

28 June 2017

Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001
Email: Codes@planning.nsw.gov.au

Our Ref: 2017/202915

Dear Sir/Madam

Northern Beaches Council Submission to Exhibition of Draft Greenfield Housing Code

I refer to the Department's recent exhibition of the Draft Greenfield Housing Code (draft Code). Thank you for granting Council an extension to make its submission after the close of the exhibition period on 16 June 2017, to enable this matter to be presented to Council's meeting of 27 June 2017.

Northern Beaches Council has actively partnered with the Department in regard to the greenfield areas within its local government area, from the review of development opportunities in the Warriewood Valley release area (completed in 2013), to the precinct planning investigations for the Ingleside Precinct and the recently announced Northern Beaches Hospital Precinct.

I attach the Council's submission to the Draft Code for your consideration.

Council welcomes the opportunity to offer its comments to this draft Code given the implications to the three areas within its LGA. Additionally, Council is happy to meet with Department officers tasked with the preparation of the Greenfield Subdivision and Master-Planning Guideline, to share our experience and lessons learnt in dealing with the delivery of these areas.

In this regard, please feel free to contact Liza Cordoba on ph. 9970 1150 to arrange a meeting.

Yours faithfully



Andrew Pigott
Executive Manager Strategic and Place Planning

NORTHERN BEACHES COUNCIL

**SUBMISSION BY
NORTHERN BEACHES COUNCIL**

**TO THE
EXHIBITION OF**

**THE REVIEW OF COMPLYING DEVELOPMENT IN
GREENFIELD AREAS**

AND

**EXPLANATION OF INTENDED EFFECT – PROPOSED
GREENFIELD HOUSING CODE**

Endorsed by Council on 27 JUNE 2017

Summary

Northern Beaches Council supports the NSW State Government in facilitating quicker approval pathways to deliver more housing as a means of meeting the housing needs and improve housing affordability for residents of NSW.

However concerns are raised that proposed amendments to the NSW Housing Codes State Policy for Greenfield areas have the potential to result in poor environmental and built outcomes and hinder innovation and sustainability in house design. Council is already concerned that housing in NSW is well behind the minimum 6 star NatHers rating for dwellings in other Australian states.

The basic premise of the proposed Greenfield Housing Code is that the Complying development pathway will be achievable for dwelling houses on newly created allotments as small as 200m² and 6m wide. This is flawed; there exist development provisions for subdivision proposals that require an 'integrated housing' approach wherein proposed lots with a width 9m or less then consent is issued for the subdivision as well as the dwelling house on the subject lots (see point 1 below).

Council is also concerned that landscaped area is not expressly defined and, as such, the area apparently required for landscaping is limited whilst the requirements for the planting of canopy trees in the rear yards of properties will result in poor environmental amenity for inhabitants of dwellings, particularly from overshadowing.

The landscaped area requirements are also insufficient to achieve water cycle management objectives in Warriewood Valley, potentially resulting in increased flooding, degradation of riparian corridors, and decimation of environmentally sensitive sites.

The expansion of private certification of small lot housing is also questioned given previous issues with this process especially related to on-site monitoring, the complexity of this type of development, and the environmental constraints in areas such as Warriewood Valley and the proposed Ingleside Precinct.

The proposition for standard 'all-in' approach towards housing in Greenfield areas is attractive and the proposal to develop a Greenfield Subdivision And Master-Planning Guideline is commendable, however the background paper is Western Sydney-centric in its current approach/philosophy.

Not all release areas are owned by a single or handful of landowners with an express desire to develop the land. There has been no consideration of those land release areas with highly fragmented landownerships that, in turn, make master-planning sites extremely difficult. As both of Council's release areas are highly fragmented, Council would be happy to meet with the Department of Planning to discuss its experiences with the master-planning of Warriewood Valley and Ingleside Precinct.

Which areas in NB LGA is this Code intended

- Warriewood Valley Release Area (already identified as an urban release area under the Pittwater LEP 2014)
- Ingleside Precinct – identified as a Priority Growth Area under recently exhibited Explanation of Intended Effect – Proposed amendment to SEPP Growth Centres 2006
- Potentially, NBHP however this will depend on whether this precinct is expressly listed under the stated criteria.

Specific concerns identified with the exhibited documents

1. 'Integrated Housing' approach for small lot housing

Housing on lots 225m² or less in lot area or propose a lot width 9m or less is typically known as 'small lot housing'. Such housing is normally subject to more detailed development controls to ensure residential amenity is not compromised eg shadowing and overlooking, access for maintenance and the like. To ensure this does not occur, such considerations are often made at the subdivision proposal phase.

