Ku-ring-gai Council Submission

Draft Explanation of Intended Effects
Proposed Medium Density Housing Code

And

Draft Medium Density Design Guide

Department of Planning and Environment
November 2016

CONTENTS

EXECUTIVE SUMMARY

Ku-ring-gai Council is generally supportive of the Department's initiative to promote the "missing middle" in that the medium density typology (smaller houses with smaller gardens) is in short supply across Sydney, and its provision would enable more housing choice. Ku-ring-gai Council supports enabling more of this type of housing, including the new medium density housing types. However, the method of delivery through complying development is not supported.

Ku-ring-gai Council has undertaken a detailed analysis of the exhibited documents. The analysis has been tabulated and attached to this document. In light of the findings, this Council does not support the proposed medium density housing as Complying Development, nor does it support the Medium Density Design Guide (MDDG) in its current form.

The key issues and recommendations are summarised in this document and comprise concerns regarding the following:

A. Probity and transparency of process and delivery
B. Consistency with State and Federal Planning Directions
C. Mechanism for delivery of medium density housing
D. Burden placed on local Councils
E. Torrens Title subdivision
F. Ambiguity, inconsistencies, lack of clarity
G. Development standards

Medium density housing must not be delivered through complying development as the proposed pathway combined with the exhibited standards will result in outcomes that have less amenity than that delivered through SEPP 65 and ADG for Residential Flat Buildings.

A one size fits all cannot deliver good outcomes to every locality across NSW, and definitely will be detrimental in the context of established high quality urban areas. Medium density development must defer to the local development standards and merit assessment through the Council's development assessment process. This will ensure rigour of assessment, integration in delivery, and transparency in decision making.

Ku-ring-gai Council has in place a coordinated suite of planning documents that ensure the effective delivery of dwelling numbers as required, and importantly, that the delivery is considerate of both short and long term environmental, social and economic consequences. These documents

- have been tested before adoption;
- are successfully delivering State and Federal Government's strategic policies and current housing targets;
- are achieving high quality outcomes that respond to the existing and desired future urban character of Ku-ring-gai;
- are aligned with State and Federal Government policies on climate change and sustainable cities.

The **key recommendations** arising from this paper are as follows:

- Do not proceed with the inclusion of medium density development in the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing.
- The role, document structure and function of the MDDG must be the same as SEPP 65 and the ADG to respect local character by deferring to local planning instruments.
- Retain local Council as the consent authority as medium density development is better suited to the development application pathway with transparent and considered expert assessment.
- Should the State Government proceed to amend the Codes SEPP, provision should be made for Councils to seek exemption where they can demonstrate that their local planning documents are consistent with the requirements of the District Plan and consistent with the design intent of the MDDG.

Ku-ring-gai Council would be happy to meet with the Department to clarify and discuss the concerns raised in this submission.

List of Additional Recommendations

1. Do not proceed with the inclusion of all medium density complying development types in the Codes SEPP.

2. Defer all medium density development to the development application process and retain Council as the independent, transparent and accountable assessor.

3. Defer all medium density development for assessment by Council to ensure thorough, in depth assessment on the short, medium and long term outcomes of development and ensure the integration of development into the local urban fabric.

4. Provide Council with a mechanism to receive fees for attending to all issues arising from complying development, including legal costs resulting from pursuing non-compliance.

5. Should the State Government proceed to amend the Codes SEPP to include medium density development, provision must be made for Councils to seek exemption where they can demonstrate that their local planning documents are consistent with the requirements of the District Plan and consistent with the design intent of the MDDG.

6. Develop a new *SEPP Design Quality for Medium Density Housing* with accompanying *MDDG* that integrates with local controls and has the same document structure, function and operations as SEPP 65 and ADG.

7. The outcomes of the objectives, design criteria, and design guidance of the MDDG must be equal to or better than under the ADG.

8. Release the full draft of the *SEPP Medium Density Housing* and a corrected version with improved standards, content and clarity of the MDDG for public comment.

9. Require a registered architect and qualified, regulated professionals for other disciplines to be independently verified by a design review panel, for all medium density development design.

10. Limit the role of unqualified private certifiers to minor/very small development where there is no doubt regarding its impact, and that does not require the rigour of academic training to perform expert analyses, merit assessment, or integration of systems, or consideration of short and long term environmental, social and economic impacts of development.

11. Address the existing and on-going serious weaknesses associated with private certifiers, demonstrating changes are effective, and defer any further expansion of their role until the system is reformed and able to deliver better outcomes in the existing complying development categories.

12. Council must retain control of the current minimum lot size for any multi-dwelling development site (1200sqm for Ku-ring-gai) to avoid local ‘piecemeal’ development.

13. Remove all Torrens Title subdivision from the Codes SEPP. Council must retain control of subdivision pattern for strategic public infrastructure such as new roads, public open space and land use intensification.

14. All medium density housing development must operate under Community or Strata Title.

15. No medium density complying development is to be permitted adjacent to a Heritage Item or within a Heritage Conservation Area.

16. Increased clarity must be made regarding definitions. In particular, the definition of ‘dwelling house’ must be clarified to align with the SI LEP definition; ‘streets’ must be clarified with all references to streets/roads/lanes being changed to read **‘public’** streets/roads/lanes; deep-soil landscaping and frontage must be defined.

With regards to development standards:

17. Ensure all development standards at least deliver the same standards as SEPP 65 and the ADG.

18. Include requirements for all complying development typologies to have every dwelling address a **public** street/road.

19. Include the requirement for all terrace development to occur only where serviced by rear lanes or basement parking under the footprint of the building.

20. Remove attics from all complying development. Buildings with attics must go through a development assessment to ensure amenity is achieved and to avoid poor elevational outcomes of a typology with numerous dormers and skylights.

21. Delete dwelling types that propose multiple garages and vehicular cross-overs under complying development. This typology must go through a development application pathway.

22. Stipulate effective deep soil area requirements for all proposed medium density typologies, to occur within common areas of strata titled development to ensure their long term retention, maintenance and contribution to the shading and greening of the local environment.

23. Building separation must be the same that applies to SEPP 65 for visual and acoustic privacy for development up to 4 storeys.

24. Building separation must relate directly to the internal planning arrangements to allow for adequate private open space, landscape screening and amenity between dwellings without the heavy reliance on privacy screens.

25. Setbacks must be retained in Council’s authority and the same as those that apply to SEPP 65 including consideration of internal planning layouts of dwellings.

