

14 December 2016

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

Dear Sir/Madam

RE: Response by Willoughby City Council to the Proposed Medium Density Housing Code.

Thank you for the opportunity to comment on the above. At its meeting on the 12 December 2016 Council resolved to forward to the Department of Planning and Environment the following submission:

General Comments

Council strongly supports the intent of the proposed reforms to reduce time and costs and deliver a good housing mix in NSW. However, it is considered that these aims are not best achieved by mandating complying development rules for two storey medium density housing types in the various residential zones and opening up this assessment to private certifiers.

In this respect Council raises the following concerns to the use of Complying Development for medium density housing as outlined in the discussion paper:

- The unplanned and unpredictable nature of permitting additional dwellings throughout lower density residential areas is contrary to good strategic planning where the future of a place is planned for in conjunction with the provision of appropriate transport and community infrastructure;
- The Revised Code could undermine the role of the District Plans and local housing strategies by enabling a significant proportion of new dwellings to be located within low density residential areas without regard to local impacts;
- This initiative could result in a significant increase in dwelling density and population of an area as part of a process that Council is largely excluded from;
- Medium density development, including dual occupancy cannot be categorised as low impact/low risk for which the *Exempt and Complying Development Code* was originally intended;

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- The intent of the changes are not best achieved by incorporating this form of medium density housing as Complying Development;
- Complying Development is considered inappropriate for use in respect to development contrary to existing Council endorsed controls for density and soft landscaping
- Local characteristics and site specific sensitivities, such as topography and view loss are not satisfactorily addressed. A 'one size fits all' model will produce poor outcomes in terms of integration of development into the existing natural and built environment;
- Subdivision of dual occupancy development at the time of development may reduce the supply of rental accommodation;
- Smaller scale Complying Development in medium density zones (R3) will be contrary to the objectives of maximising housing supply that would be achieved with the consolidation of sites;
- The design verification statement will be a subjective assessment carried out by a designer who is not required to be accredited. The system is open to abuse and lacks independence and accountability;
- The process is overly complex;
- The proposed code contains contradictions and is confusing in interpretation
- Poor governance and accountability around the private certification process already results in significant problems for Councils and the community. It should not be extended to incorporate more complex forms of development.

Detailed Discussion

It is noted that the purpose of the Discussion Paper is to:

- establish complying development rules for townhouses, terraces, villas, dual occupancies and manor houses, similar to those already existing for single dwellings;
- reduce approval times and costs for homeowners; and
- deliver more housing and greater housing choice, including more sustainable housing options.

Medium density residential development of the types outlined in the proposed code are considered to be local uses and best retained for Council to manage. This form of development does not satisfy the intent of Complying Development being for low risk/low impact development. Council opposes any policy change that enables medium density development to be approved by a certifier that overrides density and minimum lot size controls for medium density currently set out in *Willoughby Local Environmental Plan 2012* (the LEP).

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The proposed checklist approach, open to private certifiers is not advisable for assessment of medium density development throughout NSW. It may be more acceptable in new greenfield release areas, however in existing urban areas, particularly already dense areas such as Willoughby, consideration needs to be taken of a large suite of relevant issues if the best outcome is to be achieved on the site. This is one of the tasks the community entrusts to Council to ensure community needs are served well. A 'one size fits all' model will produce poor outcomes in terms of integration of development into the existing natural and built environment. A more 'site specific' approach to urban planning is preferred.

The Development Application process provides the appropriate route for the assessment of medium density housing in urban areas as well as a better opportunity for community consultation. Council acknowledges the need to reduce approval times and has introduced processes to streamline and reduce turnaround times for Development Applications. Speed however, should not be the sole consideration. The ultimate development outcome must be well designed and of sufficient quality to avoid on-going time wasting issues involving council down the track.

1. Strategic Planning Context

1.1 Relationship to 'A Plan For Growing Sydney' and District Plans

It is anticipated that the future District Plans being produced under "A Plan for Growing Sydney" will create opportunities for councils to re-visit housing strategies and find opportunities to provide housing diversity. By allowing dual occupancy, manor houses and townhouses / terraces to be privately certified on smaller lots and in areas targeted for much higher densities could undermine this whole approach and sterilise any future opportunities to "up-zone" areas in the future.

The proposed revised code would undermine the role of the District Plans and local housing strategies by enabling a significant proportion of new dwellings to be located within low density residential areas without regard to local impacts. In addition, it would negate the opportunity for appropriate community consultation on appropriate development types.

1.2 Housing supply and choice

Smaller scale Complying Development in medium density zones (R3) will be contrary to the objectives of maximising housing supply that would be achieved with the consolidation of sites.

