

**TITLE:** [PR-PC] Review of the NSW Government's Proposed Greenfield Housing Code May 2017

**SUBMITTED BY:** Strategic Planning and Urban Design

Validms



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## LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.2	Engagement
2.2.6	Strategic Land Use Planning - To provide long-term land-use plans to guide future development, plan for population growth, and protect the Tweed's environment, heritage and community life.

**ROLE:** **Provider**

## SUMMARY OF REPORT:

The NSW State Government, through its lead land-use planning agency, Department of Planning and Environment (DPE), is considering the making of an environmental planning instrument to make amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to expand its provisions relating to the fast-tracking of housing development approvals within greenfield subdivision as complying development. The government's objectives are:

- increase housing supply by 50,000 to achieve the approvals required every year;
- removing identified barriers to the wider take-up of complying development;
- establish the need and nexus to well-designed subdivision (guidance); and,
- provide simplified and tailored standards for complying development in greenfield areas.

Information surrounding the amendments, as well as a supplementary discussion establishing a linkage between faster and simpler housing approvals with master-planned subdivision development, is provided in the: *Explanation of Intended Effect (Proposed Greenfield Housing Code)* and *Background Paper (A Review of Complying Development in Greenfield Areas)*; which are an attachment to this report. The DPE is also considering whether to prepare non-statutory subdivision master-planning guidelines which councils might then adopt within their own subdivision development control plan.

A review of these exhibited documents is provided within this report with recommended points of reply as the basis of a Council submission. The original closing date for submissions was 16 June, but Tweed's request for a short extension to allow time to prepare this report has been granted by the DPE.

The review begins with commending the DPE for its initiative to evaluate the application of codes assessable development to greenfield development and its attempt to overcome some of the perceived barriers identified as potentially hindering faster approvals. The wider discussion provided in the background paper spotlights potential opportunities for efficiency gains in approvals systems, cost savings and better quality housing outcomes, and in anticipation of developers requiring time to prepare new compliant housing designs proposes as 3-year phasing in period. It is acknowledged that this initiative imprints a level of commitment needed to support the implementation and actions

within Regional Growth and District Plans for delivering on housing targets to match population growth demand and which is particularly important to Tweed as it moves forward with fulfilling its designated role as one of four Regional Cities and major growth areas in the recently adopted North Coast Regional Plan 2036.

The review does however highlight some concern for a number of proposals as the detail of these are analysed in the context of the staffs' extensive practical expertise managing the assessment and development of Tweed's many and large-scale greenfield subdivision developments over many years. Some of the proposals are considered quite ambitious and their practicality, relative to the potential for elevated risk and cost to consumers, is queried.

The report also notes that the planning system has become overly complex and inflexible and is widely recognised across all sectors as being in need of reform. Speeding up the planning and assessment process and consequently quicker and cheaper development approvals that does not compromise on outcomes requires policy change that is meaningful and measurable and justified by a clear demonstration of how claimed improvements will be achieved and reported. It is unlikely to be realised through perpetual piecemeal or ad hoc policy.

The government has committed to its publicised target of 90% housing approvals within 40 days by 2019 and the take-up of complying development must be significant for the government to achieve this target. Staff consider this commitment is inherent in the design of this reform package and weighs too heavily on the approvals side of the proposals at the risk of not delivering construction start-ups correspondingly sooner or delivering housing that is suited to local climate and geographic conditions and more sustainable, vibrant or diverse. Given that the proposed Greenfield Housing Code applies to single and two-storey dwellings and Tweed's current approval time for these is about 37 days (average) – 3 days less than the government's own target, and that additional measures are being pursued by staff to reduce this further, the relevance and suitability of the proposed reform to Tweed's context is questionable. This further reinforces a preference for this scheme to be one that councils or developers should be able to opt-in or opt-out of.

This report concludes that although the draft Greenfield Code is not suited to the Tweed at this time it may nevertheless be suited to other areas of the State. Therefore, it is recommended that Council makes a submission highlighting the areas of concern.

## **RECOMMENDATION:**

**That a submission to the NSW Department of Planning and Environment detailing the issues raised in the Officers review, comprising the highlighted recommendations within this report, be submitted in reply to the call for public submissions in respect of the proposed Greenfield Housing Code, prepared and exhibited by the NSW Department of Planning and Environment.**

## REPORT:

The NSW State Government, through its lead land-use planning agency, The Department of Planning and Environment (DPE) is currently exhibiting proposed amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (also referred to as the Codes SEPP), through a new Greenfield Housing Code.

The intended purpose is to increase the uptake of complying development in greenfield areas which the DPE believe is the key to achieving faster and more cost-efficient housing approvals and with greater certainty, so much so it has set itself a KPI target of 90% of all housing approvals within 40 days by 2019. The Codes are proposed to apply to new single and two storey dwellings on land described as within a residential release areas and that meets specific minimum requirements, such as:

- being within land zoned R1, R2, R3 Medium Density, R4 High Density or RU5 Village;
- that is within an approved subdivision;
- has a minimum lot width of 6 metres at the building line with;
- a minimum lot depth of 25 metres a primary road frontage to rear lot boundary, and;
- has a minimum lot size of 200m<sup>2</sup>.