26. Side setbacks must be increased to a minimum of 3m where basement car parking is proposed.

A. PROBITY AND TRANSPARENCY OF PROCESS AND DELIVERY

Concern is raised regarding the absence of consultation and lack of depth of analysis on impacts, and management of impacts, that the complying development mechanism will deliver to high quality established urban and landscaped areas.

1. Evidential analysis

Ku-ring-gai Council has undertaken a detailed review of the exhibition documents anticipating the proposed changes would replicate the success of SEPP 65 and the Apartment Design Guide (ADG); however, it is of great concern to see that the inappropriate delivery pathway through complying development has not been reconsidered nor in any way justified.

The exhibition has not put forward any analysis or detailed evidence-based reasoning in response to the key concerns and issues raised across numerous submissions to the 2015 exhibition of the Department's *Discussion Paper* - namely that complying development is an inappropriate mechanism to deliver multiples of housing with the associated complexity of issues arising from cumulative development impacts. See Ku-ring-gai Council's original submission at **Appendix 3.**

Detailed analysis of the *Explanation of Intended Effects - Proposed Medium Density Housing Code* (MDH Codes SEPP) and the *Draft Medium Density Design Guide* (MDDG) have revealed numerous inconsistencies and confusion of standards. The documents in their current state will result in poor delivery outcomes across Sydney and NSW, particularly through the suggested complying development pathway. See detailed analysis tables at **Appendix 1** and **Appendix 2.**

Justification by comparison with single dwelling complying development

The current exhibited documents downplay the impacts that will result from the cumulative impacts of multiples of housing by relating the outcomes of medium density complying development types with the existing single dwelling complying development type. The relationship suggests the two typologies are similar based on the final outcomes of medium density complying development delivering individual dwellings each on a single 200sqm lot with height of 2-storey plus attic, as might be found in a single dwelling complying development.

This association is fundamentally flawed as there is no regard to the actual delivered outcomes of the two typologies. Single dwelling complying developments across Sydney occur on existing parent lots within (and not altering) local subdivision patterns, usually much larger than 200sqm lots in middle and outer ring Sydney suburbs such as Ku-ring-gai, whereas a medium density development would deliver multiples of dwellings on one parent lot to the maximum allowable number with each individual dwelling having a 200sqm minimum lot size.

For example, on an existing parent lot of say 900sqm:

- only one single dwelling could be constructed through complying development (Codes SEPP), and no sub division of this lot is possible via single dwelling complying development;
- however, four terrace dwellings could be constructed on that same lot through the proposed Codes SEPP, with complying subdivision splitting the parent lot into 4 lots of minimum 200sqm each.

As such, the two typologies cannot be associated as having any similarities regarding the delivered outcomes despite the lot size and height similarity per dwelling. The fact that the exhibited proposal enables multiples of housing on the one lot removes the relevance of the comparison.

An illustration of this is as below:

- *Complying development - single 1xdwelling on one parent lot – AND- Medium Density 3xdwellings on one (same size) parent lot.*
- *Illustrates the very different outcomes resulting from density and cumulative impact of multiples of housing.*
- *Therefore no comparison can be made to the outcomes of the 2 separate typologies under complying development.*

There is also the suggestion in the *Explanation of Intended Effects* document that medium density development has less impact than a residential flat building (RFB) because its height is comparable to a single dwelling (2 storey plus attic). Again, this is a flawed argument.

Whilst the intensification of medium density development is not vertical as for RFBs, density is delivered horizontally through multiples of housing and the impacts are cumulative. In fact, in most cases, the impacts are greater than that of RFBs due to medium density housing having a large site coverage/footprint per dwelling, compared to RFBs. This results in greater on the ground impact through the clearing and coverage of large parcels of land which has more far reaching impact per dwelling than an RFB; and, which has the ability to cause long-term negative impacts on the environment and local systems unless the design and assessment process is managed in a highly considered manner with a multi-disciplinary approach. The complying development pathway cannot deliver this consideration as there is no avenue for in depth consideration.

2. The Codes SEPP wording

The exhibition material has not included the full draft of the Medium Density Housing Code as it will appear in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP), instead providing an interpretation within the *Explanation of Intended Effects - Proposed Medium Density Housing Code* (MDH Codes SEPP). This is of concern as there is no way to fully assess impacts that may result from the legislation, particularly where the information in the exhibited document MDH Codes SEPP is inconsistent with the other exhibited document- *Draft Medium Density Design Guide* (MDDG) which in itself has inconsistencies across sections, as indicated at numerous places within the analyses tables at **Appendix 1** and **Appendix 2.**

The inconsistencies in the exhibited documents mean there is the potential for enabling clauses that may intentionally/unintentionally permit medium density housing development on land that many Councils do not permit medium density development, or enable additional housing types beyond those currently permissible; or, result in medium density development that is incongruent with local and state strategic approaches, all of which would further erode Council's remaining and very limited power to manage strategic planning under this mechanism.

3. Qualification to design complex multiples of housing

The Codes SEPP has no requirement for registered architects to design any medium density development while at the same time enabling potentially unqualified, financially vested regulators to assess the development under private certification.

There is no requirement for medium density housing under complying development to be designed and coordinated by a registered architect familiar with the legal necessity of providing professionally competent and integrated design solutions with corresponding documentation. Architects undergo a minimum 6 year degree study which gives them the skills to deliver good outcomes for multi dwelling sites and their neighbourhoods, and address short and long term environmental, social and economic issues that can arise from such development.

Registered architects would have the knowledge and the qualifications to align their designs with local, State and Federal policy on development outcomes. They would have the skills to consider and balance multiple conflicting issues around the design, over and above the bottom line delivery of maximum allowable dwellings permitted on the site.

On the other hand, building designers have no formal registration or accreditation requirements in NSW and can therefore potentially design medium density development with no credentials. This increased risk and liability poses a burden on Council who is then expected to integrate poorly considered development. Accreditation by the Building Designers Association of Australia (BDA) in NSW is not regulated, is entirely voluntary and can be considered 'informal' at best (only Building Designers in Tasmania, Queensland and Victoria are regulated). It is noted that the recent *Missing Middle Design Competition* calls for registered architects, graduate architects, students of architecture and building designers to develop designs. This in itself is acknowledgement that good outcomes are only achievable through the architectural community.

To this end, all medium density housing must be designed by a person with a recognised degree in architecture; officially registered as an architect with the governing architecture body in their state or territory; and be covered by the necessary liability insurances.

