



HOUSING INDUSTRY ASSOCIATION



Reforming Building & Planning Laws

Submission to the
Department of Planning & Environment

Draft Medium Density Housing Code and Design Guide

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 40,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

“promote policies and provide services which enhance our members’ business practices, products and profitability, consistent with the highest standards of professional and commercial conduct.”

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 23 centres around the nation providing a wide range of advocacy, business support including services and products to members, technical and compliance advice, training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

1.0 INTRODUCTION

This submission has been prepared in response to the release of the draft amendment to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Code SEPP) which will support the introduction of a new Medium Density Housing Code and draft Medium Density Design Guide.

The ongoing improvement and expansion of the Code SEPP in NSW is critical to supporting housing affordability based on the orderly and cost effective delivery of planning and building approvals for all forms of housing. The certainty that can be delivered by complying development for both land owners and the housing industry is a key factor to its success.

The Code SEPP must be fostered and treated as an integral part of the NSW planning and building system through regular improvements and monitoring of its application to residential development. Without this, the residential building industry would face ongoing uncertainty and risks local government introducing measures that compromise timely and consistent approvals.

The Codes SEPP has been subject to a number of reviews and updates in recent years. The current proposal to include dual occupancies, terraces, townhouses and manor houses is a positive step forward and has the potential to see a vast improvement in approval times and reduction in red-tape imposed by councils through unnecessarily complex development control plans.

HIA has been involved in providing ongoing support and recommendations to the Department of Planning and Environment to improve the operation of the Code SEPP. The merit-based development approval process remains a frustrating process for the residential building industry and its customers. The ability of homeowners to access a more appropriate breadth of complying development will encourage development and remove time the delays and expense associated with merit approvals through councils.

HIA would like to provide the following comments on the draft Medium Density Housing Code and draft Medium Density Design Guide.

Discussion Paper

HIA made a submission to the Department of Planning and Environment in March 2016 regarding the exhibition of the Discussion Paper titled *“Missing Middle – Options for Low Rise Medium Density Housing as Complying Development”*. In making our submission, HIA provided commentary on the options contained in Volume 1 that sought feedback on a range of development standards for 3 multi-dwelling housing types (being dual occupancy, manor homes and townhouse/terraces).

Key issues were to:

1. Avoid unnecessary duplication of building regulation, such as ceiling heights which are also found in the *National Construction Code* (NCC),
2. Provide clear direction regarding permitted building envelope encroachments (such as eaves/gutters) to remove scope for confusion in interpretation of the required setbacks.
3. Allow for Torrens-title subdivision of dual occupancy were appropriate and allow for concurrent approval of the building and subdivision.



4. Allow for car parking at grade in Manor home developments to avoid mandating the construction of costly underground basement car parking.
5. Provide clear direction regarding site suitability for townhouse/terrace development. There needs to be information provided to avoid confusion regarding the density and site area requirements for these forms of development.
6. Remove reference to the inclusion of accessibility or livable housing design standards as these have not been drafted for regulatory purposes hence do not provide designers and building certifiers with the appropriate level of certainty to meet the requirements for complying development.

It is noted that these comments have been taken into consideration in the development of the draft code and draft design guide that have now been released with the exception of the 2.7m ceiling height which exceeds the 2.4m minimum ceiling height required by the National Construction Code (Building Code of Australia). HIA again requests that the draft Design Guide be altered to reflect a consistent 2.4m ceiling height for both ground and upper storeys, giving scope for an applicant to choose to incorporate higher ceilings.

Housing Affordability

The Department is aware that HIA is extremely supportive of the use of complying development and state based codes as a means of increasing certainty and reducing community resistance to residential development. However the other fundamental purpose for a design code must be to deliver an affordable outcome.

In any objective sense, the draft Design Guide and Design Code are not likely to deliver this outcome.

The Code includes a number of mandatory, and potential mandatory requirements, that go well beyond the built structure and well beyond basic home design features. These requirements directly add to design cost, construction costs and hence final sale price. Examples of this would be the requirements for storage space, landscaping, maintenance, solar access, windows and room sizes.

The concept that less is more should be considered in finalising the Code and Guidelines, if housing affordability is to be a realistic outcome for dwellings designed using the Code.



2.0 HIA COMMENTS ON DRAFT HOUSING CODE & GUIDELINES

2.1 DRAFT MEDIUM DENSITY CODE

HIA has reviewed the Draft Medium Density Design Explanation of Intended Effects which was prepared to support the proposed amendment to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and provides the following comments:

General

The proposed amendments to establish low-rise medium density housing as complying development are supported and will provide more choice for home buyers. Limiting the range of housing types provided for in the code to those having a direct frontage to a street will keep the focus of the code on the “low hanging fruit” which is well suited to the complying development pathway.

The consistent interpretation of the Code is key to its success. Any areas of confusion in interpreting specific requirements will undermine its use and integrity. The Code must avoid differences of opinion between designers, certifiers and local governments from day one. If this cannot be achieved, the application of the Code will be limited.

