

**Draft Submission
Proposed Medium Density Housing Code and
Draft Medium Density Design Guide**

December 2016

Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils, and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

Purpose

LGNSW is pleased to make a submission to the Department of Planning and Environment's *Explanation of Intended Effects: Proposed Medium Density Housing Code* and the associated *Draft Medium Density Design Guide* (Code and Guide).

In April this year LGNSW made a comprehensive submission on the Department's Discussion Paper *Expanding complying development to medium density development*. A copy of that submission is attached for your further consideration. While we are aware that the policy framework presented by the Code and the Guide has progressed since that time, our overall position opposing the expansion of complying development to medium density development remains.

1. Medium density development requires merit based assessment.

LGNSW's key objection to the proposed Code is that it will expand certification to developments that local government maintains should be subject to a merit based assessment process. This stems from our members' experience of poor planning and other outcomes resulting from the expanding use of certifiers. This has been a long standing concern of our members which we have consistently communicated in our feedback and submissions to successive Planning Ministers, and the Department of Planning and Environment (DPE). Serious problems with private certification have also been well-documented in numerous building regulatory reviews over many years.

Like the Minister for Planning, LGNSW would like to see the community embracing medium density forms of development, as a viable and attractive housing alternative, adding to housing supply and providing more housing choice. In some cases these forms of development may also provide more affordable housing opportunities. Nevertheless, we remain unconvinced that handing over medium density planning approvals to certifiers will achieve this important objective and are concerned it may well compromise good design outcomes.

We do not accept that the certifier will be able to properly and independently assess the application against the draft Medium Density Design Guide as the certifier is restricted to a formulaic 'tick the box' assessment process against specified development standards, as prescribed by the proposed Medium Density Housing Code. In addition, these 'black letter' development standards, as enabled under the *State Environmental Planning Policy (exempt and complying codes) 2008*, will automatically override all local planning controls contained within the Local Environmental Plan (LEP) and the Development Control Plan (DCP), thereby excluding the local community from having a say in how development will impact on their area.

Even the regulator of certifiers (the Building Professionals Board) has expressed concern about certifiers' reliance on 'checklists' to interpret State Environmental Planning Policies (SEPPs) and the likelihood of increased complaints: "Currently, a significant proportion of complaints received by the Board relate to complying development. This number is likely to

increase if complying development is expanded to more types of housing, and as more people choose it as an alternative to submitting a development application.”¹

2. Design decisions cannot be managed under a complying development process

LGNSW is unconvinced that the design verification process, as proposed in the draft Guide, will be able to provide the independent and effective assessment needed to deliver site specific design outcomes that are satisfactory to the neighbours and even the occupant, in many cases. The consideration of planning issues, such as the potential loss of views, the alteration of a boundary setback to protect important local trees, the protection of solar access and privacy between neighbours is far better achieved by a merits assessment under the DA process.

Trying to incorporate a design test within the complying development process requires a stringent set of design criteria being devised and complied with. This will result in a high degree of prescription and very stringent controls, such as the requirement to have 50% of private open space covered for shade or rain irrespective of the orientation of the dwelling. At the same time, important planning issues could be ignored such as the location of existing trees that can provide shade and privacy between neighbours, as well as the preservation of important views across properties.

Assessment of medium density development under the certification process will be restricted to a numerical compliance test:

- the development standards against the draft Medium Density Housing Code; and
- the design criteria against the draft Medium Density Design Guide via the design verification process.

There is no discretion to alter any of these standards or criteria to achieve a more appropriate design outcome either for public or the private benefit.

It also raises the question of how visual appearance and articulation can be addressed. The Guide requires the applicant to ‘provide in the design statement a description as to how the aesthetics and articulation contribute to the character of the area’.² This reflects a somewhat limited understanding of what constitutes a visual impact assessment undertaken by councils in a development assessment. While there can be a difference of opinion regarding the architectural merit and/or aesthetics of a proposed development, the assessment process is much more than descriptive, it also involves a robust consideration of the elements of the development that may or may not be considered to be compatible with the character of the area. Most councils will also distinguish between the current and future character of an area, where development is likely to change that character based on the objectives of the zone.