This and further detailed information surrounding the amendments, as well as a supplementary discussion about the role and importance of master-planning subdivision development to achieve not only faster approvals but greater neighbour amenity, sustainability and environmental benefits, is also provided in these documents, as attached to this Report: *Explanation of Intended Effect (Proposed Greenfield Housing Code)* and *Background Paper (A Review of Complying Development in Greenfield Areas)*.

Of particular note are the following proposed amendments:

- Deferred commencement conditions allowing Complying Development Certificates (CDCs) to be issued prior to the lot being registered.
- Looking at allowing structures to encroach within access maintenance easements where the adjoining building is not built to the boundary.
- Looking at prescribing a time frame in which a consent authority must determine a section 68 application, currently there is no time frame legislated within the NSW Local Government Act to process section 68.
- Simplified language and development standards.
- Discusses two different subdivision scenarios;
  1. solely by developer i.e. subdivision and individual dwelling approved constructed one application; and,
  2. subdivision by developer with master plan including broad dwelling design concepts, however individual CDC approvals obtained by designer/builders.
- Current General Housing Code will be replaced by the Greenfield Complying Development Code (GCDC) for new release areas and New Housing Code over a three-year transition period to allow builders to modify their standard design and procedures to comply/adapt. The GCDC will apply to land identified as residential release under clause 136AB of the *Environmental Planning & Assessment Regulation 2000* (EP&A Regulation) and any other greenfield release area nominated by Council

as a release area under Part 6 of a Standard Instrument LEP or otherwise identified under *SEPP (State Significant Precincts) 2005*.

- Neighbour notification to remain as current under clause 130AB Pre-Approval Notification and clause 136AB Pre-Construction Notification.
- Development standards within the new proposed GCDC are to comprise three major design standards:
  1. Built Form,
  2. Landscaping,
  3. Amenity.
- Secondary dwellings currently provided under the SEPP (Affordable Rental Housing) 2009 will be transferred to the Code SEPP.
- *SEPP (State and Regional Development) 2011* (Greenfield SEPP) will be simplified to align with Sydney's Growth Centre DCP.
- Development standards are similar to existing General Housing Codes front setback however side and rear setback changes significantly.
- Max building height 8.5m.
- Minimum ceiling height 2.7m.
- Min landscaping area requirement and planting of one tree to the front and back.

The DPE is commended for taking proactive initiatives in preparing the draft Greenfield Complying Development Code (GCDC) and seeking ways for improving efficiency in development approvals and better quality complying development housing outcomes. The timely provision of new housing is seen as an imperative for Tweed Shire Council (TSC) given its designated role as one of four Regional Cities and growth areas in the recently adopted North Coast Regional Plan 2036, and the Tweed's shortage of affordable rental and housing stock.

It is worth repeating at this juncture however that in the case of Tweed, and undoubtedly many other LGAs, the fundamental issues (and opportunities for reform) are not found with the approval processes for single dwelling-houses at the very end of the development and planning cycle, but rather in meeting the needs of a growing population and maintaining appropriate levels of affordability under a planning system that has long-since lacked certainty and context, arising from its over-amendment; combined with a substantive under funding and investment in essential infrastructure.

Nevertheless, staff appreciate the DPE has attempted to respond to the requests identified in recent DPE consultations with TSC and other North Coast Councils, to re-orient the Codes SEPP to better respond to the contrasting development constraints and opportunities of regional coastal areas. The strategic planning opportunities afforded by greenfield areas to capture economies of scale and innovative solutions for improved sustainability and affordability outcomes is acknowledged and as such DPE's proposal to prepare guidelines for subdivision and masterplans, in order to promote a consistent approach that will enable locally tailored solutions to growth and infrastructure challenges, is supported; despite there being no discussion as to how they could be better lawfully imposed and regulated to deliver on their commitments.

For the purpose of this report and because the DPE is not proposing any amendment to incorporate master-planning provisions or to change the master-planning status within the legal planning hierarchy, which is the key to their effectiveness, there is no need for a

detailed discussion of that practice; although there are further references to master-planning throughout this report.

What is noteworthy is that TSC currently employs master-planning practices and principles within its local planning controls, noticeably through community-based locality planning processes which inform the Tweed DCP and LEPs. Councillors would be familiar with recent Councillor Workshops: Dunloe Park and Kingscliff, at which broad master-planning principles and approaches were demonstrated by those landowners as they presented how they are approaching the future development of their land; and which incidentally would not lend itself to any significant take-up of a Greenfield complying development code without a substantial refocus of their business / development concepts.

It is helpful to understand the contextual setting within which the DPE's proposals within the draft GCDC will operate in the Tweed context. This centres on the need to support a framework that promotes a diverse mix of housing types, in well-located, connected and serviced areas. Tweed has a high proportion of single and couple households, which is projected to increase into the future and which market research to date has shown a strong trend towards more diverse housing types as an efficient way of addressing this demand both in terms of need or lifestyle and affordability.