The broader application of the Guide will provide a consistent set of design controls for these housing types across NSW when considered as a development application. This is also strongly supported. Regardless of the approval path, consistent controls create much greater certainty for industry, consent authorities and the community about the type and nature of residential development that may occur. This consistency is an important part of reducing conflict and increasing acceptance of ‘new’ densities particularly in existing suburbs.

Housing Mix

The mix of housing types (dual occupancy, manor homes, townhouses and terraces) contained in the draft Code is supported. The proposal for these housing types to be undertaken using complying development will be a major factor in these types of development being taken up in much larger numbers than is currently the case. HIA supports the proposed amendments as they will encourage a wide range of housing types to be constructed and supports the move to increase housing choices in both new and existing suburbs.

As there will be a wide mix of housing types contained within the Code, the requirements relating to each specific form of construction should be grouped together in order to make it clear for first time users what planning controls and standards apply to each form of housing.

Permissibility

The draft code permits low-rise medium density development as complying development where it is currently permissible under the relevant local environmental plan. This is supported because since the introduction of the Standard Instrument local environmental plan, zonings and definitions have been standardised across NSW providing a high degree of certainty when applying the Code. Limiting low-rise medium density to zones where such development is already permissible will hopefully help to eliminate uncertainty which often leads to community opposition to medium density development.

As each type of housing form relies on the zoning requirements set out in the relevant local environmental plan, HIA would be concerned if any local council sought to make amendments to its local environmental plan

to restrict or avoid the development types permitted by the draft code. It is the view of HIA that councils should be required to review their local environmental plans to enable the take up of development permitted by the Code.

Once the Code is in operation HIA hopes that the Department will monitor any requests from local governments in relation to these zonings and ensure the Government's intentions are not undermined.

Subdivision

HIA supports the proposal to allow for Torrens title subdivision of certain medium density developments approved using the Code. As the Code already allows for approval for strata-title subdivision it is a sensible extension of this to provide for concurrent approval of Torrens title subdivision of dual occupancy developments which meet the standard requirements for this type of subdivision using complying development. Battle axe dual occupancy designs should be included in this permissibility as complying development.

The Code will require that a site for a dual occupancy (attached and detached) development comply with the minimum lot size contained in the relevant local environmental plan. In most cases, the local environmental plan instrument or associated map will indicate the relevant minimum lot size for each land use zone.

Application of Design Guidelines

The Guidelines include a significant number of matters for consideration. Within each design criteria, there are many different elements offered as suggestions for consideration. As individual elements, many of these are reasonable and will assist designers and consent authorities. However the Guidelines will be extremely difficult to manage in relation to applications that are considered as Complying Development.

It is presumed that applications meeting the Design Criteria, whether complying development or a development application, will be accepted as meeting the requirements of the Design Guidelines. If this is not the approach to be taken, then these reforms are likely to fail at the first step.

The purpose and regulatory role of the Guidelines needs to be explicit. It is presumed that they will not apply to projects which meet the prescriptive requirements and are submitted as complying development as they are written in performance terms, refer to numerous other matters not addressed in the Design Criteria and cannot be prescriptively assessed by a building certifier.

The Design Guidelines should only play a role for applications which do not meet the minimum requirements of the design criteria (MDDG) as a means of providing performance criteria that applicants can rely on to justify variations and innovative designs.



2.2 DRAFT MEDIUM DENSITY DESIGN GUIDE

The following comments are provided in relation to the proposed design criteria in the draft Medium Density Design Guide (MDDG) :

General

The MDDG has been developed so that developments approved under the draft Medium Density Housing Code incorporate good design and have minimal impact on their surroundings. The scope of the draft MDDG is extensive and may become too difficult for some professionals to manoeuvre through. HIA would suggest that some of the information contained within the draft MDDG could be better suited to information sheets or practice notes.

Our comments have grouped into 4 sections to align with each part of the draft MDDG.

Part 1 – Introduction

The draft MDDG provides a good source of preliminary information that a user will need to understand when preparing a Complying Development Certificate application for lodgement. The references to principal controls, design controls and submission requirements should be given more prominence as these will be the key areas that will be required when preparing an application. The steps for preparing a Complying Development Certificate application (located on page 8) is a helpful source of guidance, in particular the cross-referencing to other sources of information provides an easy to understand representation of the complying development process. However as noted above, complying development should not be required to make reference to the Design guidelines in addition to the Design Criteria.

Part 2 – Design Guidance

This section contains 26 design standards intended to apply to the design of all forms of low-rise medium density housing. The Guide recommends that building designers have regard to this advice in preparing a development. The introduction to this part states that certifiers may use this section for an explanation of criteria in Part 3. As Part 2 is intended to assist with the interpretation of Part 3 it would seem to logical for the structure of the document to be revised for the Design Guidance section to follow the Design Criteria section.