In the hands of private certifiers, the proposed new code and guide will be a backward step for the planning system, requiring applicants to meet numerical standards or criteria. This precludes an assessment against ‘performance standards’ which would enable a more professional and ‘fit-for-purpose’ assessment of the real impacts on adjoining development. A theoretical and blunt tool rarely covers the real issues on the ground.

What is alarming for councils is that the proposed approach will result in ‘cookie cutter’ design outcomes – development that is not diverse, imaginative or innovative – precisely the reverse of what the Minister is seeking to achieve for medium density housing.

¹ Building Professionals Board, Submission to Discussion Paper - Expanding Complying Development to include medium density housing types, February 2016

² Design Criteria 89 of the Draft Medium Density Design Guide (p. 152)

3. District plans

The Department's approach to approving medium density development is out of step with the strategic planning approach that is being 'rolled out' by the Greater Sydney Commission. This approach enables councils to review current local strategic plans to meet growth demands and review housing and employment targets to deliver a more integrated plan for Sydney. The complying codes do the opposite. They set up controls that apply state-wide and override councils' plan making and decision making powers for medium density development. LGNSW opposes the approach of enforcing medium density development through the adoption of complying codes that will sideline councils' local planning controls. Further, we do not consider that such an important change to the assessment process should be introduced before the District Plans have been finalised.

4. Density and lot size

The NSW Government's medium density policy is presented as a means of providing for more housing, based on the proposition that medium density development is less intrusive than high rise development. The visual impact may be less, however this is not necessarily true of other impacts. Medium density development (e.g. town houses, villas) can have similar issues to high rise development around traffic generation and on site car parking that need to be addressed locally.

LGNSW is also opposed to certifiers being able to subdivide land after the development has been approved, where this would result in the lot sizes being smaller than that permitted under the council's LEP. In addition, LGNSW firmly believes that any provision that would allow land to be amalgamated to permit large scale medium density development should be subject to the DA process. There are often varying infrastructure requirements for subdivision that would not be adequately addressed via a standard complying development pathway. The Code needs to be limited in scale at the very least.

5. The Way Forward

LGNSW believes there is scope for expediting medium density development approvals and for improving consistency in decision making. These objectives could potentially be achieved through greater standardisation of DCPs as they relate to medium density development. This could involve incorporating major elements of the Guide into DCPs as common standards.

This approach would need to be developed with local government input.

Conclusion

LGNSW would like to see the community embracing medium density forms of development, as a viable and attractive housing alternative, adding to housing supply and providing more housing choice. In some cases these forms of development may also provide more affordable housing opportunities.

However, **LGNSW does not support the extension of complying development to medium density development as proposed in the draft Code.** We do not believe that developments of the scale proposed are low risk or low impact. Communities rightfully expect to have a say on developments of this nature and that such developments would be subject to a robust DA assessment process. The DA process enables local plans to apply as well as allowing residents to have a say on development that will affect them.

Further, we do not consider that such an important change to the assessment process for these types of development should be introduced before the District Plans have been finalised and more importantly, before councils have reviewed their own local strategic plans for housing in their areas. This long-standing strategic planning process enables councils to undertake local plan making that results in meaningful local controls that have been developed in accordance with the needs and desires of local communities.

The proposed approach will undermine local planning by councils and further remove councils' consent powers for sometimes controversial medium density development. The proposed changes are not simply mechanisms for expediting medium density development. They will have considerable implications on councils' local planning powers, limit residents' role in plan-making and remove their ability to have a say on neighbouring development. We believe this is a backward step for the planning system that will introduce an inflexible and inadequate assessment process, which, contrary to the intended objectives of the proposed policy, will not achieve better design outcomes.

LGNSW does consider that there is scope for the adoption of common standards in DCPs and is prepared to explore this further with the Department.

To this end we offer your staff the opportunity to contact our Senior Policy Officer Planning, Ms Jennifer Dennis, on jennifer.dennis@lgnsw.org.au or 02 9242 4000 to discuss further.