4. Qualification to assess and certify complex multiples of housing – private certifiers

Removing the consent authority from Council requires private certifiers to determine and certify all aspects of the development. Even with numerical benchmarks, certification relies on private certifiers to verify that each discipline has complied with the benchmarks and has coordinated their input with other disciplines.

Their ability to do this is questionable; moreover, there is little incentive for them to do investigation and analysis as accommodating other environmental or integration issues might result in a reduction on the maximum dwelling number outcome on a site. The private certifier, like the developer, has a vested interest in the completion and delivery of the development to its maximum capacity.

Therefore it is highly unlikely that most private certifiers will have the same guardianship of land resource and its operation for the wider population benefit, as is the case for local Councils assessing developments.

The ICAC submission regarding A New Planning System for NSW (Green Paper) 2012 also raised concerns regarding private certification which have not yet been resolved nor considered in this exhibition. The Commission's key concern was the adequacy of the in−built anti−corruption safeguards in decision−making processes, and that safeguards should be commensurate with the level of corruption risk involved in a decision. It is noted that;

"the introduction of increased flexibility into a system will create a corruption risk, especially when combined with the potential for proponents to obtain huge windfall profits through obtaining an approval. For this reason, where a zone emphasises market based processes, flexibility, innovation and limited development control mechanisms, it is important to have strong decision−making and governance processes in place."

The question of independence and rigor of the private certification process remains a key issue. A private certifier may have a fundamental conflict of interest in undertaking public responsibilities as a regulator, whilst providing a service to a client for a fee. In this regard, the recently completed review of the *Building Professionals Act* considered the effectiveness of building regulation and certification system in NSW, identified a number of inherent weaknesses in the certification process. The review outlined that there is a strong case for reform of the building regulation and certification system, and included a number of recommendations and required outcomes of the reform. The Review noted '*it is essential that there is full confidence in the integrity and effectiveness of the complying development scheme if it is to continue to be expanded as a Government strategic priority.'*

The NSW Government September 2016 response to the Review supported 72 recommendations, decided 70 recommendations be subject to further investigation, and 8 recommendations were not supported.

The majority of certifiers have not completed a rigorous 5-year town planning degree. As such they do not have the skill and competence to assess complex multiple interrelated issues, and check compliance around areas such as stormwater, bulk/scale, built form and landscaping outcomes, heritage impact, waste management, and streetscape character that would arise from cumulative development impacts from multiple homes. Nor do they have the skills to balance the demands on land parcels to ensure a positive outcome for the site, the neighbourhood, the wider area, and for environmental, social and economic integration.

Current short training courses offered by universities in relation to planning and development assessment are inadequate and do not equip certifiers to undertake a meaningful planning compliance assessment including the type of complex merit assessment that will be required through the exhibited documents for complying medium density housing.

To expect certifiers to ensure *"compliance with the Design Criteria"* and with motherhood statements such as *"the development addresses the street and fits with the character"* (MDDG) overestimates the abilities of most current certifiers who may not have a town planning degree and developed skills to both understand planning legislation and to undertake associated merit assessments.

The complying development mechanism effectively transfers the existing independent, transparent, robust and highly accountable assessment process from local Councils to one which is absent of transparency, with inherent conflicts of interest where both parties (the developer and the private certifier) are dependent on each other and have a vested financial interest in the speed and success of a development approval with little governance.

Noting the outcomes of the independent review into the effectiveness of the current building and certification system in NSW, the Government should not be expanding complying development to high impact medium density development when the current system is not effective and thorough, and has been found to be in need of reform in the assessment of development with fewer implications than those associated with medium density development

Recommendations:

- Remove the complying development pathway for all medium density housing.
- Defer all medium density development to the development application process and retain Council as the independent, transparent and accountable assessor.
- Develop a new *SEPP Design Quality for Medium Density Housing* with accompanying *MDDG* that integrates with local controls and operates in the same way as SEPP 65 and ADG.
- Release the full draft of the SEPP Medium Density Housing and a corrected version of MDDG for public comment.
- Require a registered architect, and qualified, regulated professionals for other disciplines to be independently verified by a design review panel, for all medium density development design.
- Limit the role of unqualified private certifiers to minor/very small development where there is no doubt regarding its impact, and that does not require the rigour of academic training to perform expert analyses, merit assessment, or integration of systems, or consideration of environmental, social and economic impacts of development.

- Address the existing and on-going serious weaknesses associated with private certifiers, demonstrating changes are effective, and defer any further expansion of their role until the system is reformed and able to deliver better outcomes in the existing complying development categories.

B. CONSISTENCY WITH STATE AND FEDERAL PLANNING DIRECTIONS

Concern is raised regarding the apparent lack of consultation and comment from groups involved in State-level future planning for Sydney and NSW. These organisations are instrumental in setting directions on the management of generational impacts resulting from development across Sydney and the State and also issue directions to Local Councils. The proposal to supply medium density housing through the complying development mechanism negates the work of these strategic bodies.

1. Agencies overseeing and developing key strategic planning approaches

It is still unclear what consideration has been given to, and which specific groups and organisations were consulted in the consideration of this complying development delivery mechanism, particularly

- with regards to both the short to medium term impacts of such development on infrastructure and character of established areas, and associated burdens placed on local Councils from lack of integration into local systems;
- with regards to the long term far reaching generational social, environmental and economic impacts that will result from poorly resolved cumulative development, which cannot give due consideration to alignment with State and Federal policy due to the nature of the fast track complying development delivery mechanism, combined with the potentially unqualified designers and private certifiers preparing and assessing the developments.

The exhibition has not included any discussion on the consequences of removing swathes of established fine grain urban and landscape fabric with associated social and environmental value and character, particularly where the proposed MDH Codes SEPP and MDDG bear little relation to the local planning standards that have, and continue to, deliver high quality urban outcomes within fine grain established areas.

The exhibition documents present no discussion on the resultant **environmental** problems of increased heat emission, stormwater runoff and pollutants, and energy burdens which will inevitably arise from this delivery mechanism (as is already being experienced with single dwelling complying development delivery within Ku-ring-gai and across Sydney). The complying development pathway will place a considerable burden on the environment and create **economic** issues requiring injections to remedy and rectify the effects of poorly resolved development resulting from the fast track process.

