



Lane Cove Council

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Director, Code and Approval Pathways
NSW Department of Planning
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

Re: Submission – Draft Medium Density Design Guide and Medium Density Housing Code

We write in response to the Draft Medium Density Design Guide and Medium Density Housing Code (the 'Design Guide') currently on exhibition.

While Council is cognisant of the potential benefits of encouraging medium density development, we firmly believe that the potential issues and negative impacts outweigh any such benefits if delivered by the proposed addition to the Exempt and Complying Development SEPP, in its current form.

The Design Guide has been considered and the following issues are raised.

1. Lane Cove Local Environmental Plan (LEP) 2009 and Multi-dwelling Housing in the R2 Zone

Under the Lane Cove LEP 2009, multi-dwelling housing is a permissible land use with consent in the R2 Low Density Residential Zone, the R3 Medium Density zone and the R4 High Density Residential zone. Similarly, the Ryde LEP 2014 permits multi-dwelling housing in R1, R2, R3 and R4 zones.

In contrast, the vast majority of LEPs (for example, the Hunters Hill LEP 2012, North Sydney LEP 2013, Willoughby LEP 2012 and Warringah LEP 2011) do not include multi-dwelling housing in their R2 Low Density Residential zone. It appears to be more commonplace for an LEP to omit multi-dwelling housing from the R2 low density residential zone.

The proposed Design Guide would have the largest impact on Lane Cove's R2 zone. It seeks to encourage dual occupancies (side by side), terrace houses and manor houses at a larger scale than currently allowed under Council's LEP. It would also permit strata or Torrens title subdivision, as complying development.

Currently, Council's planning policies both support and control multi-dwelling housing in the R2 zone by FSR, lot size and height yielding developments which are appropriate for the locality. These controls were based on extensive

urban design research and a significant amount of public input during the exhibition of Council's Standard LEP and Development Control Plan.

While the Lane Cove LGA is undergoing enormous expansion and change, Council has strategically planned for an increase in densities in locations within proximity to transport, such as in St Leonards, or near shops/services, such as near the Lane Cove Village. Much of the R2 zoned land is not near such centres and a large proportion of this land is along the Lane Cove River.

It is considered that the proposed Design Guide will therefore undermine Council's long term strategic planning and zoning hierarchies and unnecessarily facilitate the development of medium density developments in established low density residential areas, where they would be inappropriate.

2. Subdivision of Dual Occupancy Development in the Low Density R2 Zone

Lane Cove Council strongly and consistently opposes the subdivision of dual occupancy development. Currently, a planning proposal is on exhibition which further strengthens and clarifies the Council's LEP position in relation to the subdivision of dual occupancy.

Dual occupancies have not been permitted to be subdivided since May 1996, as their dual frontages and double garages were dominating the streetscape, and detached dual occupancies developed in significant numbers were negatively impacting on future land use and subdivision potential, and the orderly, leafy character of rear gardens.

During the drafting of Council's Local Environmental Plan, the definition of "dual occupancy" prevented this type of subdivision by stating that dual occupancies (either attached or detached) *"means 2 dwellings on one lot of land"*. However, DA applicants frequently query this as a basis for refusals and recent decisions by the NSW Land and Environment Court on this matter do not reflect the Court's position.

As a result, the intent of the Standard LEP definition is not necessarily reflected or in line with the legal position.

Therefore, as is done in other councils' LEPs, a prohibition clause to clarify that subdivision of dual occupancies is not permissible was proposed for Council's LEP. This was supported and granted a Gateway Determination by NSW Planning & Environment and Greater Sydney Commission. Currently, this proposal is on public exhibition and if approved would be in direct conflict with the Draft Medium Density Design Guide as prepared.

