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December 15, 2016.

Dear Lynne,

Re: Submission of MDDC (Exempt & Complying) SEPP, Explanation of Intended Effects and the Medium Density Design Guide.

I have examined the above material on exhibition for this submission. I have also scrutinised additional material including the SEPPS Review of 2015, the SILEP Amendment Order of 2016, the Basix Target Review (under consideration since 2014), the amendments to the Codes SEPP in 2013 and the 'housekeeping' amendments to the Codes SEPPS (Exempt & Complying) 2008 and the Affordable Housing SEPP 2009 of 2016.

Introduction:

As a general principle, in my opinion, code-based assessment should only be used to provide 'fast-tracked assessment processes' for small, low impact developments. Already on show are some very poorly planned single dwelling outcomes in local communities courtesy of the General Housing Code - no setbacks, built right to the boundary either side - ensuring only **maximum** impacts on existing neighbours.

Larger, higher impact developments - including those with the potential for cumulative impacts, and that means almost everywhere across Metropolitan Sydney and in the larger regional centres - should be subject to full assessment and approval processes.

Unfortunately, this principle is already being eroded by incremental changes to the Codes SEPP. For example, the 'housekeeping' amendments to the SEPP (Exempt & Complying Development Code) 2008 of 2016 include a definition of height of building calculations! The amendments to the same SEPP in 2013 – classifying industrial buildings with a floor area of 20,000 sqm as complying development - whilst simultaneously weakening protections for environmentally sensitive areas is a very telling case in point.

Contradictions in the proposed code:

The "Explanation of Intended Effects" states:- *"The Codes SEPP provides planning guidance for the fast-tracked, combined planning and building approval of one and two-storey dwelling houses under the complying development pathway".*

This policy document above makes the argument that *"A policy gap exists in providing design guidance for medium density housing types, including low-rise examples such as dual occupancies, manor houses, townhouses and terrace houses. This policy gap is known as the 'missing Middle'.*

"Low-rise medium density housing provides a low cost and sustainable way to achieve higher densities with minimal impact on the existing urban form" it claims.

Immediately following the above statement headed medium density housing as complying development the 'missing Middle' policy gap is expanded to now include *"multi-dwelling housing (townhouses and villas)"*. This expanded definition on the page allows for a height control of 10metres, which is 3-stores on any analysis.

But wait, there's even more of this marketing hard sell...."Importantly, this form of development can allow for highly valued individual lot titles". See the Explanation of Intended Effects.

Confused interpretations and inconsistent definitions:

In contrast, the Medium Density Design Guide on page 4 describes medium density housing as "Low-rise, medium density residential development that contains more than one dwelling and has a height of less than 10m. Typically, it results in a net density of 25-45 dwellings per hectare".

What exactly does this mean?

While urban planning controls are focused on the net density on a particular site, they are of little use in understanding how cities work because they do not include the public space of streets and parks. Thus in the first instance net density is not usually considered an effective measure of urban density.

Oddly enough, gross density (the preferred measure) is always lower than net density and it is the one that matters in debates over increasing urban density particularly as the densities of people or buildings are measured at much larger scales and involve such things as where a boundary is drawn - a crucial decision in measuring urban density - as are water bodies, freeways and unbuildable sites for example.

Another common measure of density is dwellings per hectare – often used as a means of assessing population densities and building densities at the same time. But it does neither well unless the size of dwellings or households is known. Thus it too can be a very blunt measure of density.

However, to use the Department's definition of net density with intended minimum lot sizes of 200sqm, (many are actually lower in minimum size in this Code) this will result in a net density of 50 dwellings per hectare across metropolitan Sydney, and not the 25-45 dwellings per hectare as claimed above on page 4 of the Guide.

At present Metropolitan Sydney has an average of 20 dwellings per hectare. An increase to 50 dwellings per hectare at minimum lot sizes of 200sqm represents a 250% increase on existing net density of dwellings per hectare.

Other fudges in interpretation:

The Guide describes low-rise medium density residential development above as having a height of less than 10m. That's a fudge. Low-rise built form in Council LEP's is currently classified by the zoned height of building that in a low residential zoning (R2) is from 8.5m to 9.5m in height.