No comment or consideration is presented regarding the fundamental fact that this delivery mechanism will result in an output that is in direct opposition to key State and Federal policy and direction. There is a lack of discussion and evidence put forward to show consideration of the environmental, economic and social impacts stipulated in those policies, and no evidence has been included in the exhibition to indicate how these impacts will be managed in the short, medium and long term across all of Sydney and NSW, and who will bear the costs for the rectification and management of the problems that will result from these developments if considered through complying development.

2. Justification of complying development outcomes - State, Federal Government directions

No regard appears to be given in the exhibited documents to the fact that medium density development deals with housing multiples and the associated complex cumulative impacts that cannot

be managed through the complying development route, and that will be exacerbated through the minimal considerations possible via complying development being designed by unqualified groups.

The pattern of intensification that this proposed complying development delivery mechanism will enable across swathes of Sydney and NSW will create impacts that are cumulative, high intensity and generational, and which are in direct conflict with the directions of Greater Sydney Commission, Federal Government Green Cities policy, NSW Government Better Placed policy, NSW Office of Environment and Heritage Climate Change heat emission and rainfall policies, to name a few.

The exhibited documents make no reference to the current and ongoing work of these organisations, and do not appear to have consulted and integrated the outcomes of this delivery mechanism into those broader policies which this proposal will directly influence.

Medium density development delivered through complying development will not align or achieve the directions, aims and outcomes of key strategic organisations, as illustrated below

Greater Sydney Commission (GSC)

The exhibited documents are not aligned with the GSC key documents. The delivery of medium density housing through complying development will not achieve the key strategic directions stipulated by the GSC, rather it will counteract those efforts.

For example *A Plan for Growing Sydney* states goals and directions which rely on good urban design and planning to "*make the city's built environment sustainable and energy efficient while also protecting the environment*". It refers to principles of environmental sustainability and the importance of strategic and considered planning *"promoting environmental resilience as housing and economic development occurs* (and which) *will have greater benefits than site-by-site decision making*". Complying development can only deal with site specific delivery. It does not have the capacity or expertise to consider implications beyond the site.

It makes reference and commitment to the *Green Cover Demonstration Design Project 18* stating that the Government will "*deliver Green Cover Design Principles to inform how to incorporate vegetated, permeable and reflective surfaces into urban settings, to address thermal loading in the built environment and provide co-benefits such as reduced energy costs for cooling, stormwater management, cleaner air and biodiversity habitat"*; and

It refers to social sustainability and how *"through urban layout, we can improve air quality in residential areas to improve our health and wellbeing…These actions will encourage best practice urban design to manage or mitigate the impacts of increased urban temperatures and will reduce the impact of Sydney's growth and increasing density on the quality of our natural environment and on our neighbourhoods and communities."* The outcomes that will result from the proposed medium density, delivered through complying developments, as per the MDH Codes SEPP and MDDG make no attempt to consider these issues, resulting in developing that will ignore these considerations.

The draft amendment update to *A Plan for Growing Sydney* called *Towards our Greater Sydney 2056* states core objectives for "*A Sustainable Sydney"* including " *A city in its landscape; An efficient city; A resilient city*" and "*how we can green our streets, neighbourhoods and suburbs with new tree canopies."* The proposed development standards cannot deliver on these principles.

Sarah Hill, (CEO GSC) has commented that "*the Commission is focused on making Greater Sydney a better place and a strong global city to ensure that as Greater Sydney grows it becomes more liveable, more productive and more environmentally sustainable.*" The GSC "*recognises that cohesive and vibrant cities have overlapping components and an integrated approach to city making is crucial to success*." The complying development mechanism does not have the ability to deliver this integrated approach.

The proposed complying development pathway for medium density housing will result in fast-track, poorly resolved development that will undermine the principles of the *Draft North District Plan* which Ku-ring-gai and northern Councils are required to assimilate.

The mechanism of delivering medium density housing through complying development will not "*enhanc(e) the great places in the North District (which) require protecting and, where possible, enhancing these highly valued liveability characteristics, and managing growth to create healthy, well-designed, safe and inclusive places that encourage economic and social activity, vibrancy and community spirit*" as stated in the *Draft North District Plan*. This is particularly the case for high quality established fine grain areas such as Ku-ring-gai and much of the North District.

The draft *District Plan* instructs local Councils: "*when making strategic plans, relevant planning authorities should consider how tree canopy cover in land release and established urban areas can be protected and increased, with a focus on providing shade to streets*." The exhibited complying development documents make no consideration of this and will undermine this principle within areas such as Ku-ring-gai where this principle is already established and delivered through the integrated planning documents.

Rod Simpson (Environment Commissioner GSC) commented: "*The biggest threat to ecological systems both locally and globally is climate change and we will be working very closely with state and commonwealth agencies and councils to work out the most effective ways of helping to achieve a zero carbon city by 2050, as well as being more energy and water efficient*". Ku-ring-gai Council has integrated numerous green principles in its DCPs to ensure delivery of all built outcomes lower the impacts on climate change. The proposed complying development delivery of medium density housing will undermine the efforts that this Council has put in place to ensure development is delivered in a considered manner to provide the required accommodation whilst managing short and long term impacts.

Federal Government's 'Green Cities' policy (announced 01/2016 by Minister Greg Hunt)

The exhibited documents are not aligned with the Federal Government's direction. The delivery of medium density housing through complying development will not achieve the principles stipulated by the Minister, rather it will counteract those efforts.

For example, the FSR and landscape as proposed in the exhibited documents, are diametrically opposed to the policy which calls for "*cities with high levels of trees, foliage and green spaces (*as they) *provide enormous benefits to their residents. Increasing urban canopy coverage decreases heat, which improves health and quality of life*." Ku-ring-gai Council is currently delivering on these aspects for all housing typologies. The proposed complying development mechanism will undermine this Council's long standing efforts in developing models of delivery that consider both short and long term outcomes.

The fine grain integrated suite of planning documents that Ku-ring-gai Council has put in place are the result of extensive research and consultation to ensure development delivery meets current needs whilst supporting the established area character and integrating growth in a considered and sustainable way with due consideration of generational impacts on social, environmental and economic issues.

Urban Green Cover Guidelines - Minimising Local Temperature Impacts in Cities and Towns

This technical manual stipulates "*integrating vegetation, green spaces and permeable surfaces into our cities and towns* (so that) *communities can adapt urban environments to minimise local temperatures, now and into the future. Increasing urban green cover provides effective and relatively low cost resilience to heat impacts while improving community amenity and providing multiple*

benefits". The complying development pathway does not have the depth of consideration of a development to ensure any of these considerations and their delivery in the final outcomes.