3. Impact on Local Character

Residential Character:

If adopted, the Design Guide would adversely and significantly change the residential character in the R2 zoned areas. The R2 objectives state:

Zone R2 Low Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To retain, and where appropriate improve, the existing residential amenity of a detached single family dwelling area.*
- *To encourage new dwelling houses or extensions of existing dwelling houses that are not highly visible when viewed from the Lane Cove River or Parramatta River.*
- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

The objectives of the R2 zone clearly articulate a vision which includes development which is 'low density' in character not medium density, which retains/improves 'the existing residential amenity of a detached single family dwelling area'.

Allowing much smaller dwellings, on substantially smaller lots with narrow frontages will detract from the rhythm and character of well-established low density residential areas.

Foreshore Character

As stated above, much of the Council's R2 zone is near or adjacent to the foreshore of the Lane Cove River. The above relevant objective is to 'encourage new dwelling houses ...that are not highly visible when viewed from the Lane Cove River'. As the foreshore area is not excluded from the Exempt and Complying SEPP, the Design Guide if adopted would apply to the areas adjacent to the Lane Cove River.

Foreshore areas are visually and environmentally more sensitive than flat suburban land. It would be highly inappropriate to allow more intense development, which would not be subject to professional scrutiny from architects, planners and engineering professionals, in foreshore areas.

4. Height of Buildings under the Lane Cove LEP

The LEP 2009 currently limits the height of multi dwelling housing in the following manner:

(2A) Despite subclause (2), the maximum height for multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres.

Under the MDH Code/Design Guide, terrace houses are permitted a height of 9m. While this complying height would be consistent with single dwellings in the R2 zone, the Guide undermines Council's intention to permit greater

densities within an R2 zone while controlling the potential for excessive bulk and scale.

5. The effectiveness and purpose of the Exempt and Complying Development SEPP ('Codes SEPP')

Currently, when using the Codes SEPP, it is often expensive and time-consuming to ascertain whether a proposal can be considered as complying development. Applicants can pay significant amounts of money to certifiers just to ascertain whether they can lodge, for example their alterations and additions, using the complying development system.

The original intent of the Codes SEPP document was to take very simple development proposals out of the development application system and provide quicker cheaper approvals for low impact developments. However, often a detailed depth of knowledge is needed to correctly apply the Codes SEPP which can be costly and time-consuming.

Moreover, there are serious problems with the existing system. When issues are encountered and complying developments are not carried out correctly, residents feel frustrated and helpless without the opportunity to approach Council with legitimate concerns about for example, the development next door which does not match the approved design.

The long-term issues with the complying development system have not been adequately resolved. Consequently, compounding this by adding larger developments into this system is problematic and cannot be supported.

Instead of streamlining the process, the Codes SEPP currently complicates the planning system, and the addition of a Medium Density Housing Code will further encourage ill-considered development that fails to have regard to physical site and precinct constraints.

Notwithstanding this fundamental concern, the Medium Density Design Guide can add value to the planning arena by offering a resource document to be referenced. It would provide guidance opportunity for Councils to review their existing medium density policies and consider a variety of alternative built form outcomes.

6. Inconsistent and confusing terminology in the Design Guide

The Design Guide attempts to explain in great detail all the possible different forms of medium density development. The Design Guide then goes on to include together developments that would require a development application and those that could be processed as complying development. It is strongly suggested that there would be value and be beneficial to have a separated Medium Density Housing Code.

Part 3 entitled "Design Criteria", however this part also includes 'Principal Controls' which would appear to be more important than the Design Criteria.

The Design Guide states “A complying development certificate must comply with each of the design criteria” Page 80. The status of the Principal Controls is not explicit and the intent is not clear.

Terminology used on the Design Guide is at times confusing. For example, in the section “Two Dwellings Side by Side” (page 80), it mentions that these are dual occupancies. However, dual occupancy development is found in two separate parts of the document. For example, on page 136 (grouped with Manor Houses) dual occupancies are raised for the second time. At first reading it is not clear that this section refers to dual occupancies where one is on top of the other (like a ‘duplex’). A clear diagram would help to show the type of dual occupancies. It may also be clearer to group all dual occupancy development together.