While some of Tweed's greenfield development sites are reasonably well-located, and there is opportunity within these for small lot and medium density housing types to improve housing choice and density within proximity to our business and activity centres and public transport hubs; most are at the marginal edges of existing communities. This arguably puts TSC greenfield sites at a comparative disadvantage, for example, when compared to those in the greenfield areas of the outer fringe metropolitan areas of Sydney, which are either largely serviceable by existing expansive infrastructure and services or themselves have a critical level of mass to support investment in new infrastructure and services, and, where the NSW government is also heavily investing in this. These metropolitan areas are also benefitted by a separate planning legislation framework under the *Greater Sydney Commission Act 2015*, that is contextual and enforceable, combined with the oversight of a fit-for-purpose and heavily-resourced Commission. In that setting and with the latent and projected high population growth, the need for alternative assessment and approval practices, combined with predetermined development outcomes, would better lend itself to the draft GCDC than might be the case for Tweed or other like regional areas.

This said, if there is a genuine beneficial application of such proposals as the ability to approve a dwelling-house complying development certificate application on an unregistered lot within an approved subdivision, then it is incumbent on the DPE to ensure that such practices are applied to all current approvals pathways and not applied purely to incentivise the take-up of complying development. Complying development has its place and has become an important part of the planning approvals framework, however the scale of development under the CDC pathway can be significantly more limited than under the Part 4 development application pathway; it is notoriously reliant on achieving minimum standards and stifling innovation, which flourish under the Part 4 approach.

### **Recommendation**

The Code SEPP Greenfield Housing Development should be an opt-in policy for regional councils. There is concern that release areas already mapped within standard instrument LEPs will be caught by the proposal necessitating an amendment to remove them and thus weakening councils' ability to proactively plan strategically for these; e.g. requiring a DCP.

### **Recommendation**

While the development of a guideline for greenfield (master-planned) subdivision is welcomed, greater emphasis and support needs to be given to upfront strategic planning in partnership with local communities, and regulatory certainty (legal weight) to delivery outcomes.

### **Recommendation**

That greater emphasis be given to providing the community with the information and tools to support their decision-making on planning matters, for example a guideline on the cost of development, evidence of the sustainability and well-being benefits of well-designed and serviced subdivision, and how this relates to other State-wide policy initiatives such as BASIX and Climate Change Fund Strategic Plan; and how they collectively operate on the cost and choice of housing.

## **DRAFT GCDC KEY DESIGN ISSUES**

### • ***Cumulative Impact of Proportionally Large Dwellings on Small Allotments***

Following the implementation of The NSW Housing Code, dwelling houses processed under the Complying Development Code generally have a much larger building envelope proportionally to the sites they occupy with less landscaping compared to Council's minimum standards. This increased building envelope and reduced landscape proportion changes neighbourhood character and visual amenity particularly with a noticeable absence of landscaping and trees across sites.

The further intensification of density and increased proportion of building envelopes over increasingly smaller allotments without the uplift in access to public open space, business, transport and social infrastructure opportunities has the potential to further exacerbate residential character, visual amenity and social dislocation issues across new greenfield development sites.

### **Recommendation**

The DPE should take a lead role to facilitate guidelines and frameworks to guide design-led greenfield master-planning and subdivision processes to optimise robust urban structure frameworks and identify appropriate density targets and housing typologies relative to available infrastructure, proximity to business centres, transport, open space and social infrastructure. This needs to be undertaken prior to increasing code assessable development of a denser scale and in consultation with local communities.

Whilst the controls clearly identify the allowable building envelope achievable across the range of allotment sizes, there is a disjunct between the size of the allotment and the size of a dwelling which could potentially be constructed disproportionately to the allotment size and resultant landscape open space available.

For example, using the minimum lot size (6m frontage x 33.3m depth) and after a deduction of required front (4.5m) and rear setback (3m) and assuming a zero-side setback could result in a building envelope of 153sqm which equates to 76.5% site coverage. The amount of permeable site surface then further decreases with the inclusion of a rear garage and pathways. Assuming a single garage size (6.0m x 3.0m =18sqm) to the rear of the site, equates to 171sqm of total impervious surface and a landscape area of 29sqm or 14.5% of the total site area.

This represents a significant increase in development potential in relation to the NSW Housing Code and provisions within the Tweed DCP.

Cumulatively this may impact a precinct's ability to manage stormwater runoff through reduced site permeability. It may also exacerbate the heat island effect through increased hard surfaces and reduced opportunity for landscaped open space, which is at odds with the strategic objectives of the proposed GCDC.

The smaller lot size may also lead to councils' being further burdened with significantly more compliance issues, mainly from noise e.g., air-conditioning, BASIX-required water pumps connected to toilets running through the night, hot water heat pumps and pool pumps and the like.

Further, each of the diagrams in the DPE's publication depicts only pairing of different housing types when the reality is that a number of housing and setback scenarios would likely apply within a street or urban block. Understanding the competing design issues at this urban block scale is imperative to understand likely cumulative amenity-based and streetscape impacts, and application of the standards. The diagrams should also consider and provide guidelines on differing site orientation considerations. Each of the diagrams presented have illustrated the favourable orientation of backyard to the north and two storey examples.