Rob Stokes MP noted the importance of considering climate change in any planning approach that delivers accommodation for communities: "*The Urban Green Cover Guidelines will assist NSW built environment professionals increase resilience to future extreme events and natural hazards and help communities prepare for a changing climate. I trust you will find them a useful resource for planning and achieving more liveable and resilient neighbourhoods and communities in NSW".* The complying development pathway, utilising designers that are not registered architects and private certifiers that do not hold a town planning degree, does not have the mechanism to give any in depth consideration along these lines.

Office of Environment and Heritage (OEH)

The exhibited documents are not aligned with important direction from OEH regarding management of development with regards to climate change. The delivery of medium density housing through complying development is in direct opposition to these directions.

According to OEH *2016 Impacts of Climate Change – East Coast Lows*, rainfall extremes and average rainfall is likely to increase but become more variable. Compounding the effect of this transition is the occurrence of east coast low (ECL) events which can happen up to ten times per year and bring heavy rain and strong winds. OEH reports that climate change is likely to already be affecting the intensity, frequency and duration of these ECL events. As a result many NSW Councils are already looking to upgrade stormwater drainage systems to cope with increase in flow volume and intensity.

The complying development mechanism is already failing in terms of creating effective stormwater outcomes for single dwelling developments delivered through complying development, with Council having to remedy poorly resolved stormwater design, spending considerable time and expense to mitigate the impacts of the complying development. Stormwater, particularly the increase predicted by OEH, is of particular concern in Ku-ring-gai given the ridge, valley, slope topography.

The Ku-ring-gai DCP seeks deep soil allocations and the planting of vegetation including large canopy trees to all housing typologies. This requirement has many reasons, one of which is the importance of permeable areas to absorb increasing runoff, and the establishment of deep and wide root systems to hold soils in place and prevent downslope erosion with runoff. If not managed, the erosion will not only denude the ridges and slopes, but create knock on effects of sediment and pollutants in downslope riparian areas. The complying development pathway will not support this local approach, nor will it be able to consider stormwater issues with the rigour of Council assessment which ensures developments do not cause ongoing issues.

Ku-ring-gai, like many other areas has an aging population. As people age they become more vulnerable to heat stress. Heat waves are recognised by the NSW Department of Health and the Red Cross as a major risk associated with climate change. According to OEH *2016 Impacts of Climate Change – Heat,* land use modifications, especially those that reduce the area of shade from the destruction of the tree canopy, increase hard surfaces, and reduce air flow across the region. These combine to increase not only daytime temperatures but more importantly night time temperatures. This contributes to the increase in heat exposure and greater reliance on mechanical ventilation during night hours and associated energy consumptions and increase demand on the energy supply network.

According to UNSW Built Environment *Multi-Scale Research Urban Climate Sustainable Development 2016,* as the urban footprint increases in density the risk of creating urban heat islands rises accordingly. Transitioning to greater densities requires particular planning skills to ensure the risk of creating heat islands across an area is minimised. Ignoring this requirement once again creates a scenario of a significant increase in foreseeable risk of hospital admissions and deaths related to extreme heat events. (Deaths that are preventable.)

OEH (2016) notes that heat waves kill more people than any other type of natural disaster. Considered strategic planning of medium to high density development is vital in ensuring both the social and environmental sustainability of the communities that are being housed within new development. Considered strategic planning also avoids the need of remedial 'fix it' works having to be conducted to deal with poor initial development.

The one size fits all complying development pathway cannot deliver considered strategic planning across the numerous different terrains across Sydney and NSW and can only result in poor environmental, social and economic impacts due to its fast track nature and limited cross consultation and integration.

In terms of economic sustainability, the urban forest plays a role in defining Ku-ring-gai and enhances the area's aesthetics and consequently its property values. Studies have estimated that properties in tree-lined streets are valued around 30% higher than those in streets without trees (*Sander H., Polansky S., Haight R.G., 2010. The value of urban tree cover: a hedonic property price model in Ramsey and Dakota, Minnesota, USA. Ecological Economics 69(8), 1646-4656*) Significant canopy coverage provided by our urban forests improve the lifespan of some assets (for example asphalt), by shading them from harmful rays – potentially by 30%. (*'Urban Forest Impacts on Carbon, Water and Urban Heat Islands', G McPherson, Centre for Urban Forest Research, USDA Forest Service, 2009*).These type of preventative measures have not been considered in the MDH Codes SEPP or MDDG.

United Nations

The proposal is inconsistent with the United Nations, General Assembly Draft outcome document *United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*, particularly with regards to loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect which impacts on the amenity and liveability of housing and their environments. It noted that:

"Given cities' demographic trends and their central role in the global economy, in the mitigation and adaptation efforts related to climate change, in the use of resources and ecosystems, the way they are planned, financed, developed, built, governed and managed has a direct impact on sustainability and resilience well beyond urban boundaries."

These outcomes cannot be achieved through the complying development pathway.

Government Architect, NSW

The NSW draft policy *Better Placed – A Design Led Approach: Developing Architecture and Design Policy for New South Wales,* is a key strategic document which refers to the importance of place-making, people, context and the elevation of high quality design. The document describes fundamental design considerations and a process very similar to the approach Ku-ring-gai is advocating for dealing with medium density housing- probity (independent review), architects as key to delivering good outcomes, local context and character, local strategic planning in consultation with local communities, and valuing the 'green grid.' It primarily stipulates the link between good design and sound long-term **economic** outcomes as design excellence is related to economically positive outcomes.

This policy, located on the Department of Planning and Environment website, *"sets out the New South Wales Government's position on design in the urban environment, with a focus on cities, towns, streets, open space, public spaces, infrastructure, buildings and public domain... Great design in the built environment is informed by and derived from its location, context and social setting. It is place-based and is relevant to and resonant with local character, heritage and communal aspirations"* and

"design excellence generates ongoing value and reduces costs over time. It is an essential component of achieving durable, resilient and cost effective urban buildings and places. As the arena for daily life, the built environment can dramatically improve value creation if effectively designed."

The draft policy outlines the significant **environmental, social and economic** effects of poor design, stating that *"… 'poor design' or even 'business as usual', is likely to have significant adverse environmental, social and even economic effects"* and emphasises that *"sustainability is no longer an optional extra, but a fundamental aspect of functional, liveable design."* The proposed complying development pathway cannot deliver on this policy and in fact will operate in opposition to it due to the far reaching cumulative impacts that will result from the lack of integrated and robust consideration of development delivery.