Any medium density areas not currently being taken up should be addressed by re-examining the LEP controls and re-evaluating their potential through housing strategies and the Planning Proposal process, particularly with a view to a growing population and managing housing growth. The LEP prescribes a minimum lot size of 1100m² for "townhouse" development in the R3 Zone. Permitting a smaller lot size via the complying development process, will isolate sites from the real objectives of the R3 Zone and the "missing middle" will remain unaddressed.

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1.3 Infrastructure

Inadequate consideration has been given to the pressure on existing infrastructure associated with increased densities and hard surface.

Infrastructure such as the public road system, open space, stormwater drainage system and sewage system will be under increased pressure as a result of increased densities beyond what is currently permitted under Council's Local Environmental Plan, particularly in the R2 zone.

2. Use of Complying Development as the approval mechanism

2.1 Good Design and Better Housing Choice

Under the LEP, subdivision of dual occupancy development is only permitted 5 years after an occupation certificate is issued. This has been successfully operated by Council and has created an increase in more affordable rental housing in the LGA. The ability to subdivide dual occupancy by complying development will override this control and remove this means of creating a supply of affordable rental housing in Willoughby where it is in short supply.

Other areas of concern are that

- A 'one size fits all' model will produce poor outcomes in terms of integration of development into the existing natural and built environment. A more 'site specific' approach to urban planning is required;
- The reliance on a Design Verification Statement produced by the designer of the building with no formal accreditation is open to abuse and lacks independence and accountability;
- The designer of the building is not required to hold any formal qualification or have a minimum level of experience;
- The subdivision provisions are contrary to the objective of promoting housing choice by reducing the supply of rental accommodation;
- Past experience of private certification provides clear evidence that the process should not be extended to more complex forms of development;
- Medium density development, including dual occupancy cannot be categorised as low impact/low risk for which the *Exempt and Complying Development Code* was originally intended.

2.2 Variation to Councils numerical controls

Complying Development is considered inappropriate for use in respect to development contrary to existing density controls. Further, the code is unclear as to whether the application of controls for dual occupancy relates to existing lots (in which case the bulk and scale would be similar to a dwelling house permissible as

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Complying Development) or the potential future lot for each dwelling (in which case the bulk and scale will be significantly greater than that permissible for a dwelling). Irrespective, once subdivision has occurred, the bulk and scale could be increased under the provisions relating to dwelling houses for smaller lots.

Concern is also raised regarding the proposed reduction in soft landscaping to that required by Councils Local Environmental Plan of 35% to a minimum of 20% permitted by the codes. Adequate levels of soft landscaping enhance the settings of buildings in the streetscape, provide for onsite infiltration of stormwater and maintain the amenity of surrounding development. It is considered that the ability to meet these objectives will be compromised.

In addition Council considers approval of these medium density housing types should be subject to merit assessment and community consultation rather than as complying development as care and skill is required to ensure these developments fit well in the locality and on any particular site. They do not constitute low risk/low impact in an established residential environment.

2.3 Local Characteristics and Sensitivities

Although the exclusion of E4 and heritage conservation areas from the code provisions is supported, local characteristics and sensitivities are still not satisfactorily addressed. For example:

- certain areas zoned R2 within the Willoughby LGA are also identified as bushfire prone land;
- Complying Development is permissible on sites within the vicinity of heritage conservation areas or heritage items without any assessment of the impact on those areas/items;
- Merit assessment is appropriate for development in more hilly areas due to the greater likelihood of impacts such as overshadowing, loss of privacy and loss of views.

A 'one size fits all' model will produce poor outcomes in terms of integration of development into the existing natural and built environment. A more 'site specific' approach to urban planning is required.

To minimise concerns regarding these impacts it is suggested that Councils be given the opportunity to exclude areas where complying development for medium density housing is permitted based on the characteristics of the locality.

2.4 Subdivision

The LEP does not allow subdivision of dual occupancy development until five years after the development has been completed. This has provided rental accommodation in the area consistent with the objectives of providing diversity of housing choice. Subdivision of dual occupancy development at the time of development will reduce the supply of rental accommodation and is not supported.

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Other areas of concern are that:

- Torrens title subdivision of multi- dwelling housing in an R3 zone will result in a non-permissible use (a single dwelling-house on an individual lot) and as such establish existing use rights;
- Torrens title subdivision of multi- dwelling housing will result in further fragmentation of land within the R3 zone limiting the ability to consolidate sites for future development consistent with the zone objectives.

2.5 Lot size

The change to require Council minimum lot size controls to apply to dual occupancy (other than one above the other), being 700m² for attached and 900m² for detached, is supported. However, the 600m² minimum lot size applicable to all other forms of multi-dwelling housing is considered inappropriate for the Willoughby LGA and is not supported. A 'one size fits all' model will produce poor outcomes in terms of integration of development into the existing natural and built environment. A more 'site specific' approach to urban planning is required.

2.6 Complexity of system

The proposed process is overly complex and does not achieve the objective of removing complexity and 'red tape'. In particular, the LEP and Willoughby Development Control Plan (WDCP) controls will vary considerably between Councils in NSW.

