

6 July 2017

Director, Codes and Approval Pathways  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Sir/Madam

**Subject: Submission on the introduction of a Greenfield Housing Code - Complying Development in Greenfield Areas**

Council staff would like to thank the Department of Planning and Environment for the opportunity to comment on the Background Paper - A Review of Complying Development in Greenfield Areas and Explanation of Intended Effect (EIE) for a new Greenfield Housing Code.

Please find below our comments:

**General:**

Council staff concur with the objective that the proposed Greenfield Housing Code is intended to fit within the existing Codes SEPP and will be subject to the existing land based exclusions and general requirements that applies to the existing General Housing Code.

However, it is unclear if adherence to the proposed greenfield subdivision and master plan guidelines will be a requirement for all new Urban Release Areas or will be left to the market to decide. Staff support the objectives of the proposed greenfield master plan guidelines but are concerned that the proposed guidelines will only be utilised in high-end subdivision developments rather than being utilised across the board. To ensure a liveable environment, that provides for good amenity for future occupants and positive environmental outcomes, the proposed greenfield subdivision guidelines should become the preferred subdivision model and be given statutory effect.

An example of the difficulty of making adherence to guidelines mandatory is at Apple Tree Grove at West Wallsend. The DA was approved by the JRPP with the requirement that design guidelines be prepared for all housing. However, the only way the guidelines could be enforced was through excluding the area being excluded from complying development. All DAs are lodged with Council to ensure compliance with the design guidelines.

**Specific matters:**

Staff generally concur with the proposed lot widths to enable housing variety and the potential for affordable housing however, raise concern with the allowance of a double garage for lot widths of 10m for 2 storey dwellings. Given that a double garage is some 6 metres in width this ratio provides for the frontage of the building being dominated by a roller door resulting in poor visual amenity to the street scape, and limitations on on-street parking through lack of kerb areas between driveways. It also limits the use of the remainder of the ground level floor space for an efficient and useable dwelling design. The example shown in the Background Paper at Appendix 3 – Example House type Plans, demonstrates the poor streetscape outcome dominated by a garage and limited use of the dwelling layout adjoining the garage.

Our Ref: F2007/01473-02 Your Ref:

Concern is also raised with the minimal setbacks that have been proposed for corner lots. Setbacks of 1m for lots widths of 6m to 7m and 2m for lots widths of greater than 7 metres through to more than 15 metres, does not provide for privacy, amenity and noise control from either vehicle noise or from passer- bys. At a minimum, a 3 metre setback to a secondary road as provided for in the General Housing Code (Housing Code 2017) should be provided to enable sufficient separation for privacy, amenity and noise control.

## **HERITAGE:**

Lake Macquarie has listed heritage sites, which include old rail/steam tram routes and historic colliery sites, as well as, areas of high archaeological potential and fossil sites – all of which might look like vacant land. Land Use zoning alone does not help to identify where these items are located.

It is imperative that any assessment of whether the Greenfield Housing Code applies to an area or not has to take these items into account, particularly since the Heritage Act would still apply to any relics uncovered during construction. Nominated exclusions should include development on land identified as an item of environmental heritage or a heritage item, by an environmental planning instrument.

Exclusions to the Greenfield Housing Code need to also apply to land containing Aboriginal heritage. The requirement for an AHIMS search and other provisions in Lake Macquarie LEP 2014, related to aboriginal heritage need to continue to apply. This includes provisions related to the LEP 2014 Sensitive Aboriginal Cultural Landscape layer. Aboriginal sites are still protected under the NPW Act and would apply to any sites located within the area or uncovered during construction.

## **SUSTAINABILITY:**

### **Contaminated Land**

Council has found that the lack of a formal requirement to consider contaminated land, as part of Complying Development applications on residential land, is problematic and may be increasing the likelihood of public exposure to hazardous substances (clause 1.19 of the Codes SEPP).

Recommendations of the EPA Lead Expert Working Group's Report on Managing Residual Lead Contamination in North Lake Macquarie (December 2016) included a recommendation for the Department of Planning and Environment to address contaminated land management in exempt and complying development. This recommendation is provided below:

#### *Recommendation 14*

*The Department of Planning and Environment, in consultation with the EPA and Lake Macquarie City Council, takes steps to ensure that Exempt and Complying Development that is likely to result in the disturbance of contaminated soil within Lake Macquarie City is appropriately managed to minimise harm to human health and the environment.*

Land based exclusions and general requirements that apply to the Greenfield Housing Code should take the above recommendation into consideration.

### **Flood Risk Management**

It is not clear from the Statement of Intended Effects how proposed development on flood-prone land is to be assessed. Council should remain the approval authority for development on flood-prone land to ensure that the proposed development is compatible with the flood hazard at the site.