Recommendations:

- Remove the complying development pathway for all types of medium density housing.

  Incorporate robust measures and standards that reflect current strategic work by key organisations in the area of environmental, social and economic sustainability of development.

C. MECHANISM FOR DELIVERY OF MEDIUM DENSITY HOUSING

Complying development is an inappropriate mechanism for the fast track delivery of medium density housing. This is due to the cumulative impacts of increased density delivered horizontally across multiple lots, exacerbated by a mechanism relying on unqualified designers and unqualified private certifiers to deliver a complex development typology that has the biggest on the ground social, environmental and economic impact.

To date, complying development has not been able to deliver consistent, high quality integrated development that does not detract from the character of fine grain established areas, and create burdens upon whom the task to fix poor outcomes befalls, despite the complying development being only for single dwellings.

1. Scope of complying development

Given its scale, density and high site coverage, the proposed use of Complying Development for medium density development is beyond the scope of complying development - which is straight forward, permissible development with low environmental impacts.

Although this built form typology is a well-received choice for housing, it does in fact deliver one of the highest development impacts due to its large footprint (arising from cumulative developments) and ability to cover vast tracts of land, and in doing so, strip the land of all other attributes. For this reason, it is a residential typology that requires innovative and considered solutions from expert multi-disciplinary teams for its delivery to minimise impacts whilst providing well designed, desirable dwellings.

As such, it is vital that qualified architects prepare designs to deliver interesting, engaging and integrated built outcomes for medium density housing that contribute to the area, and at the same time avoid visual impacts of monotonous development that is often the result of this typology where a unit is repeated in 'cookie-cutter' fashion with no consideration of the site features or area context. The delivery of this typology is far beyond the scope of the complying development pathway and beyond the capabilities of unqualified designers and private certifiers to deliver one of the most environmentally challenging residential typologies. The delivery of medium density housing must be

through a mechanism that can limit the development impacts, and that can ensure alignment with the growing number of policies on development impacts that are being released at State and Federal level.

As previously stated, the justification for the complying development route through comparison with single dwelling complying development is incorrect as height is not the only determinant of a building typology. The typologies for lower density single dwellings and for medium density terraces, vertically or horizontally attached/detached dwellings (dual occupancy, terraces and manor houses) cannot be categorised as the same.

Medium density housing is not comparable to single dwelling housing in that the on the ground footprint of a medium density development is more dense, as are the elevational and siting aspects; and, single dwellings do not have to consider inter-related amenity impacts of multiple housing in close proximity.

The typologies are differentiated by elevations, setbacks, garages, hardstands, openings, gardens, footprint etc. and their on the ground delivered outcomes. As such, single dwelling complying development and medium density complying development (dual occupancies, terraces, manor houses) are two distinctly separate building typologies. Refer to **Appendix 1** of this paper.

2. Scale and complexity of medium density housing

Medium density housing comprises a broad range in scale and complexity of development. This cannot be successfully managed under Complying Development Certification.

The *Explanation of Intended Effects* presents an impression of all medium density complying development having little and manageable impact to surrounding character (although ignoring potential cumulative impacts of 2, 3, 4 new dwellings at a higher density on a single site).

The reality that does not seem to have been considered is that a proposed development could be very large scale as an amalgamation of lots, and complex if including a basement and/or any development with dwellings above or below another (Manor House, Dual Occupancies). In effect, medium density development could comprise a basement, be Class 2, and under the proposed MDDG design criteria, could result in multiple 4 storey developments on any number of amalgamated lots.

In the case of R2 zones, depending on each LGA's LEP development standards for minimum lot size for subdivision and the permitted type of development (dual occupancy within Ku-ring-gai), it is possible for a very large scale, complex development to comply with the Codes SEPP requirements and qualify for the complying development pathway. This raises multiple issues.

Should the Codes SEPP enable this type of development, the location of amalgamated sites cannot be controlled by local Councils' strategic planning policies. There is nothing to prevent concurrent complying development proposals for any number of lots for a single developer, should a site meet minimum site requirements.

Ku-ring-gai's R3 zoned sites where multi-dwelling housing is permitted, will automatically have the option of development application or complying development pathway, and generally landowners prefer the complying development pathway as they are not interested in best outcomes or the bigger issues at stake, preferring a faster development and quick monetary returns on sales. However, given that within Ku-ring-gai these are often highly complex sites due to steep topography, biodiversity, heritage and other factors, their consideration is beyond the capacity of a fast track simple complying development system operating in the hands of unqualified designers and assessors.

The exhibited MDH Codes SEPP states that "*complying development is not intended to override a council's strategic planning, but work with the controls development through strategic planning to effectively deliver simple housing forms."* However, whilst the MDH Codes SEPP appears to respect

the local LEP permissibility of development types within zones under cl 1.18, it will still override a Council's strategic planning framework, particularly with regard to the development standards, controls and requirements within Council DCPs.

This is a big concern for Ku-ring-gai as the complying development standards and criteria are less sensitive than the controls within the DCP which seek to ensure that medium density developments in the locality are sympathetic to the streetscape and support the local character by reinforcing deep soil setbacks and substantial shrub and canopy tree planting within communal areas which are retained for the life of the development as shared common areas.

3. Conflict with Council's strategic planning

The proposed complying development pathway undermines the local strategic planning framework undertaken by Councils, particularly those with a fine grain established area character, to deliver quality outcomes for the area. Complying development stipulates design standards within the MDH Codes SEPP and the MDDG that over rule all DCP standards, and which are of a lower standard than those stipulated in local DCP controls for high quality considered outcomes for areas such as Ku-ring-gai .

In addition, the suite of Ku-ring-gai Council's planning documents have been developed to align with current State and Federal directions which stipulate the importance of understanding, preventing and managing impacts of development such that fosters long term sustainable communities, whilst contributing towards Sydney as a growing sustainable city.

Established high quality area character

Poor design and delivery of medium density housing through complying development, as posed in the MDH Codes SEPP (dual occupancy, terraces, manor houses), will have significant impacts on the character of many established areas across Sydney and NSW, with negative consequences on streetscape, vegetation, ecological, riparian, biodiversity and heritage values, urban landscape character, visual and service amenity.

Whilst the housing typologies proposed via complying development might fit into the streetscapes and character of certain parts of NSW where consultation and development of the proposed models might have occurred, they are not typical to large swathes of Sydney, and not suited to the fine grain integrated established character of areas like Ku-ring-gai.