Diagrams could be labeled in clearer detail to better illustrate what is being discussed on the same page. For example, on page 137 it is difficult to discern what the diagrams are showing. Ground and first floors could be labeled, balconies could be labeled as private open space, and the colour for communal open space does not appear to match the colour in the key. Further, Figure 3-15 should include a caption, in particular identifying what the figure is demonstrating.

The Design Guide would benefit from the clear separation of the Medium Density Design Guide and the Medium Density Housing Code.

7. Outcome of Council’s Medium Density Controls

Within Council’s comprehensive Development Control Plan, controls are included for dual occupancies, attached dwelling and multi-dwelling housing and residential flat buildings. An analysis has been undertaken of selected medium density developments within Lane Cove, assessed against Council’s controls and notionally compared to the Design Guide controls (see Appendices A and B). A summary of findings is included below.

Dual Occupancies

It should be noted that none of these examples are forms of detached dwellings. Currently, dual occupancies (both attached & detached) are permissible in the R2 zone. However, while Council’s E4 Environmental Living permits only attached dual occupancies, this Guide will not apply to this zone.

Appendix A – Dual occupancy

The Design Guide would allow/require:

- irregular lot sizes (parent lot must comply with LEP but after subdivision 200sqm is the min lot size)
- more floor space on the site;
- small side setbacks;
- overly large rear setback;
- in some instances, half the number of car parking spaces.

Multi-dwelling housing

It should be noted that none of these examples would qualify as complying development under the Design Guide because lot shapes prevent some dwellings from having their own public road frontage.

Appendix B – Multi dwelling housing

The Design Guide would allow/require:

- A larger number of dwellings;
- a much greater FSR;
- much larger setback from the front and rear boundaries;
- significantly less private open space and landscaped area per dwelling;
- in some instances, less than half of the current parking space numbers.

For example, a development at 1-3 Sera Street was carefully designed to exceed environmental criteria and in recognition of the sustainable design, received a Building Design Award. In addition, the townhouses have commanded prices well above expected levels possible due to generous proportions and good design (for example 1/1-3 Sera St sold for \$1.74m in April 2014).

Locally derived controls can reflect local aspirations and expected levels of amenity. The Design Guide is not designed to deliver higher-end dwellings as would be the expectation in an area close to the city with high land costs.

8. Site context

Development must have regard for the topography of the site. Site analysis must consider the slope, cut and fill, and other local opportunities and constraints. Items listed in the site analysis checklist within the Guide are often overlooked by complying developments.

9. Council Strategies

Councils which are achieving growth and have undertaken community consultation as part of a medium density strategy should be exempt from the provisions of any Medium Density Code.

Overall Conclusion

- The Design Guide is not supported as a beneficial policy direction for housing in the Lane Cove LGA, most importantly because it is likely to result in inappropriate over-development in Lane Cove's R2 Low Density Residential areas;
- Moreover, existing development, operating under controls in the Lane Cove LGA has achieved the intent of the proposed Design Guide with less

bulk and scale, an outcome more appropriate to the layout patterns and streetscape of the LGA;

- Quality medium density development is already being viably achieved in the LGA's R3 Medium Density Residential Zone under Council's controls;
- Complying development is not an appropriate mechanism for medium density development, especially where it permits density out of character with its context;
- Complying development as a mechanism should focus on low impact proposals and not undermine strategic planning undertaken by Council in relation to the placement of future density;
- A succinct high quality Medium Density Design Guide would be welcomed that could be used as a resource by Council when setting policy documents for medium density housing.

Yours sincerely



Michael Mason
Executive Manager - Environmental Services

Attachments:

Appendix A: Existing Dual Occupancy developments in Lane Cove

Appendix B: Existing Multi-Dwelling housing developments in Lane Cove