### **Recommendation**

The illustrated guiding diagrams need to be revised to depict a broader range of potential (and likely) design outcomes. This includes a range of different site orientations and dwelling configurations. Diagrams should also be included to depict urban blocks where the cumulative impacts of different adjoining developments can be appraised and potential amenity impacts mitigated.

### **Recommendation**

Introduce a sliding scale relationship between lot size and dwelling size to ensure that small houses can only be achieved on small allotments resulting in greater opportunity for landscaped open space. This could be achieved by:

- Introducing site coverage for the lower level of development encouraging two storey development;
- Introducing sliding scale of maximum GFA relating to allotment sizes; and
- Increasing proportion of landscape open space requirements.

### • ***Limited contextual or climatic consideration***

Given the standardised nature of code-assessable criteria, there is limited opportunity for design requirements to respond to climatic considerations outside of a general BASIX assessment. As such, despite Tweed's subtropical climatic location, many new dwellings processed under the proposed GCDC will need to consider design in relation to solar path, prevailing breezes and use of climatically-appropriate materials. This is particularly pertinent in the context of a number of dwellings with zero side setbacks which restrict both ability to take advantage of solar path and natural light and ability to take advantage of prevailing breezes paths.

BASIX reports that new dwellings in the Tweed Shire have consistently shown a preference for no cooling systems (33%) or ceiling fans only (40%) over air-conditioning (20%), indicating the importance of capturing prevailing breezes in local housing designs<sup>1</sup>.

<sup>1</sup> ePlanning data reports – BASIX. [www.datareporting.planning.nsw.gov.au/](http://www.datareporting.planning.nsw.gov.au/) (as at 01/06/2017)

*Note - Council values and supports the continued provision of this ePlanning reporting tool as critical for monitoring and evaluation of outcomes. Council notes latest data available is to Q2 2015 and requests a further update of publicly available data.*

Lower thermal loads achieved through these passive design measures reduce the demand for new or upgraded energy infrastructure by managing peak demand for energy required for cooling and heating; a BASIX policy setting that is supported.

There is concern that prescriptive 0m (zero-lot-line) or small side-setbacks with no maximum gross floor area will restrict necessary passive design measures for thermal performance and require greater reliance on more costly heating and cooling systems and technologies for a dwelling to maintain thermal comfort levels.

- ***Prescriptive requirements conflict with performance-based policy for improved sustainability outcomes***

The prescriptive standards, if approved, are noted to come into force in 2020. There is concern the proposed development standards will halt and restrict current design trends and market flexibility to meet current and future improved thermal comfort stringencies, as per national sustainability commitments in the Building Code of Australia, or through NSW Government *Climate Change Policy Framework*. It is noted there is no policy discussion or evidence of analysis in the documents on exhibition that demonstrates the measurable performance of the proposed development standards against BASIX requirements or Climate Change Policy Framework sustainability objectives.

**Recommendation:**

The DPE conduct and make available BASIX assessment of proposed development standards for side-setback and no maximum gross floor area on BASIX thermal comfort performance requirements for affected dwellings.

**Recommendation:** Council notes and supports the proposal in “A Draft Plan to Save NSW Energy and Money” for higher BASIX target increases in selected high-growth land release areas in the specific local government areas with participating Councils.

Council welcomes an opportunity to collaborate with the Department’s policy authors for BASIX and the Housing Code as well as the Office of Environment and Heritage Climate Change Policy Framework on this proposal.

- ***Data and tools to achieve ‘stretch’ targets for greenfield areas***

Master-planning and subdivision design of greenfield areas present critical opportunities to capture economies of scale and measure the cumulative impact and performance of sustainability standards at neighbourhood scales, and lock in necessary infrastructure.

There are available precinct scale assessment tools available such as CCAP Precinx tool and Urban Feasibility Model that the NSW Government has developed and used previously in master-planning of urban activation precincts and greenfield areas in Sydney’s growth centres. Urban Growth NSW (formerly Landcom) have used these tools to assess and achieve improved sustainability performance of BASIX energy and water “stretch” targets across neighbourhoods and this was celebrated by the Minister of Planning in Bunya showcase in 2012<sup>2</sup>.

**Recommendation:**

Council calls on the DPE to make available guidance, data and precinct-scale assessment tools to councils and industry to support master planning processes and outcomes. This

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<sup>2</sup> Landcom Sustainability Report 2012 [www.bunyaiving.com.au](http://www.bunyaiving.com.au)



would enable a transparent and consistent assessment method to test and clearly define measurable and meaningful performance outcomes in plans and their controls. The Urban Growth NSW case study highlights the capability and importance of tools such as CCAP Precinct and Urban Feasibility Model to test feasibility of lot-based development standards and controls and integration with BASIX scheme.

- ***Landscape Area and planting requirements***

There is support for the strategic objectives for improved landscaping to provide urban canopy cover in order to mitigate urban heat island effects resulting for urban development and consolidation. However, there is concern regarding the proposed minimum landscaping area and tree planting requirements as measures to ensure each lot contributes to these goals.

The disproportionately small areas of landscape open space raise concerns with regards to its actual use and practicality. If maximum building envelopes were pursued, landscape areas would account for a small proportion within the front setback (3.5m/4.5m deep ~ frontage) and rear yards (3-6m deep ~ width) unlikely to be used for anything more than a small outdoor courtyard likely to be a paved surface with small vegetation.