This 'integrated housing' approach is required via existing Development Control Plans used for the Growth Centres and already developing release areas such as Warriewood Valley. The integrated housing approach requires a dwelling footprint/design to be prepared for each lot that is 225m² or less in lot area or where the lot width is 9m or less. The development consent issued by Council approves the subdivision and house design(s)/footprints on the corresponding allotments with such lots typically registered with an 88B Instrument that contains the approved building footprint/design and easements to be registered for maintenance and access.

In the event that certifiers are allowed to issue CDC's for a dwelling house on an unregistered lot, the criteria must state that the design of the dwelling must be within the approved building footprint for the lot in accordance with the development consent issued for the subdivision via the integrated housing approach.

Clause 3.4 of the Codes SEPP, regarding easements and other instruments under the Conveyancing Act, specifically affords some security for small lot housing in ensuring that the initial considerations of the subdivision are secured for these small lots in terms of access for maintenance, the building footprint ensuring that a dwelling can be accommodated on the lot with sufficient distance to afford the future residents' amenity. Council does not support any change to Clause 3.4 of the Codes SEPP.

2. Landscape Controls:

Landscaping for small lot housing is critical in terms of its utility and setting as well as its impact on residential amenity and enjoyment. Additionally, there remains an ambiguity in how the landscaped area is calculated.

(a) *Utility of the landscape area*

- (i) The landscaped area is prescribed as a percentage of the lot area and having a minimum width of 1.5m. The proposed numeric standards will not afford utility of the landscaped area especially in the rear yard (as the private open space area). The utility of the rear yard is also compromised by the planting of an 8-10 metre high tree (required).

A rear yard of potentially 18m² in area (for a 6m wide lot with a 3m rear building setback) does not have sufficient area/cubic volume of soil for an 8m-10m tree to successfully thrive; any canopy tree will accommodate the majority of the rear yard resulting in little or no private open space area. Additionally, a tree of this size may result in future impacts on the structural adequacy of the dwelling itself in terms of the tree ball/root system or the limbs/canopy, or impact on neighbouring houses.

Minimum dimensions should be established for the private open space area for the dwelling. Any tree canopy in the rear yard should not be sited wholly within the minimum dimensions for the private open space area.

The rear building setbacks should be increased to sufficient width to enable sufficient clearance between the canopy tree (planted in this setback area) and the dwelling.

- (ii) The landscape area is also critical in managing water detention and water quality, particularly in the Warriewood Valley release area and the Ingleside Precinct.

For Warriewood Valley, the integrated water cycle management scheme for subdivision proposals is based on an imperviousness fraction of 50% of the development site, and that BASIX-compliant rainwater tanks for each dwelling within that subdivision are independent of the onsite detention volume requirements for the integrated water cycle. The 50% imperviousness fraction, applicable to all residentially zoned land in Warriewood Valley is based on the suite of water management studies and the Integrated Water Cycle Management Strategy developed and implemented for this release area.

The required imperviousness fraction of the development site dictates that each created lot already has a defined area that could be built upon as well as the landscape area. Setting aside 15% of the lot area for landscaping is insufficient and would result in failure of the approved water cycle management for the overall subdivision. Such failure has environmental consequences, including flooding of adjacent and downstream properties and degradation of the riparian corridors recently rehabilitated as part of the subdivision, and water quality impacts entering environmentally sensitive sites such as Warriewood Wetlands and Narrabeen Lagoon.

Ingleside Precinct, recently listed as a Priority Growth Centre, is a precinct planning investigation being led by NSW Planning in partnership with Northern Beaches Council and UrbanGrowth NSW. The Precinct is located at/adjacent to the Escarpment and has specific environmental conditions that require a strict balance with the water cycle management to ensure that:

- flooding does not occur on established residential areas below the escarpment when Ingleside develops as a release area, eg Mona Vale, Warriewood and the Warriewood Valley release area, and
- adverse impact does not occur on the riparian corridors within the Precinct and downstream, and on groundwater dependent ecosystems/ environmentally sensitive areas such as Warriewood Wetlands and Narrabeen Lagoon.

The percentage for landscaped areas proposed by the draft Code is significantly lower than the percentage crucial in balancing the water cycle (environmental flows, groundwater, water quantity and quality). The cumulative effect of higher impervious (or built upon) areas at Ingleside results in significant flood impact on established residential areas below the escarpment (Mona Vale, Warriewood and Warriewood Valley) and deterioration of ecological communities and habitats such as the riparian corridors within the Precinct and downstream as well as the Pittwater Estuary, Warriewood Wetlands and Narrabeen Lagoon.

For this reason, Council and its precinct project partners including the Department of Planning are seeking to mandate the following elements:

- the size/capacity of the rainwater tank,
- all roof water is to be used for internal flushing, and
- site coverage in terms of the landscaped area for each lot,

that results in the application of a higher water target under the BASIX SEPP being applied to all dwellings in the Ingleside Precinct.