Ku-ring-gai Council is actively engaged in delivering sustainable outcomes across all development types and has developed a suite of comprehensive planning documents to deliver low, medium and high density housing typology models which honour the highly valued and established local character of urban form integrated into the landscaped setting of gardens and canopy trees.

Medium density housing developments are better suited to the development assessment pathway which allows qualified assessment and qualified merit consideration of impacts on local character, neighbour amenity, and greater social, environmental and economic issues in line with State and Federal policy. The development assessment pathway through local Councils is the only mechanism that can successfully integrate development into the local context and systems.

Given its high cumulative impact, medium density development is well beyond the scope of the complying development pathway and must only be delivered through the highly transparent and accountable development application process which conducts full and frank investigation and due diligence around all decision making.

4. Current delivery under complying development

There is a clear consensus within organisations involved in ensuring the reasoned development of finite resources such as land, that development must consider more than just the site potential. As previously stated, there is enough evidential data and enough policy and direction emerging from State and Federal government bodies to support the case for the removal of the complying development route for medium density housing.

In terms of current delivery via complying development, for the most part, developers have chosen private certifiers to issue the Complying Development Certificate (CDC) and for the most part the developments have delivered little to no consideration of site features or aspects beyond the site confines. The key driver in complying development is to fit the maximum on the site and increase profit margins in a short space of time, regardless of medium and long term impacts.

Like many other high quality established areas around Sydney, Ku-ring-gai is now seeing single houses delivered through complying development that lack site integration, make very little meaningful contribution to the established streetscapes or to the overall Ku-ring-gai character of built form within a landscaped garden setting including canopy trees.

In addition, Ku-ring-gai, like other areas, is seeing instances where tree removal is being requested to pave the way for complying development houses and pools. In complying development, there is no scope for negotiation with disinterested applicants on adjustments to their designs to save trees or features, including Aboriginal heritage which are not publicised, on their land as they are only concerned about their accommodation and its rapid delivery.

Developers have very little interest in any site attributes or features, and very little interest in addressing the environmental, social and economic impacts of their development choices. In addition, between the unqualified designer and private certifier there is no scope to negotiate better design outcomes and as the dwelling is being developed under a SEPP that overrides local controls. It has been difficult to argue on sites applying for tree removal to facilitate a complying development dwelling that bears no relation to the site and depends on a cleared site. Council is now appearing in Court to dispute tree retention on development applications being made to clear sites of canopy trees and existing vegetation to facilitate a complying development site. In addition, there are more instances of trees being destroyed by construction works, resulting in their eventual removal.

Below is an example of two different developments within the same locality in Ku-ring-gai, illustrating the difference in the delivered outcomes:

Complying development delivery – poor connection/integration of built form with the site itself, and lack of contribution to streetscape and to Ku-ring-gai's character of built form within a deep soil landscaped garden setting including canopy trees.

Development Application Delivery – dwelling integrated into the site and in relation to neighbouring dwellings. Considered architectural treatment of elevations contribute to high quality streetscape character. Inclusion and retention of existing and new canopy trees to front and rear setbacks respects the overall Ku-ring-gai character of built form within a deep soil landscaped garden setting including canopy trees.

5. The SEPP 65 and Apartment Design Guide (ADG) mechanism

The proposed delivery of medium density housing via complying development will mean the development will not align with the local LEP and DCP standards and outcomes, as the Codes SEPP would override the possibility of integrating local controls. The result will be complying development out of character with the high quality established urban and landscape character of Ku-ring-gai and many other local Councils, and associated far reaching negative impacts arising from poorly designed medium density development and the associated cumulative impacts

Following a detailed review of the exhibition documents, it is clear that the proposed changes will not replicate the success of SEPP 65 and the Apartment Design Guide due to the mismatch in the pairing of a delivery mechanism over riding local development standards via complying development, and a design document attempting to direct positive outcomes for the whole of NSW, an impossible task if individual local area issues are not factored in.

SEPP 65 and ADG provide minimum standards and design guidance, but defer to the local Council planning instruments (LEP and DCP) to ensure successful integration into the local context. The ADG also works as a DCP type document for those Councils that choose to use it in the absence of their own development standards, allowing their planning staff to conduct merit assessment on how development meets the ADG within their locality.

Unlike the functioning of SEPP 65 and ADG which call up and integrate local planning controls, the proposed inclusion of medium density housing as complying development establishes an entirely different relationship - with the MDH Codes SEPP and MDDG over ruling Council's development standards which are set at a higher level for high quality established areas, such as Ku-ring-gai.

The attempt to deliver a document that deals with both Complying Development and Development Application pathways has resulted in a confusing and difficult to understand document. To be effective, the MDDG must follow the ADG with a single development application pathway which is clear, concise and accurate.

As the quality of high density development is improving, local urban character is being protected and the inevitable changes and layering of place-making is being carried out in an orderly fashion. Medium Density Housing could and should be managed in a similar way to high density residential housing. SEPP 65 and the ADG are working well, with developers and Councils now conversant with the process. The ADG contains all the required amenity standards, which can be easily transferred to medium density housing to ensure medium density does not provide lesser standards of development outcomes and amenity.

The MDDG separation of the Design Principles from the Guidelines distances the relationship between the two and dilutes their purpose. The confusion and difficultly in navigating the exhibited documents is exacerbated by the numerous errors and inconsistencies across the exhibited documents and within different sections of the documents themselves. This is especially worrying where numerical standards are different at different places, and where words have dropped off in one section but are retained in another.

The successful relationship between SEPP 65 and the ADG is the result of the following:

- SEPP 65 recognises the complexity of apartment development, which it should be noted can be similar to the complexity of many medium housing development models;
- SEPP 65 requires development approval via a Development Application pathway, retains all local principal development controls, is well structured to embody design quality and provides no overriding development standards other than those specifically about amenity;
- The standards are of a quality that delivers excellent levels of minimum amenity that consistently achieves the design quality principles regardless of the overall quality of the application;

- Defers to Council to conduct thorough, integrated, transparent assessments and relies on a robust Court system to prevent inappropriate development;
- Provides clear documents for guidance as the documents only pertain to one route - Development Application.

Complying development must be removed as the delivery mechanism, for all types of medium density housing (Dual Occupancy, Terraces, Manor Houses) and a better delivery mechanism based on SEPP 65 and ADG and the development application approval process needs to be developed.

