Council's.

### **11. Duty of Care to the community and Landowner**

It is considered Council has a duty of care to the community and landowners. Given the issues surrounding private certification over the years it is considered Council is the authority best placed to appropriately assess, approve and manage development within Fairfield City LGA. Council is resourced with professionally qualified staff and assess development based on state and local legislation, and generally subject to community consultation and community interest. Council does not generally have competing business, private and financial interests that may influence their decision making of development applications.

### **Specific Issues**

There are a number of specific issues outlined in the Discussion Paper requesting feedback from Councils. These relate to specific design controls including setbacks, heights, amenity etc. The feedback sought and officer commentary to the matters is provided below. This will form part of the overall submission to the state.

As highlighted earlier in the report, Council has a sound planning framework supported by comprehensive planning controls (LEP and DCP's) that effectively manage medium density development in Fairfield LGA. These documents have been professionally developed with expert advice, have been the subject of community and stakeholder consultation, have been successfully applied and resulted in good development outcomes in the area. Council's citywide DCP is reviewed regularly to address specific design measures and to respond to the changing environment. The site specific DCP's provide development controls relevant to a particular area and respond to the character and amenity of a particular area and to deliver desirable outcomes specific to a locality.

Comments being sought by the Department with regards to certain development controls specific to particular land uses are questionable with regards to the appropriateness and applicability to Fairfield and its localities. Given the comprehensive process Councils LEP

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and DCP's have gone through, and how these controls have been derived and applied it is difficult for officers to support design controls that differ from those that are current in FLEP and respective DCP's.

Please note officers do not support the Departments proposal to expand complying development provision to include types of medium density housing for the reasons outlined in this report. Notwithstanding this, the following comments are provided in response to queries raised in the discussion paper.

### **Dual Occupancies**

- 1. Should the development of dual occupancies on a single lot as complying development be permitted in R1, R2 and R3 zones?*

Dual Occupancies are currently permitted with consent pursuant to the FLEP in R1, R2 and R3 zones. Should the Department push through with its proposal to expand complying development provisions, it is reasonable that dual occupancies be permitted in R1 and R3 zones.

However, the proposed development standards being recommended to apply, including minimum lot size are less than Councils LEP provisions pertaining to minimum lot size for dual occupancy development. The proposed standards also differ to the citywide DCP standards applying to dual occupancies in the R2 zone with respect to lot width. Council development controls are considered more applicable and responsive to the built environment of the locality.

For the reasons outlined in this report it is recommended complying development for dual occupancies does not extend to the R2 zone. The provisions will be in conflict with Council's LEP (minimum lots size for Dual occupancies and Heights provisions) and differ from the Councils DCP provisions. Council has invested significant time and resources in the development of these planning instruments and controls, these documents have gone through a statutory process, have been publicly exhibited and subject of community consultation and stakeholder involvement, are considered comprehensive and should prevail over the proposed standards being considered within the Discussion Paper.

- 2. Should the minimum frontage be reduced to 14m so that the construction of 2 dwellings on a single lot can be carried out as complying development on more existing lots?*

Fairfield Citywide Development Control Plan 2013 (FDCP) provides for a minimum frontage of 15m. For the reasons already expressed in this report it is recommended Councils DCP provisions prevail and a 15m minimum frontage width be maintained.

- 3. Should the height be limited to 8.5m?  
Should attic rooms be permitted?*

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*Should 2.7m floor to ceiling heights be imposed?*

The FLEP has varying heights across the city however a general maximum height limit of 9m applies across the majority of its R2 and R3 zones. The FDCP has a maximum height for eave lines and ridgelines being 7.2m and 9m, respectively. For the reasons expressed in this report it is recommended Councils LEP and DCP provisions prevail with regards to height provisions.

The city wide DCP does not have specific controls for attic rooms. It is recommended that attic rooms not be supported until further investigation and community consultation is undertaken with regards to this the potential impacts and suitable design controls to properly manage this matter.

Floor to ceiling heights of 2.7m is desirable, however may increase the cost of development and impact on the affordability of the housing.

4. *Should eaves and roof overhangs be required to comply with the envelope control? Would the application of a 1.2m setback and no building envelope be easier to implement?*

The Building Control and Compliance section advise the application of a minimum 1.2m setback and no building envelope is preferred and would be easier to implement and control.

5. *Should Torrens title subdivision of 2 dwellings on a single lot be permitted as complying development? Should subdivision be permitted only after the buildings are completed?*

Torrens title subdivision of 2 dwellings on a single lot being permitted as complying development is not supported. Maintaining subdivision approval under Council control ensures conditions of development approval are satisfied prior to issuing of title. It also ensures Council manages infrastructure and service delivery effectively.

It is envisaged extending this approval to private certifiers would lead to further demand on Council compliance and enforcement resources.