Given the potential landscape open space dimensions, planted trees are unlikely given the canopy reach would exceed the areas landscape open space. With the ability of zero setbacks on 6m frontages, these spaces will be disconnected.

It is noted there are known compliance issues with current landscape requirements in BASIX. The DPE's BASIX Target Review 2013 highlighted the issue found with single dwellings in particular where *"landscape features of a development are rarely completed at final inspection and the preference is to leave landscaping to the occupier. As a result, it is likely that the landscape commitments are not certified in many cases and are potentially never implemented by the occupier"*.<sup>3</sup> The review points to several other studies such as LGNSW survey and University of Canberra report that found the use of landscaping as an example of a commitment that is frequently compromised at post-occupancy as landscaping and plants are easy to remove and are likely to be changed to reflect to the style and preferences of the new owner. It is noted for this reasons, landscaping requirements as factors toward water reduction targets were proposed to be removed from BASIX.

#### **Recommendation:**

Council does not support the mandatory requirements for tree planting at lot scale, due to the uncertain link between the measures against performance outcomes and known compliance issues concerning landscaping requirements. This also poses risk to structural systems to neighbouring properties and increases the risk of damage to property and life arising from natural events, the liability for which TSC does not accept.

- ***Need for evidence to demonstrate performance of codes against strategic outcomes.***

There is not sufficient detail made available to demonstrate the nexus between process efficiencies by the proposed removal of barriers to complying development and improved housing affordability or faster construction start-ups.

For example, shifting final approval for registration, road easement and driveways to a later stage in the process may not deliver efficiencies overall, or secure the transfer of any

<sup>3</sup> Department of Planning and Infrastructure, 2013. *BASIX Target Review - Supporting Research paper*

savings to the consumer / homeowner. A cost-benefit analysis done by CIE is mentioned in the Background paper report but is not made publicly available. There are also notable major changes envisioned under draft ePlanning Regulation and programme that propose to deliver broad efficiencies in planning and development assessment processes however, there is no discussion of these.

**Recommendation:**

Given the ongoing expansion of complying development policies and ePlanning Regulation reforms, Council requests a clear business process mapping and change and economic impact analyses be conducted and made available for all stakeholders to understand the alignment and interface of these systemic reforms and their anticipated impact and benefit.

The Independent Commission Against Corruption raises the need for “performance outcomes contained in local plans should be meaningful and measurable” in their submission to the White Paper Planning Reform Bill 2013 in response to proposed code-assessable development<sup>4</sup>.

For example, the Codes propose carbon sequestration benefits from landscaping requirements of one tree to be planted in front and rear setbacks in order to mitigate climate change. Plant sequestration is a short-term contributor to climate change mitigation, however the uptake of CO<sup>2</sup> by vegetation is known to decrease with time as plants grow to their full capacity and become limited by other resources such as nutrients, and the capacity and longevity of storage depends on the final fate of the plant material. Consequently, these controls for the purposes of sequestering carbon are considered insufficient; it is not supported with evidence and therefore should not be required on that basis.

Minimum landscaping requirements could be better addressed and delivered using such tools for example by quantifying and measuring a proportion of canopy cover or open space that accounts for population or household densities per walkable catchment, and that can be better delivered as green infrastructure or distributed per lot in the subdivision design. Another measurable of urban heat island effect mitigation objectives is the ratio of pervious to impervious surfaces that may contribute to urban thermal performance as well as water hydrology and flood mitigation.

The strategic planning, design of and provision for the green grid and green infrastructure is a noted key component of the District Plans prepared for Sydney Metropolitan Region by the Greater Sydney Commission. There are no equivalent district planning scale legal mechanisms for the regions. Councils manage these strategic planning considerations through LEP amendments, detailed locality plans delivered through DCPs and subdivisions design manual DCP and assessment of development applications.

Council supports the direction by the DPE to proposed Guidelines for Subdivision and Masterplans, however is concerned about the uncertain legal authority and how they will operate in the event of a conflict with Council’s Subdivision Design DCP. This will be important to ensure ‘in-principle’ approval of subdivision design of lot layout, road easements, driveways for proposed complying development.

**Recommendation:** Council calls on the DPE to provide support and greater legal weight on district or local master-planning processes and outcomes, to ensure the delivery of important elements for long-term sustainability and viability of new and growing communities including infrastructure, mixed uses and densities and new homes and jobs.

<sup>4</sup> NSW Independent Commission Against Corruption, [Submission Regarding a New Planning System for NSW \(White Paper and Accompanying Bills\)](#), June 2013, p. 1

- **Design Based Issues**

There is an inherent difficulty in ensuring well-designed outcomes with codified numerical principle standards which are devoid of character and climatic considerations. Achieving well-designed contextually appropriate greenfield development sites is the result of detailed and high level negotiation and design review between Council's, development stakeholders and the broader community.

Locality based planning processes that seek to embed character and context are vital to the overriding vision and strategic planning principles which may apply to such new development sites whereas a codified framework provides a mechanism for new Greenfield development buildings to override these character and context considerations set during the master-planning / subdivision process. This is particularly pertinent in Greenfield development sites where the first stages of development set the built form character.