Note how the majority of the typical principle development controls listed for the 7 types of built form in schedule 5 of the Guide indicate heights of 10 metres - that is 3-storeys built form based on the average rule of thumb of 3 metres per storey (excluding basement car-parking). That is not a 'permissible' development in the existing R1 and R2 zonings in Council Local Environmental Plans.

The accepted definition of low-rise built form is one to 2 storeys, (as reflected in existing Council LEP R1 and R2 zones) medium-rise built form is 3-5 storeys (as reflected in existing R3 Council zonings) and high-rise built form is 6 storeys and upwards. Thus the height of building has nothing whatsoever to do with residential density – and does not at all measure like with like.

Building densities on the other hand are most commonly measured by 'floor space ratios' – the ratio of floor area to land area. However as seen above FSR's do not control the building height, the footprint (the area occupied by the building), nor the coverage (the proportion of land covered by buildings).

'Mumbo jumbo' definitions and inaccurate interpretations used in the Guide **DO NOT DO** the advocates who want **more density** any favours.

See page 194 of the Guide where a reference is made to the FSR of multi-dwelling development as being "*highly variable dependent, open space road network and typologies selected within. Gross densities around 25-30 dwellings/ha are achievable. Net density is typically 30-40 dwellings per hectare*".

Why use the nomenclatures of 'manor houses' and 'mews' in the Australian building and design vernacular? Do we really want to use terminology and specs for housing types that bring Dickensian London to mind? Are these housing types even appropriate for the Australian climate?

Is the expansion of Code-Complying Development justifiable right now?

Code complying development is development that is not subject to a development application or comment by neighbours or the broader community. Rather code-complying development is guided by an established set of (upfront) criteria (in this instance the SEPP Code and MDDC Guide) and if it meets these criteria, it is fast-tracked. Code complying development also involves the use of private certifiers employed by the developer.

"Complying development is not intended to over-ride a Council's strategic planning, but work with the controls developed through strategic planning to efficiently deliver simple housing forms" as The Explanation of Intended Effects assures the reader.

Contrast this with *"Complying development is an approval process for straightforward development. The primary controls are contained within the State Policy". Page 15 of the MDDG.*

Both of these statements cannot be true. Conversely, one of these statements must be a demonstrably false statement of fact.

In Summary:

Larger, higher impact developments - including those with the potential for cumulative impacts, and that means in every LGA across Metropolitan Sydney and in some regions in NSW - should be subject to full assessment and approval processes with Local Council being the planning and consent authority.

Medium density development, including multi-dwelling proposals and dual occupancy cannot be categorised as low impact/low risk for which the Exempt & Complying Development Code was originally intended.

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.

Increasing densities has the potential to threaten liveability if the big picture of how a city works is missed:-

- Code complying development is considered inappropriate for use in respect to development contrary to existing density codes as it will increase densities largely through the unco-ordinated development of small 'mum & dad' developer-builders that replace one house with two or three. That ad-hoc development pattern will erode the amenity and character of the suburbs bit by bit and will threaten the loss of tree canopies and established gardens (green amenity) with public domain and public open space being replaced by concreted areas.

Further concern is also raised regarding the proposed reduction in soft landscaping from 35% to 20% permitted in the Codes to that required by most Councils' LEP's. Adequate levels of soft landscaping enhance the settings of buildings in the streetscape, provide for on-site filtration of stormwater and maintain the amenity of surrounding development.

- The medium density housing code and its scatter-gun approach to design and implementation does not recognise the need to design our homes and other spaces – public space and public domain – in the larger-scale context of the city:-
- Perversely, the Code looks at developments in isolation and does not consider their connection with the whole environment and in relation to a range of pertinent issues including population growth, climate change, changing family demographics and resource limitations.