(b) Ambiguity in calculating landscape area

Neither the existing Codes SEPP nor the draft amendments include a definition of 'landscaped area'. Some statutory documents of what landscaped area include hard surfaces such as paved areas in the definition of landscaped area. This ambiguity is likely to result in significant problems in Warriewood Valley and Ingleside, where flooding and water management are of paramount importance in ensuring the amenity, as well as the safety, of the community.

Council's preferred definition, consistent with the Standard Instrument LEP, will not permit the inclusion of any hard surfaces and reads as follows:

"landscaped area means a part of the site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area"

3. Amenity Controls do not afford sufficient residential amenity

The amenity controls do not address private open space requirements, or visual and acoustic privacy that, in turn, impacts on the future amenity of residents.

(a) Private open space is insufficient

As discussed in 1(a) above, the proposed controls will result in insufficient private open space areas, exacerbated by the required planting of a tree, resulting in limited utility for the residents. The rear building setbacks should be increased to sufficient width to enable sufficient clearance between the canopy tree (planted in this setback area) and the dwelling.

(b) Visual, acoustic, shadowing and privacy impacts

The proposed Code will, result invariably result in a 6m wide 'landscape' strip between dwellings aligned parallel to each other (in the case of allotments back to back), with this 6m strip able to be varied due to house design and/or lot width. The building setbacks at the rear and side boundaries raises visual, acoustic, shadowing and privacy implications to which no detailed assessment is proposed. This is unreasonable given the opportunity available to address potential concerns from the outset in a Greenfield area.

More detailed provisions for offsetting of windows and/or use of fixed highlight windows in side walls, greater rear setbacks should be included in the Code.

4. Non-compliance matters due to private certification

The draft Code enables private certifiers to issue complying development certificates for housing development in greenfield areas, and in some locations where the subdivision has been approved, may have unintended consequences due to the less stringent development standards.

Concerns with the existing private building certification system in NSW are widely acknowledged. Proposals to expand complying development without effective improvements to the certification system are therefore not supported.

The onus on a private certifier to ensure that the approved dwelling is not constructed/occupied until the registration of the lot upon which the dwelling will site, must be approached with caution. Additionally, expanding complying development to include more challenging developments such as those in Warriewood Valley and Ingleside Precinct, which are subject to multifaceted environmental constraints (e.g biodiversity, bushfire and flooding), could result in potential increases in flood occurrences/impacts on downstream properties and potential degradation of the creekline corridors due to flooding.

Recent reforms to the private certification system are acknowledged, however more work is needed to upskill private certifiers and increase understanding of the criteria and the implications of failing to enforce those criteria. Additionally, improved audit and disciplinary measures for must be implemented for private certifiers

Recommendations to the Department

Northern Beaches Council would be pleased to meet with the Department to discuss its experiences with Warriewood Valley in the master-planning of highly fragmented sites ahead of the Department developing a Greenfield Subdivision And Master-Planning Guideline. In addition, Council provides the following recommendations to the Department for its consideration:

- A. Council requests that, as a matter of priority, the Warriewood Valley release area be exempt from the Greenfield Housing Code. Alternatively, if Council's request is not agreed to, that the landscaped area percentage for all lots in the Warriewood Valley release area be 50% of the lot area.
- B. The Ingleside Precinct be exempt from the Greenfield Housing Code. In the event that Council's request is not agreed to, that Council's request to increase the BASIX Water target for Ingleside should be progressed by the Department to ensure that the water cycle balance will not be mismanaged and result in adverse flood occurrences to areas downstream of the Ingleside Precinct.
- C. Landscaped area is expressly defined, either within the generic definitions section of the Codes SEPP or in the Greenfield Housing Code section; and its definition is consistent with that found in the Standard Instrument LEP, to read as:

"landscaped area means a part of the site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area"

- D. Council does not support any change to Clause 3.4 of the Codes SEPP as this may undermine the considerations already made by the Council, as the consent authority, in its initial consideration of the subdivision and integrated housing proposal.
- E. Council be permitted to set its own principal standards for complying development to cater to local conditions.
- F. Alternatively, if Council is not permitted to set its own principal standards then the following standards should replace those exhibited standards, namely:
 - (i) In the event that certifiers will be allowed to issue CDC's for a dwelling house on an unregistered lot, the criteria must state that the design of dwelling must be within the approved building footprint for the lot in accordance with the development consent issued for the subdivision via the integrated housing approach.
 - (ii) A minimum 3m x 3m of private open space area is to be established for a dwelling under the Greenfield Housing Code. Any tree canopy in the rear yard should not be sited wholly within the minimum dimensions for the private open space area.
 - (iii) The rear building setbacks should be increased to sufficient width to enable sufficient clearance between the canopy tree (planted in this setback area) and the dwelling.
 - (iv) More detailed provisions for offsetting of windows and/or use of fixed highlight windows in side walls, greater rear setbacks should be included in the Code.