### **Waste**

Ongoing waste management considerations need to be included in complying development codes. Where waste management has not been considered in the design of developments, Council has found that developments often:

- have not allocated space for bin storage, or have inadequately-sized, unsafe, unsightly, unlit, uncleanable waste storage areas;
- have no safe access to waste bins for residents of accessible dwellings;

- have space from which it is impossible or unsafe to move bins to the presentation point for collection (such as having to wheel them through the house, over retaining walls, through neighbour's visitors' cars blocking the way, through dense landscape planting, or up/down stairs);
- have no way of collecting the waste from the property (such as insufficient street frontage, and/or no way for waste vehicles to safely enter the site); and/or
- have nowhere inside the dwelling to store separated recycling, food waste and residual garbage.

This results in compromised amenity for the street and the development, unnecessary additional expenses for owners and residents in attempts to rectify shortcomings; and inability to fully separate and divert recyclable and compostable waste from landfill towards achieving the NSW Government waste minimisation targets.

Proposals also often do not consider designing for waste avoidance and waste minimisation, and in designing subdivision layouts, there are missed opportunities for more optimal, cost-saving and sustainable waste collection solutions.

Figures 10 and 11 in the Explanation of Intended Effect should show where the bin storage is to occur. If this is to be in garages, the garage must be at least 600mm longer or wider to accommodate the car as well as bins. If the side yards are to be used, the space must be at least 1200mm wide (better 1500mm) by 2200mm long by 1800mm high (to fully open lids) to access bins and move bins past each other.

Shared bin storage areas need to:

- be within 75 metres of all dwellings (or 50 metres of accessible dwellings);
- be between 3 metres and 75 metres of the bin collection point (depending on bin sizes); and
- meet other design criteria for safety, sanitation and amenity, such as is discussed in the "Better Practice Guide for Waste Management in Multi-unit Dwellings" (NSW Department of Environment and Climate Change, June 2008).

### **Energy provisions for proposed Greenfield subdivision and master plan guidelines**

The proposed guidelines provide a useful mechanism to create more sustainable communities. Additional elements for consideration within the guidelines are provided below:

- All buildings should be covered by mandatory disclosure requirements, to ensure that consumers and owners are well informed about actual, as distinct from modelled, energy performance.
- Integrated sustainable transport considerations
- Appropriate block/building orientation and solar passive performance
- Enable building-based or precinct-scale renewable energy supply
- Limit over-shading and preserve solar access for buildings
- Limit urban heat island effects via appropriate management of albedo, green cover/shading and heat rejection sources (e.g., natural ventilation)
- Fully integrate infrastructure investment decision making with local planning schemes and strategies, to ensure that the overall character of development encourages a low carbon footprint.

### **DEVELOPMENT ASSESSMENT AND COMPLIANCE:**

Recognition that a new release area will experience intensive development in a short period time is supported. There are, however, specific matters that need further consideration:

- There are limited sites which have flat land in Lake Macquarie, cut and fill for the suggested narrow width lots will become problematic. Consideration needs to be given for maximum cut and fill requirements where retaining walls can be established.

- Setbacks are detailed as a minimum. A maximum setback should also be specified as significant variation in setbacks will impact on the streetscape.
- Stipulating requirements on Council's processing Section 68 Approvals differently to how they are approved currently is not supported. Approvals for driveway entries at the subdivision stage under the Roads Act is an option to address this issue.
- Easements are stipulated in the LEP under Clause 1.9A. CDC's should be held to the same standards (that is, provisions under subclause (2) require the matter to be a DA not a CDC).
- Critical to the uptake of this form of development will be the creation of lots unburdened by property conditions at subdivision stage.
- The Department should prepare development standards for those instances where property conditions would otherwise restrict Complying Development. Flood, Contamination, Heritage (Aboriginal or European), flora/fauna should be anticipated and addressed so an authentic Greenfield Code can be delivered rather than one with exceptions peppered throughout a land release.
- A development standard for deferred commencement has a great benefit for both applicants and Council. However, such deferrals should only occur once council has issued a subdivision certificate and a plan can be submitted for registration.
- The landscape controls will be hard to enforce. Recent experience has highlighted that Certifiers, employed by the Builder, conclude their work at handover inspection and may not return to see if trees are planted after lawns and gardens are established. There is no lever to ensure the owner completes the landscaping work. Similar issues arise with driveway construction, so the comments regarding Roads Act should not be a barrier to an approval.
- It is unlikely that the certifying industry will take up the initiative to gather receipts for construction waste disposal. It may be impractical when a truck with waste is likely to have sourced that waste from multiple sites. It would also be hard for the Certifier to quantify the volume of waste on a given job.
- Provisions related to alterations and additions being incorporated into the Greenfield code are not supported. At what point would the site no longer be 'greenfield' and the code no longer relevant. The Greenfield Code is complicated by this proposal. The Alts and Adds Code is sufficient in dealing with such matters.
- Opportunity exists with the introduction of the new Greenfield Housing Code to introduce a standardised fee for Councils and Private practitioners across the state.

Should you require further information, please contact me on 4921 0509.

Yours faithfully



Gabriele Calcagno  
**Senior Strategic Landuse Planner**  
**Integrated Planning Department**