Poor spin vs quality decision-making:

Why are we not designing for long-term sustainability rather than short term gain? The view that carbon constraint, ecological protection and liveability can only be achieved by remodelling our cities at high-rise densities (such as during the Part 3A fiasco) is inconveniently flawed and dishonestly framed in debate:-

- When different building scales are compared on objective environmental criteria the evidence suggests that high-rise apartments are often the worst performers. The building scale with the least overall ecological impact – measured in energy, CO2 and water use per capita – tends to be medium-rise of between 3-6 storeys, with individual detached dwellings the next best. These findings fundamentally confound the simple 'high density good, low density bad' assumptions in current planning debates.

The medium density housing code if implemented will have the perverse effect of allowing for smaller scale complying development in medium density zones (R3) and this will be contrary to the objectives of maximising housing supply that would be achieved with the consolidation of sites, for example.

- The Code fails to address cumulative impacts. Traffic, existing infrastructure, tree clearing, bushfires, flood mitigation, stormwater run-off, topography and privacy would not be assessed in the absence of a full development application and across multiple developments.

The BASIX Target Review of 2014 has not been completed. Why not? BASIX should be updated to provide for significantly better water, energy and material efficiency so as to reflect technological advances and achieve superior environmental outcomes, including higher-efficiency buildings. This review should be implemented before code-based assessment is expanded in NSW.

- The Code relies upon private certifiers for compliance at a time when serious concerns of poor governance and accountability around the private certification process has already resulted in numerous problems for residents, the wider community and their Councils. The Code should not be extended to incorporate more complex forms of development.

Other specific areas of concern are:

- A top down '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 a building is not required to hold any formal qualification or have a minimal level of experience. A designer is not required to have professional indemnity insurance.
- The subdivision provisions are contrary to the objective of promoting housing choice by reducing the supply of rental accommodation.
- 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.
- The proposed process is overly complex and does not achieve the objective of removing complexity and red tape.
- The proposed Code contains contradictions and is confusing in interpretation. The Explanation of Intended Effects uses interchangeable and undefined terms creating confusion in interpretation and contradictions. For example, does lot area relate to strata or Torrens?

The ‘missing link’ in proper planning is not the ‘missing middle’ as claimed:

Until recently, it was generally accepted that urban transport and land development needed to be planned in an integrated way having regard to what city future was desired. While city planning was once a tool for correcting and avoiding market failure it is now much more about promoting economic growth by providing certainty for the development industry and reducing regulation.

While that is important, how has city planning come to this?

Growing the economy – not city planning – has become the government’s main rationale for building urban transport infrastructure “which drivesgrowth and jobs”. Urban transport infrastructure and land development are not being planned in an integrated manner having regard to what city future is desired. This **‘missing link’** more than anything else demonstrates the complete abandonment of any concept of planning in an integrated way in and for the public interest.

- So the rationale of the Code “*Low-rise medium density housing provides a low cost and sustainable way to achieve higher densities with minimal impact on the existing urban form*” is in and of itself just another deceptive oxymoron – a figure of speech that completely misses the mark.

Isn’t it about time that planning’s obsession with density as a driving objective of urban policy was ‘dumped in the trash can where it belongs’ in favour of instead designing our living environments to best accommodate our overall economic, social and environmental goals, at whichever scale is most appropriate? That means viewing density as just one instrument among many in the urban toolkit, and one that should be used carefully and selectively, and not as a universal determinant that is forced unthinkingly upon our cities.

- If doing the same thing over and over again and expecting a different result is the definition of madness, as Einstein has said, then this CODE with its menacing tool to drive density increases through all suburban areas of metropolitan Sydney and its’ core belief that this can occur with minimal impact on the existing urban form, is the very definition of madness.

Conclusion:

- The Code is not currently supportable because of its narrow, anti-democratic focus and the intellectually dishonest form of the Explanation of Intended Effects and accompanying Design Guide.
- It is not supportable as a public policy outcome either as the expanded Code Complying concept, on any analysis, is simply not ‘fit for purpose’. The expanded Code will not deliver

increased housing supply, a greater and more affordable diversity of housing types nor will it result in an improved design outcome.

- It will instead deliver only more disbelief and disappointment to those interested in better planning outcomes and appropriate design for site and context.

Jillian Grove

PS. I have no objections to my name being published.
In addition I have made no political donations to any party federal, state or local since 2004.