



FRIENDS OF
KURING-GAI
ENVIRONMENT INC.

Ms Lynne Sheridan,
Director,
Codes and Approvals Pathways,
Department of Planning & Environment,
Level 24, 320 Pitt St, SYDNEY NSW 2001
Email: lynne.sheridan@planning.nsw.gov.au

23 December 2016

Dear Ms Sheridan

RE: The Medium Density Housing Code (MDH Codes SEPP) and the associated Draft Medium Density Design Guide (MDDG)

We wish to register our strong opposition and concerns regarding the draft medium density housing code and design guide proposals to allow medium density development in the form of complying development in single residential zones.

Concerns and Objections to the Code and Design Guide

We supported Planning Minister Robert Stokes who stated in a SMH interview on May 6 2016 that he aimed *“to remove the idea that people will be surprised by the things that are happening next door to them”*. Mr Stokes also went on to claim that *“the government had learnt from the experience (2013 failed Planning Reforms) and had jettisoned contentious reforms like “code assessment”, which fast-tracked complying development with limited community objection rights.”*

<http://www.smh.com.au/nsw/ask-the-neighbours-first-new-da-process-for-nsw-considered-by-rob-stokes-20160505-gomxyc.html>

Complying development does not allow neighbours and the community to have a say in how their areas are being developed. Something that Minister Stokes said would be an essential element of any planning process he would be recommending. (NSW Planning Media Release 6 May 2016-) This code does not allow neighbour or community comment in how their areas are developed.

Residents buy into an area with expectations as to what type of development is permitted. R2 is not classified as a medium density zone. People who buy into R2 zones expect to live in an area of single residential houses and with that brings a sense of character, built form and areas for gardens and trees. Throwing medium density into the mix will enable residents to effect major cumulative change of the environment, neighbourhood and streetscape and the liveability of the area. Medium density will bring more cars, more people and more buildings, cumulatively eroding the built amenity and threatening the loss of tree canopies and established gardens – with public domain and public open space being replaced by concrete!

This code will enable ad hoc development pattern, uncoordinated and haphazard in approach of ‘mum and dad’ developer builders replacing one house with several! This is a scattergun approach to design and planning. This code does not recognise or deal with population growth, climate change, changing family demographics, services and infrastructure. The code fails to address cumulative impacts such as traffic, existing and often old infrastructure, tree clearing, bushfires, flood mitigation run-off, topography and privacy which are all factors influencing liveability of an area and would not be assessed under this proposed code. Under a development application and normal medium density proposal in a R3 area they would be assessed.

This code is a top down 'one size' fits all model which will produce poor development outcomes in terms of integration of development into the existing streetscape, built and natural landscape established over many years with assessed, accountable and transparent planning instruments.

Complying medium density development will be permissible on sites adjacent to heritage conservation areas or heritage items without any assessment of impact on those areas or items which currently R2 development requires with development applications and complying development. Heritage conservation areas and items will thus be degraded and impacted by this code.

Many areas have already been subjected to large scale overdevelopment in R4 and to a lesser extent R3 zones over the past few years without any new infrastructure and services. Roads are crumbling, services are deteriorating and overloaded, neighbourhoods and environments are being destroyed and the liveability of Sydney suburbs have been eroded.

The Greater Sydney Commission has just released figures for the 6 Districts in terms of increased high density dwellings. The figures released already allow for massive increases in density of our suburbs. This medium density housing code will permit thousands of ad hoc dwellings across Sydney which are not yet factored into the equation of a city growing too big too fast. It appears planning in an integrated way linking urban transport and land development has given way to economic growth - growing a city and driving jobs and growth with no sense of how people are going to live in the city or the public interest. People such as Dick Smith and communities across Sydney are starting to question this never-ending economic based growth as this code will only exacerbate unending growth, eroding garden suburbs and not promote ecologically sustainable development.

Existing Concerns with Complying Development

For the most part, developers have chosen private certifiers to issue the Complying Development Certificate, and for the most part the developments delivered have had little to no consideration of site features or aspects beyond the site confines.

As a result, council areas across Sydney are now seeing houses that lack site integration, make very little meaningful contribution to the established streetscapes or to the overall character of built form within a landscaped garden setting including canopy trees. In addition, in garden suburbs such as Ku-ring-gai we are seeing instances where tree removal is being requested to pave the way for the complying development houses and pools being developed under a SEPP which overrides local controls.

Further to this, a growing burden is being placed on councils and communities where there is an expectation for council's to fix the problems that have been created by complying development which has not considered impact beyond the site, such as issues around stormwater discharge. In addition, council's are being expected, by a dissatisfied community, to account for and check non-compliant development due to the weak avenue of accountability and meaningful penalty through State level channels on misuse of the complying development pathway. Council's neither the staff nor resources to check or correct development that has been ill-considered, nor is there any avenue to seek funding from the State Government to perform this role.

A key problem around complying development that has been repeatedly raised, is development being certified by private certifiers who often may lack legal or town planning qualifications to fully assess, verify and question the developments they are certifying. A fast-track process can potentially by-pass what actually needs to be checked and verified through formal rigorous independent assessment. The private certification system is highly flawed, corrupted and needs urgent reform.