The proposed GCDC and supporting Guidelines for subdivision and masterplans is noted to have been developed from Sydney-centric objectives from the *A Plan for Growing Sydney*, and comparative references development standards in the Blacktown DCP.

Despite inferences about the proposed codes seeking to protect and enhance amenity by reflecting the distinct character of greenfield areas, there are no considerations to the distinct character of new communities in regional and rural areas. It is considered that the proposed GCDC would deliver poor urban consolidation outcomes for regional areas which do not have the benefit of the existing metropolitan transport services and infrastructure.

The need for councils to be involved in the development of locally-relevant codes is a noted issue that contributed to the controversy around the proposed introduction of code assessment in the Planning Reforms 2013<sup>5</sup>. The Planning Institute of Australia emphasised this point, stating: *"It must remain possible for local planning authorities to develop locally-relevant and responsive planning codes"*.

For these reasons support should be directed toward the proposed changes to code-assessment development, as announced by the former Minister for Planning, the Honourable Brad Hazzard<sup>6</sup>, in response to concerns voiced by the community and key stakeholders, including local government, as follows:

- Allowing councils to modify the State-wide codes to better reflect their local area.
- Code assessable development will only apply in nominated growth areas (for example around the North West and South West train lines or areas nominated by councils).

### **Recommendation:**

The Greenfield Housing Code to apply to areas of identified State Significant Urban Growth where there is an identified housing supply shortfall or Greenfield development sites nominated by a planning authority or developer, but only after approval of the master-planned subdivision.

<sup>5</sup>NSW Parliamentary Research Service "NSW planning reforms: decision-making" Briefing Paper No 11/2013. Pp 31.  
Source: <https://www.parliament.nsw.gov.au/researchpapers/Documents/nsw-planning-reforms-decision-making/NSW%20planning%20reforms%20decision-making.pdf>

<sup>6</sup> NSW Parliamentary Research Service "NSW planning reforms: decision-making" Briefing Paper No 11/2013. Pp 8, 19  
Source: <https://www.parliament.nsw.gov.au/researchpapers/Documents/nsw-planning-reforms-decision-making/NSW%20planning%20reforms%20decision-making.pdf>

**Recommendation:**

In the long-term, Council calls on the DPE to apply a policy development approach that involves Councils to participate in the drafting and management of complying development codes that suit local conditions and community priorities defined in regional and local strategies.

This approach could provide a complying development policy framework that:

- gives greater legal authority to district and master-planning processes and outcomes;
- provides a methodology, data and tools to derive controls that are measurable against performance outcomes as defined in regional, district or local plans and strategies;
- enables councils to collaborate with regional planning offices and engage with local communities in how the codes are derived; and enables monitoring of outcomes and evaluation of policy settings according to changing national or state government priorities.

**NON-DESIGN BASED POLICY RESPONSES TO 'OTHER' BARRIERS**

- **Allowing development approvals on unregistered lots within an approved subdivision**

Under the current planning framework, a complying development cannot be approved on an unregistered lot. According to the DPE (p21 EIE) this unlike a DA which can be made on an unregistered lot, on which a condition of consent can be applied to suspend the consent's operation until such time the lot is registered. This is not a practice that has been employed in the Tweed, staff are unaware of any multi-lot developments where this has occurred and are doubtful that it would occur on a greenfield development site scale, for the same reasons detailed below regarding this draft proposal to allow CDC's to be issued for dwellings on unregistered allotments after the granting of a DA for the subdivision of land and prior to the final plan of subdivision being registered and individual Title created.

The DPE contends that this practice will reduce approval times for CDC's for consumers and reduce costs through a greater take-up of CDCs and whilst this might be achievable at varying levels the evidence tendered is insufficient to be conclusive about the likely rate of success or failure if adopted.

While the theory of this new practice therefore has a level of plausibility and given the lack of take-up of this approach under the DA pathway, that we are aware of, there is some concern that the extent of potential implication has not been addressed in any credible way and as such uncertainty arises about whether these have been properly taken into account.

It is considered that several matters require clarification or resolution prior to support being given to this new approach.

The granting of development consent for the subdivision of land is only the first step in a four (4) stage process that must be completed before Title to land can be registered for the new allotments. The remaining steps are the approval of a construction certificate for the actual infrastructure works, the physical construction of the infrastructure and finally the determination of the subdivision certificate and lodgement of the plan of subdivision with the NSW Land and Property Information (LPI). During any of these subsequent stages changes may be required to the original allotment layout shown on the development consent. These

changes could have significant implications for a dwelling approved on an unregistered allotment such as:

- It is not uncommon for property boundaries shown on the DA subdivision plan to be amended by the Plan of Subdivision registered at the LPI. This could result in dwellings being approved across adjoining allotments.
- Often easements for underground services such as sewer, water supply, stormwater and electricity are not shown on the DA plan. They are shown on the registered Deposited Plan and s88B instrument. It is possible that parts of the dwelling approved by the CDC could be located over a future easement.
- The authority issuing the CDC for the dwelling will not be aware of the location of infrastructure such as road pavements and kerb alignments, street lights, storm water gully pits, electrical supply boxes, water services and sewer junctions as no approved Construction Certificate exists for this infrastructure. Furthermore, the infrastructure has not yet been constructed.
- The authority issuing the CDC will be unaware of final fill or cut levels and how final allotment levels impact on the proposed dwelling.
- No geotechnical assessment might have been undertaken for the proposed allotment. It is possible that the proposed dwelling cannot be constructed on the subject allotment due to geotechnical constraints.
- Contamination issues relating to chemical, acid sulfate soil or radioactive substances have not been addressed at the DA approval stage and may impact on the dwelling location.