Subdivision should only be permitted after the buildings are completed. This ensures development is completed and prevents landholders subdividing their land based on speculative development.

### **Manor Homes**

6. *Which zones would be appropriate for manor homes? Should manor homes only be permitted on corner lots or lots with dual street access?*

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*Should manor homes on lots that do not have rear lane access be required to have a basement car park?*

For the reasons outlined in Point 3. Manor Homes within this report, the development of Manor Homes in Fairfield is not supported in the absence of more detailed land use investigation, analysis and community consultation.

This is not a type of development common to Fairfield and without planning and design analysis it is difficult to determine whether this type of development would be suitable and/or supported in Fairfield. Given the nature of the development it is considered that it should not be developed in the R2 Zone. The location of these types of development should be the subject of masterplans and/or site specific DCP's.

*7. Instead of council certification of On-Site Stormwater Detention (OSD) and waste, could certification by appropriately qualified specialists be provided?*

For the reasons previously outlined in this report Council objects to the private certification of On-Site Stormwater Detention by externally qualified specialists. Officers, do not have the confidence in private certifiers and will result in a further demand on Councils compliance resources.

It may also impact Councils various Management plans and infrastructure.

### **Multi Dwelling Housing (3-10 Dwellings)**

*8. How should the proposed car parking controls be designed to ensure that adverse impacts on the transport network (including on-street parking) are minimised and active transport options are encouraged?*

Car parking provisions are provided within Councils DCP's. For the reasons previously outlined in this report it is recommended Councils DCP controls should be applied to development within Fairfield, as these provisions have already gone through a comprehensive plan making process, are responsive to the needs of Fairfield city and have undergone extensive community consultation.

*9. Should subdivision only be permitted after the buildings have been completed?*

It is agreed that strata subdivision should only be permitted after the buildings have been completed. This ensures development is completed, all conditions of consent have been addressed and prevents speculative development.

*10. In which zones should the development of 3-10 dwellings be permitted?*

Pursuant to FLEP, multi-dwelling housing is permitted with consent in the R1, R3 and R4 zone. Multi-dwelling housing is prohibited in the R2 zone. Consequently, it stands to

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reason, if the State pursues with its intentions, complying development for multi dwelling housing (3-10 dwellings) may be permitted in zones R1, R3 and R4.

*11. Instead of council certification of on-site stormwater detention (OSD) and waste storage, could certification by appropriately qualified specialists be provided?*

For the reasons previously outlined in this report Council objects to the private certification of On-Site Stormwater Detention by externally qualified specialists. Officers, do not have the confidence in private certifiers and will result in a further demand on Councils compliance resources.

It may also impact Councils various Management plans and infrastructure.

*12. The proposed controls do not permit the use of attic rooms. Should attic rooms in the roof be permitted to be carried out as complying development?*

The citywide DCP, or site specific DCP's, does not have design controls for attic rooms. It is recommended that attic rooms not be supported until further investigation and community consultation is undertaken with regards to this matter.

*13. Is the building envelope necessary in this instance? A minimum 2.0m setback already dictates a maximum height of 7.5 above ground level before the building envelope would be breached.*

*As development is limited to 8.5m (2 storeys), is it necessary to also have an envelope control?*

*Is the building envelope control as proposed easy to apply?*

I refer you to previous commentary regarding inconsistencies between what is being proposed and Councils LEP and DCP provisions.

Notwithstanding this advice, a building envelope may not be necessary if the minimum 2m side set back is applied for the reasons outlined in the discussion paper.

*14. Should the proposed car parking controls be consistent with the requirements of the Guide to Traffic Generating Developments or should the relevant council controls for parking apply?*

Council car parking provisions are stipulated within its citywide DCP. The DCP does reference the document Guide to Traffic Generating Developments. However, this document is used in addition to those requirements provided within the DCP. For the reasons previously outlined in this report it is recommended Councils DCP controls governing car parking be applied to development within Fairfield, to provide consistency with development already approved in Fairfield and because these provisions have already gone through a comprehensive plan making process, are responsive to the needs of Fairfield city and have undergone extensive community consultation.

***Implementation Issues (Excavation)***

*15. Is it appropriate to permit excavation for basement car parking as complying development?*

*What provisions or controls should be in place and information required to accompany an application?*

It is considered excavation for basement car parking should not be complying development.

The impacts on adjoining land uses may be significant and need to be assessed appropriately (officer concern regarding private certification has been discussed above). Further, given the minimum development controls proposed to be applied (lot width and setbacks) it is difficult to ascertain how basement carparking could be provided within these design parameters, without impacting on adjoining land uses.

***Implementation Issues (On-Site Stormwater Detention Systems)***

*16. Is up-front certification by council for On-Site Stormwater Detention (OSD) appropriate?*

*Is it acceptable to have independent certification of OSD against council's policies?*

For the reasons previously outlined in this report Council objects to the private certification of On-Site Stormwater Detention by external qualified specialists.