The proposed structure of the Code's SEPP and Design Guide

The proposed structure of the *Medium Density Housing Code* (MDH Codes SEPP) and the associated *Draft Medium Density Design Guide* (MDDG) proposes to enable 3 types of medium density development through complying development, and the ability for those developments to concurrently seek either Strata or Torrens Title subdivision.

The types of development the Department is proposing are:

- Dual Occupancy two dwellings side by side (attached or detached) with concurrent Strata or Torrens Title subdivision on those sites within R2 zoned land where dual occupancies are permitted under Schedule 1 of the KLEPs;
- Multi-dwelling Housing (Terraces) with concurrent Strata or Torrens Title subdivision on R3 zoned land;
- Manor houses (up to 4 dwellings within a building) on R3 zoned land, and attached dual occupancies (one over the other) with concurrent Strata Title subdivision within R2 zoned land where dual occupancies are permitted under Schedule 1 of the KLEPs.

It is clear to us that this proposal for medium density housing as complying development will exacerbate issues, that are already being experienced through the single dwelling complying development process, and will have widespread detrimental impacts in the Ku-ring-gai locality and on swathes of Sydney suburbs in general. The key concerns are

- erosion of the established and widely valued local character of quality built form within a landscaped garden setting of substantial vegetation including tree canopy;
- significant burden on Council to assist and resolve problems resulting from developments that have not been integrated into Council's local systems or other infrastructure;
- generational impacts of poorly considered development only delivering on dwelling numbers with no alignment to State and National policy and direction.

The proposed "one size fits all" being demonstrated in the exhibited documents is highly unlikely to deliver good outcomes to every locality across NSW, and definitely will not support the context of established high quality areas such as Ku-ring-gai. For this reason the key recommendations put forward in the submission are:

- Remove the complying development pathway for all medium density housing and implement a new SEPP Design Quality for Medium Density Housing that operates in the same way as SEPP 65 and ADG.
- Require all medium density housing to be designed by a registered architect and suitable qualified and regulated professionals for other disciplines to be independently verified by a design review panel.
- Ensure all multi-dwelling development is assessed by Councils with their qualified team of professionals engaged in accountable and transparent process of assessment.

The proposal for medium density housing via complying development, bypassing Council's development assessment process, proposes a risk to communities as it will potentially have a

detrimental impact on the character of built form within a landscaped setting with canopy trees. Further, the fast-track approach with minimal consideration of aspects beyond the limits of the site will result in a significant burden on councils who will be required to address the negative impacts of developments that have not been integrated with council's or other local infrastructure and resources.

The proposal to further expand the Codes SEPP to allow forms of medium density development as complying development will have significant negative environmental outcomes for Ku-ring-gai and swathes of Sydney councils including the erosion of the established and widely valued local character of quality built form within a landscaped garden setting of substantial vegetation including tree canopy.

It raises key concerns on the delivery mechanism and associated issues of probity of process, impact on the established character of Ku-ring-gai and other areas of Sydney, and burdens placed on council through the inadequacy of the complying development process, and long term generational impacts on the local and wider environment with associated social and economic impacts.

Concluding Recommendations:

- Remove code complying process for all medium density developments
- Remove the allowance for complying development on lots that adjoin heritage conservation areas and heritage items and allow assessment against local council development controls which protect heritage values.
- Remove Torrens Title subdivision from the Code SEPP, only allow concurrent strata title subdivision
- Release the full draft of any SEPP Medium Density Housing and a corrected version of Medium Density Design Guide for public comment
- The Medium Density Design Guide must not be adopted in its current form
- Standards should be included to ensure adequate amenity of dwellings e.g. minimum solar and daylight access, minimum room sizes, maximum building depth, natural cross ventilation and natural ventilation
- Standards should also be provided around the minimum dwelling sites, the provision of storage within dwellings, dwelling address and pedestrian access into sites, density control to reduce the impacts of overdevelopment of sites, car parking, bulk and scale of development, minimum landscape requirements, disposal of stormwater, water management systems and rain water retention and onsite detention.
- All medium density developments should go through the development application process and retain councils as the independent, transparent and accountable assessors
- Require a registered architect and fully regulated professionals to be independently verified by a design review panel
- Remove the confused interpretations and inconsistent definitions in the Design Guide
- Allow minimal code complying medium density only in areas zoned R3 Medium Density
- Ensure that areas abutting R2 residential are one of the low-rise options and adhere to the Development Application process through Council that allows for resident comment and objections. The local council must be retained as the consent authority.
- That all low rise medium density meets a Design Guide as described, but with local input from Council re character, services and infrastructure requirements.
- That low-rise medium density in R2 zones must proceed through the standard Development Approval process which includes resident comment prior to approval
- That limits are enforced to ensure that the impact on any one residential block does not result in a doubling of dwellings, as per page 156 of the Design Guide. That no more than a 10% increase in dwellings on any one block be allowed.

- Address the ongoing and serious weaknesses associated with the private certification system, demonstrating changes are effective, and defer any further expansion of their role until the system is totally reformed.

It is to be hoped that our recommendations concerns will be considered and the medium density housing code and design guide proposals will be scrapped or amended in the public interest.

Yours faithfully

(Mrs) Kathy Cowley
PRESIDENT

cc Member for Davidson Mr Jonathan O'Dea MP
cc Member for Ku-ring-gai Mr Alister Henskens SC MP
cc Member for Bradfield The Hon Paul Fletcher MP