The matters that can and often do arise from the time of granting a subdivision consent to the creation of land Titles for those newly created lots are varied. They possess inherent risks of delay and costs. They may lead to the need for an approval to be amended. They may lead to the need, in a worst case, of a lot reconfiguration (boundary adjustment) to rectify errors arising from reliance on subdivision plans prepared before all critical matters have been addressed or constructed.

It is difficult to see how the proposed approach could be managed whilst maintaining the consumer safety-net the current approach provides in a Tweed context. That is not to say this approach is unworkable or inherently too risky - it may work well in the case of a developer who has and maintains control of the site, approvals and dealings throughout the entire process, especially where individual consumers are purchasing a land & house package at the end of the process, and are essentially shielded from the development processes and potential risks.

Whilst this might lead to quicker housing approvals, there is no evidence to show that the construction start-up will occur any earlier, and Council calls on the DPE to record and report this data to justify the approach, and to demonstrate how the indicated average \$15,000 cost-saving gained from reforming the CDC pathway will be passed on the consumer.

#### **Recommendation:**

DPE is encouraged to ensure that a deferred commencement condition is added requiring the approved CDC plans to be consistent with the registered plan of subdivision.

#### **Recommendation:**

The DPE should commit to and demonstrate how it will report back to the NSW public on the effectiveness of these proposed amendments, in particular how reforms to speed approvals have impacted on the start-up time for actual constructions as well as how the average \$15,000 cost saving has been passed on to consumers.

**Recommendation:**

- The DPE should provide complete case study examples of where development consent has been granted for dwelling-house approvals within a multi-lot subdivision consent prior to those lots being created by Title deed as this would provide a better platform to evaluate this practice.
- The DPE to clarify the conflicting information on this point on p21 (EIE) where it states on the one hand that a condition could require the lot to be legally created “prior to completion of the development” whereas it is elsewhere presented as a condition enabling operation of the consent only after creation of the lots – the former representing a very different circumstance to the latter and one that is strictly opposed.

**Recommendation:**

Based on the level of detail provided, Council cannot support the proposal to allow an application or approval over an unregistered lot in a subdivision consent approval. Council calls on the DPE to first consider the type of issues likely to arise between the granting of consent and Title creation that may impact developers or consumers adversely, particularly concerning modifications and the delay and additional costs that be incurred.

• **Other ‘Approvals’ Barriers – ss68 & 138 Stormwater and Roads**

The exhibited publications identify ‘secondary’ applications, including s68 Local Government Act stormwater applications and s138 Roads Act driveway applications as contributing to delays in CDC approvals. However, staff are of the view this has not been the experience in Tweed Shire Council in recent years, where parallel approvals processes are in place and resourced to process these concurrently.

Delays only occur where there is a site-specific issue that requires additional information to overcome, such as a conflict with driveway location and other services, unsatisfactory grades between the roadway and the garage floor. Notably, this is usually to the advantage of the overall outcome of the dwelling development.

Concept or in-principle approvals of driveway locations at subdivision stage is generally supported, and similar processes have been enacted for subdivision applications at Cobaki Lakes Release Area.

Issues that can arise through the concept approval phase include:

- Conflicts with other services – this occurs when consultants preparing the driveway plans do not consider other infrastructure layers being developed by others.
- Non-compliance with Council standards – for example when driveway locations do not comply with minimum setbacks from intersections or conflicts between adjacent driveways or conflicts with adequate provision of on-street parking.
- Consideration of driveway locations in plan only – in-principle approvals do not take into account finished levels of allotments and grades on roadways, so have limited weight in the final determination of the driveway.
- It is unclear given these assessments occur with the parent subdivision how this can be incorporated into the housing code that applies to subsequent development.

Because of the limitations in the concept / in-principle approvals, detailed applications at s138 construction stage are still required, consequently further information on the DPE's intent regarding "standard construction requirements" for driveways needs to be clarified.

**Recommendation:**

Further information on the DPE's intent regarding "standard construction requirements" for driveways requires clarification. Council is open to providing and discussing its design and construction standards for driveways with DPE.

Regarding the drive to enable smaller lot housing and zero-lot lining there is concern for the implications this may have on driveway layouts, locations, and spacings, and these in turn have the potential to impact on availability of on-street carparking and safety in proximity to intersections and pedestrian crossing points. For example, the minimum lot widths of 6m do not allow for a standard driveway and on-street carparking space to be provided. TSC has adopted 2mx2m clear zone triangles either side of residential driveways, requiring them to be set back from side fences, high landscaping and entry features. This reduces the risk of reversing cars conflicting with pedestrians. Many of these standards would not be possible for the indicative proposed standards provided on page 18 of the EIE document.