***Implementation Issues (Waste Management)***

*17. Should proposed waste management facilities be certified by councils as part of the process?*

*Could independent certification of compliance with a council's waste management provisions in their DCP be the appropriate mechanism?*

Fairfield requires sites with more than 4 units to have waste facilities serviced on site with a separate waste holding facility (bin room) as street pickups are affected by on street parking. This is evident in medium to high density development areas / sites.

It is considered certification of waste management provisions be maintained with Council to ensure appropriate design of waste facilities to assist waste management operations and effective servicing of these sites.

***Implementation Issues (Adaptable Housing)***

*18. What proportion of new housing should be adaptable housing?*

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Council officers do not have a position on regulating the quantity/proportion of adaptable housing. The construction of adaptable housing is generally more expensive. This is contradictory to the delivery of affordable housing.

### **Implementation Issues (Building Envelopes)**

*19. How easy is the envelope control to understand?*

*Is an envelope control necessary given the combination of controls proposed?*

*For development involving 2 dwellings, should the side setback control simply be mandated at 1.2m for ease of implementation and assessment?*

*Should the setback be 1.5m for easier BCA compliance?*

The Building Control and Compliance section have advised building envelopes can be difficult to implement and control, a greater setback is preferred. Council officers suggest a control for Manor homes to observe a minimum side setback of 1.5 metres to comply with the Building Code of Australia (BCA) Deemed to Satisfy (DTS) Provisions for fire resistance levels applying to walls and openings in walls for a Class 2 building, so to eliminate and or limit the need for installation and reliance on active fire safety measures for protection of openings in walls etc.

Such active fire safety measures require an rigorous and disciplined ongoing maintenance regime to be in place, coupled with annual inspection, testing and certification.

The local experience has been that once the fire safety measures have been initially installed, tested and certified and then with the ongoing responsibility passing on to the owner / owners corporation, maintenance regimes are not effectively put in place and in some cases are none existent, resulting in operational failure of the fire safety measures which leads to the deterioration of the level of fire safety afforded to the occupants of the building.

### **Implementation Issues (Built Form Certainty)**

*20. Does the suite of suggested controls provide sufficient certainty of the built form outcome and management of potential impacts?*

*Are there further controls that may assist in delivering positive outcomes?*

The proposed generalised development controls do not provide better development outcomes than Fairfield's citywide and site specific DCP controls. It is considered the controls do not provide for the implementation of design controls considerate of a specific character and amenity of a particular community as effectively as Councils DCP's do.

### **Implementation Issues (Dwelling Size)**

*21. Should guidance on dwelling size be provided?*



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Fairfield's citywide DCP has provisions with regards to dwelling design controls, site and building controls and provides controls with regards to minimum room sizes. This appears to provide enough guidance to manage appropriate dwelling size.

It is recommended that if Dwelling Size provisions are to be implemented, that councils DCP provisions prevail for the reasons previously referred to in this report.

### ***Implementation Issues (Supporting Information)***

*22. Are there other forms of supporting information that may be required?*

The FDCP outlines all the information required by Council to support applications. To provide consistency across Fairfield City and to ensure a comprehensive assessment of development is undertaken the same supporting information should be required through the complying development process. For reasons previously expressed in this report it is considered Councils DCP provisions prevail.

### ***Implementation Issues (Conditions)***

*23. Are there other matters that should be addressed as conditions of consent?*

Conditions of consent should accord with Council's standard conditions of consent to ensure consistency across Fairfield City. This will ensure Councils specific requirements such as servicing, infrastructure, S94 and 94A fees, design standard, policies, engineering standards etc are addressed and complied with.

## **CONCLUSION**

The report has highlighted a number of concerns regarding the Departments proposal to expand complying development to include a variety of single and 2 storey medium density developments.

Officers do not consider the Departments proposal will deliver an improved planning framework that would deliver better development outcomes. The proposal seeks to adopt generalised development controls for a variety of medium density housing types. This would effectively remove Council powers from managing these types of development. Council has implemented considerable time and resources toward developing comprehensive planning controls to properly and effectively manage development in Fairfield. These controls are considerate of the local natural and built environment and provide better site specific outcomes than the generalised approach being offered by the Department.

It is recommended this report and the issues outlined within it formulate Council's submission to the public exhibition of the Department discussion paper on expanding complying development provisions.

## OUTCOMES COMMITTEE

Meeting Date 9 February 2016

Item Number. 6

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Eber Butron  
**Manager Strategic Planning**

**Authorisation:**  
Group Manager City & Community Development

Outcomes Committee - 9 February 2016

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\*\*\*\*\* END OF ITEM 6 \*\*\*\*\*