To enable a complying development certificate to be issued the certifier will need to be satisfied that a development complies with the *Medium Density Design Code*, the *Medium Density Design Guide*, select provisions of Councils Local Environmental Plan and select provisions of Councils Development Control Plan. (Examples of LEP and WDCP controls include zoning permissibility, lot size, parking rates and stormwater management). The latter two documents will vary considerably between the scores of Councils in NSW and there is concern that complying development certificates will be issued in error as a result of this complexity. In particular Council is concerned about the number of Complying Development Certificates issued that are non compliant with Councils stormwater controls including on site detention and rainwater reuse systems. These controls are necessary to minimise overland flooding impacts, thereby protecting life and property in severe rain events.

There is concern that Complying Development Certificates will be issued in error, with Council having to resolve the consequent issues, due to:

- the complexity of the process;
- the designer of the building not being required to hold any formal qualification or have a minimum level of experience;

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- inexperience and lack of training of certifiers to undertake the assessments required of these more complex forms of development; and
- the focus on reduced time and cost associated with the issuing of Complying Development Certificates.

Council continues to receive complaints from the public about errors and the poor performance of private certifiers with development in the City of Willoughby. Further, the increase in private certifiers in the management of development in the City of Willoughby has produced an increase in complaints from residents and the need for enforcement action by Council to penalise and remedy offences and their impacts as well as reporting of issues to the Building Professionals Board.

Past experience of private certification provides clear evidence that the process should not be extended to more complex forms of development.

Of particular concern are the outstanding section 94A contributions which remain unpaid following the issue of complying development certificates issued by private certifiers. This concern will be further exacerbated by the broadening of the certification system.

3 Drafting Issues

The proposed code contains contradictions and is confusing in interpretation. These include:

- Ambiguity regarding reference to strata lot, torrens lot or dwelling curtilage;
- Ambiguity regarding reference to roads (primary, secondary, parallel, private or public);
- utilising the term strata lot without contemplating that strata subdivision may not be proposed;
- what constitutes the frontage of a site with no apparent control for a width of frontage to a primary road for multi dwelling housing other than to say it cannot be a battle-axe lot;
- the provision enabling torrens title subdivision of multi-dwelling housing creating a non-permissible use (dwelling house on a single allotment of land) within the zone;
- the Explanation of Intended Effects uses interchangeable and sometimes undefined terms creating confusion in interpretation and contradictions. For example does lot area relate to strata or Torrens?

Summary of Concerns

1. Strategic Planning Context

- 1.1 The Revised Code could undermine the role of the District Plans and local housing strategies by enabling a significant proportion of new dwellings to be located within low density residential areas without regard to local impacts. The

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unplanned and unpredictable nature of permitting additional dwellings throughout lower density residential areas is contrary to good strategic planning where the future of a place is planned for in conjunction with the provision of appropriate transport and community infrastructure.

- 1.2 Smaller scale Complying Development in medium density zones (R3) will be contrary to the objectives of maximising housing supply that would be achieved with the consolidation of sites.
- 1.3 Inadequate consideration has been given to the pressure on existing infrastructure associated with increased densities and hard surface.

2. Use of Complying Development as the approval mechanism

- 2.1 Medium density development, including dual occupancy cannot be categorised as low impact/low risk for which the Exempt and Complying Development Code was originally intended. The reliance on a *Design Verification Statement*, which is subjective in nature and produced by the designer of the building with no formal accreditation, is open to abuse and lacks independence and accountability. Further, the designer of the building is not required to have a minimum level of experience or hold any formal qualification. Past experience of private certification provides clear evidence that the process should not be extended to more complex forms of development.
- 2.2 Complying Development is considered inappropriate for use in respect to development contrary to existing Council endorsed controls for density and soft landscaping.
- 2.3 A 'one size fits all' model will produce poor outcomes in terms of integration of development into the existing natural and built environment. A more 'site specific' approach to urban planning is required. Local characteristics and site specific sensitivities, such as topography and view loss, are not satisfactorily addressed. To minimise concerns regarding these impacts it is suggested that Councils be given the opportunity to exclude areas where complying development for medium density housing is permitted based on the characteristics of the locality.
- 2.4 Subdivision of dual occupancy development at the time of development will reduce the supply of rental accommodation.
- 2.5 The 600m² minimum lot size applicable to all other forms of multi-dwelling housing is considered inappropriate for the Willoughby LGA.
- 2.6 The process is overly complex. Poor governance and accountability around the private certification process already results in significant problems for Councils and the community. It should not be extended to incorporate more complex forms of development.

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3. Drafting (Editing) Issues

3. The proposed code contains contradictions and is confusing in interpretation.

Council would like to be involved in any further discussion/exhibition on this matter.

Yours sincerely



Ian Arnott
MANAGER PLANNING UNIT