**Recommendation:**

Council is supportive of pursuing mixed lot sizes within new greenfield release areas and those of smaller dimension. There is a need however to better understand impacts on accessibility resulting from reduced availability of on-street carparking, particularly adjacent to smaller lots with a lesser capacity to accommodate off-street parking, and implications for strategic planning and deliver of public transport infrastructure.

**OPTIONS:**

- 1 That the 'recommendations' highlighted in the body of this report form the basis of a submission to the DPE of Planning and Environment.
- 2 That no submission be made.

Council officers recommend Option 1, the making of a submission.

**CONCLUSION:**

Above all, staff note that reform of the NSW planning and development assessment system and its processes is needed if housing supply is to meet the needs and expectations of the community and is to be delivered in a sustainable, cost and time efficient way. Council considers such reforms can only be guaranteed if the policy changes are meaningful and measurable and can be justified by a clear demonstration of how the claimed improvements will be attained, delivered and monitored. It must not otherwise allow for piecemeal or ad hoc policy that supplants the need for the government to comprehensively and holistically review and update the current 37 year old Environmental Planning and Assessment Act where required; for it is widely agreed by all sectors that prevailing planning legislation is overly complex and with its layered approach to regulation brought about by years of continual incremental change, is stifling innovation and efficiency gains in the planning system at both the developer and local government level.

While the approach advanced in the draft new Code is recognised for its more concise form of controls and potential measures for improving cost-saving and efficiency; it is generally

the view of TSC officers that the emphasis of these is most likely suited to an end product of greenfield development on the outer fringes of the Sydney metropolitan area and where the landowner, subdivision and housing developer are either a single entity or multiple entities with close associations and common aspirations. The proposed Code is not seemingly suited to the Tweed nor does it align with the design outcomes espoused by current larger scale developers in the release areas of the Tweed. There is also uncertainty that the proposed Codes are not consistent with national and state sustainability building and planning measures. For these reasons the draft GCDC is not supported for use in the Tweed however, it is accepted that its relevance elsewhere in the State might be timely and appropriate.

It is recommended that Council makes a submission in reply to the exhibition of the Proposed Greenfield Housing Code.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Nil

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**TWEED SHIRE COUNCIL  
MEETING TASK SHEET**

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**Action Item - PLANNING COMMITTEE MEETING Friday, 7 July 2017**

Action is required for Item 7 as per the Planning Committee Recommendation outlined below.

**ATTENTION:**

**PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD Friday, 7 July 2017 (Minute No 243 Refers)**

**TITLE:** [PR-PC] Review of the NSW Government's Proposed Greenfield Housing Code May 2017

**ALTERNATE MOTION**

**Cr C Cherry  
Cr K Milne**

**RECOMMENDED** that Council endorses this report as Councils submission to the NSW Department of Planning with the following amendment:

Recommendation in regards to tree planting at lot scale (Page 167 printed Agenda) be replaced with the following:

Council strongly supports mandatory requirements for tree canopy coverage across development sites but raises concerns about relying on this to be largely delivered at lot level due to the uncertain link between the measures against performance outcomes and known compliance issues concerning landscaping requirements. This also poses risk to structural systems to neighbouring property and life arising from natural events, the liability of which Council does not accept, and thus should be accompanied by a list of mandatory guidelines for appropriately sized native and endemic tree plantings if at lot level.

And the addition of the following:

1. The draft Greenfield Housing Code intensifies the support and likelihood of very small lot housing with minimal land available for open space and planting or large or mature vegetation. Clarification of how this allows for trees, in particular without impacting on essential infrastructure and without further adding to the urban heat island effect, is requested.

2. Regarding the limited capacity of small lots, especially those capable of supporting a comparatively large dwelling and to safely provide for mature trees and vegetation, can the DPE clarify whether it has considered a need to regulate road reserve widths to accommodate footpath reserves larger enough to accommodate additional tree plantings to offset the impact associated with small lots and provide the research and analysis of this issue to better support the draft Greenfield Housing Code proposals.
3. The draft Greenfield Housing Code is heavily focused on small lots, minimal regulation of dwellings, and removing barriers to approvals, but does not seemingly offset the potential lesser environmental performance or sustainability of this form of compact housing with increased provision or better standards for cycle ways or other measures to curb car dependency and accelerate walkable communities. Whilst there is a discussion of master-planning guidelines we seek assurance that these will be prepared and given legal standing to offset the impact of denser greenfield housing development promoted in the draft Code.
4. The draft Greenfield Housing Code whilst advocating for smaller lots and denser housing does not seemingly address the corresponding need for the greater provision of public open space per capita. Can the DPE clarify whether it has researched and evaluated the impact on community health associated with intensifying the quantum of new dwellings with limited open space and how this is proposed to be addressed?
5. Notification requirements are considered inadequate and should include neighbouring land and their respective landowner and not merely a tenant of the property. Can the DPE clarify what level of consideration has been given to the neighbour notification proposals and relevantly the evidence in support of the limited approach.

The Motion was **Carried**

***FOR VOTE - Unanimous***

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