Specific comments in respect of Part 2 are:

2A Building envelopes (Heights and setbacks)	The draft Design Guide recommends a 10m setback for any upper floor on lots between 200sqm and 1,500sqm. This requirement will have an impact on project viability and would be better redefined as a performance-based standard.
2C Landscaped Area	The draft Design Guide requires that a Landscape Maintenance Plan be prepared by a suitably qualified landscape professional. HIA does not support this requirement for low rise sole occupancy dwellings as it will involve additional cost with minimal benefit for smaller developments where home owners are seeking affordable dwelling and

	<p>will make choices about future maintenance after occupation.</p> <p>Landscape requirements for internal private open space should be flexible to allow for the personal tastes/maintenance budget of the future owner.</p>
2F Internal streets (Pedestrian and vehicle access)	The draft Design Guide recommends 6m wide lanes. This may be too narrow to be able effective turning of a vehicle, particularly where buildings are encouraged to be built at a zero setback.
2I Solar and Daylight Access	The draft Design Guide has proposed a maximum living room depth of 8m. This will have an impact on some townhouse developments, in particular, those on narrow lots.
2S Universal Design	The draft Design Guide (and Design Criteria for each dwelling type) requires developments to achieve Silver level as defined by Livable Housing Australia. HIA does not support adhoc mandatory requirements for accessibility in sole occupancy dwellings. The LHA Guidelines were not drafted for regulatory application and therefore cannot be consistently interpreted by designers, building certifiers and consent authorities. These Guidelines have also not be the subject of any regulatory impact assessment. Prior to their inclusion in this Code, or any other regulatory document, HIA would expect that the NSW government would undertake such an assessment and review the drafting of the requirements.

Part 3 – Design Criteria

These are the controls which must be satisfied for a Complying Development Certificate application. The minimum lot sizes applying to complying development “Two Houses Side by Side” is described as 200m² on page 82. This appears to be inconsistent with the draft Code which stipulates that the relevant local environmental plan determines the minimum site area for each form of housing permitted by the draft Code. This should be clarified so that the draft Code and draft Design Guide are consistent.

The draft Design Guide may confuse users as the Design Criteria in Part 3 must be applied to Complying Development but the reference on page 82 states “*Complying Development – The building envelope standards for complying development can be found in the Medium Density Housing Code within State Environmental Planning Policy (Exempt and Complying Codes) 2008. A summary is in the table below*”. The Code and Design Guide need to provide clear advice and should not be ambiguous.

The solar access Design Criteria on pages 89, 107, 126 and 145 require that living rooms or private open space in 75% of dwellings shall receive a minimum of 2 hours direct sunlight (achieved when 1m² of direct sunlight on the glass is achieved for at least 15 minutes) between 9am and 3pm at the winter solstice. This criteria is too complex and will be very difficult to demonstrate for different times of the day. A performance standard that is easier to achieve and assess should be provided. Preferably this requirement should be removed and the requirements should continue to apply without the 15 minute increment scenario.

The requirement to provide a medium sized tree (with a mature height of 5m) in the front setback (refer to pages 84, 102, 120 and 140 of the draft Design Guide) could become an issue for building footings if planted within 3m of the building. This requirement should be flexible to allow for smaller trees to be planted where a front setback between 3 and 5m is proposed. Whilst landscaping of medium density development is an important and useful way to reduce the visual impact, particularly when constructed in existing areas where street trees and the like are well established, the reality is that the Code should not create the potential for the planting of trees that are inappropriate types or inappropriately located and cause issues into the future. HIA's preference would be that the Code is silent and leave this aspect to future home owners to manage.

In the context of complying development it is extremely difficult, if not impossible to practically apply requirements such as local character and future desired character. Moreover, these concepts are extremely arbitrary and difficult to use when making 'discretionary' assessments for development applications. Many councils have little or no guidance on the purpose when referring to a local character for an area and where this character is not related to 'heritage' values then it is unclear what its real purpose is gained by applying this type of requirement to complying development applications.

Part 4 – Delivery

The information provided in this part, in particular, the requirements for complying development (4.4) is supported. It may assist the process to also address related delivery issues such as ancillary council approvals (driveway/road and tree removal permits), dedication of assets to local councils such as laneways and footpaths, connection to utility services (water/sewer and electricity) and drainage requirements which are determined by local councils or public utilities. These steps in the process can cause considerable delay despite a Complying Development Certificate pathway being available.

3.0 CONCLUSION

The proposed introduction of a state based code for medium density developments is supported. The Missing Middle amendments offer an important improvement for the residential building industry in terms of reducing red tape and delays and potentially improving housing affordability.

The most important step in finalising the Design Criteria is to view them in the context of complying development and ensure that they are non-discretionary and that they provide sufficient scope for simple, low rise medium density projects to be designed and approved. If this outcome is achieved, the Code will go on to be a practical tool for local councils in the assessment of applications that do not meet the minimum requirements are hence would require a development application.

The implementation of the proposed amendments to the Complying Development Code will be important and rely heavily upon local councils and private certifiers to implement effectively. It is important that the Department provide the necessary resources and training to those practitioners to enable the objectives of the Missing Middle to be achieved.

HIA looks forward to working with the Department to finalise the first phase of the Missing Middle agenda and support the further implementation of complying development to other forms of housing in New South Wales in the future.