Recommendation:

- Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing.
- The Medium Density Design Guide (MDDG) must not be adopted in its current form, but amended to improve its standards, content and clarity.
- Retain local Council as the consent authority to ensure thorough and accurate delivery of medium density housing that is integrated into the local urban fabric and gives due consideration to environmental, social and economic issues related to the development.
- The Codes SEPP must ensure that all medium density housing being conducted through complying development, including dual occupancies, is located only in R3 and R4 zones across all Councils.
- The document structure and function of the MDDG must be the same as SEPP 65 and the ADG.
- The outcomes of the objectives, design criteria, and design guidance must be equal to or better than under the ADG.
- Test all development controls against the worst outcomes they enable so ensure the desired design quality can be consistently achieved.

D. BURDEN PLACED ON LOCAL COUNCILS

The fast track nature of complying development means that it is difficult for in depth consideration to be given to any complex or far reaching issues around a development. This fact coupled with the lack of qualifications of designers and certifiers, and lack of interest in issues beyond the maximum delivery of site potential means that the due diligence required around a development proposal cannot be adequately conducted.

An increasing burden is being placed on Council having to deal with issues around problems arising from complying development. Growing number of complaints are being received due to community dissatisfaction on the lack of an effective route for complaints, or effective consequences for lack of compliance or poor outcomes in the final built outcomes of complying development certified by private certifiers.

1. Rectifying Stormwater Issues

Due to the fast-tracked provision of complying development which applies little rigour of investigation or integration with local systems, Council is being called on more and more frequently to remedy problems arising from ill-considered complying development, including legal action.

For example, inadequate stormwater consideration in complying development has resulted in Council having to deal with growing numbers of people complaining about overflow and flooding issues affecting neighbouring properties due to poor resolutions and possible non-compliance within the

complying development site. Council is left in the unfortunate position of having to spend considerable time and money in the rectification of the root of the problems.

Since Council was not involved in the complying development pathway and received no fees to undertake this type of damage control role, therefore, consideration must be given to compensating Council for time spent repairing and doing the integration work that should have been picked up by the private certifier, for legal costs associated with the rectification of poor outcomes, and for time spent dealing with irate public complaining about developments delivered through complying development.

2. Collection of Development Contributions

Given that medium density housing is a dense development form, it will generate S94 Development Contributions. It is therefore anticipated that Council officers will be spending considerable amounts of time on complex calculations and advising on the Contributions. This is the current experience with calculation and chasing collection of Contributions for complying development single dwellings which is far simpler under the S94A requirements.

In a development application, the cost of staff time is factored into the fees, however Council is spending increasing amounts of time calculating, advising and collecting on contributions for complying development with no payment for the service. This situation must be remedied in a fair manner with fees being apportioned to Council for its services around calculation and collection.

3. Complaints on Non-Compliance and Poor Outcomes

As noted by Justice Pepper in *2013 in Kogarah City Council v Armstrong Alliance Pty Ltd*, complying development is causing wide reaching issue within the general community:

Ongoing breaches not only undermine community confidence in the certification and planning system, but leave councils with the responsibility of managing resident concerns and in certain instances commencing proceedings in the Land and Environment Court. Of further concern is the Building Professionals Board (BPB) poor enforcement record. This issue, and the related potential conflicts of interest, were highlighted by George Maltabarow in his 2013 report.

As such, medium density development must not be delivered through the complying development mechanism as it will multiply the current problems in the community through its cumulative impacts.

It is not Council's role to be responsible for, or to deal with, or act on time consuming complaints for developments with poor outcomes. In the absence of a robust and satisfactory system of accountability that members of the public can go to with their complaints regarding complying development, Council is being placed in the difficult position of being expected to fix, remedy, attend to listen to the problems that are the result of complying development.

If Council is experiencing these problems with single dwelling complying development, consideration must be given to the larger cumulative problems that will result from medium density sites and the further burden that will be placed on Council.

Prior to any expansion of complying development, a more robust and accountable system at State level has to be developed to manage and monitor complaints regarding Complying Development, deal with community dissatisfaction on the lack of an effective route for complaints, or effective consequences for developers and private certifiers delivering problematic development.

Recommendations:

- Remove all medium density development from the Codes SEPP complying development route.
- Retain local council as the consent authority with all medium density development being subject to a development application.

- Provide Council with monetary benefits (fees) for attending to issues arising from complying development, including works conducted to remedy and integrate complying development into local structures and systems and any other tasks such as around development contributions.

E. TORRENS TITLE SUBDIVISION

Subdivision patterns are integral to the character of an area. No consideration has been given to the widespread impacts, and changes to subdivision patterns in established areas by enabling substantially smaller lot sizes through complying development in an area characterised by large lots. No consideration has been given to the long-term implications of altering the status of multi dwelling developments to single dwelling development by enabling Torrens Title subdivision (200sqm lots) to each individual terrace dwelling, and the resultant loss of medium density lands in the LGA.

The Codes SEPP and MDDG do not address the fundamental issue of existing street pattern and block structure. This is a fundamental flaw of the policy. These are defining features of every city, town, suburb that set the foundations for the urban character. The Codes SEPP cannot be applied successfully where the development standards have no ability to consider this fundamental physical structure of the city.

Lot size forms part of the character of a local area and therefore the Torrens Title subdivision through complying development of terrace houses on minimum 200sqm lots is of great concern.

Clarification needs to be provided on the acceptability of the loss of long term medium density lands through Torrens Title subdivision of individual terrace houses as it alters the status of the land to that of a single dwelling. They may not be permitted development within certain Council LEPS. The Torrens Title Subdivision through complying development is not supported.

It is vital that medium density lands are retained as such for future generations. Just as we see old apartments being demolished and rebuilt to higher densities, these R3 lands must be retained as consolidated strata title sites to allow for strategic future proofing and enable ease of any future redevelopment. Splitting the land into numerous small portions will create problems of consolidated uplift in future planning. Torrens Title of small lots that originate as medium density development must be considered on the long term strategic implications, and the provision of flexibility around land as a resource that will inevitably experience generational change.

Ku-ring-gai, like many other Councils, allows only strata title to all multi dwelling development. In Ku-ring-gai the important deep soil landscaping is maintained within the common open areas (setbacks and communal areas) of these developments. This approach prevents the built form blanket approach of this typology with its poor environmental outcomes. Therefore, Torrens title subdivisions through complying development is not supported as it will prevent the long term retention of deep soil areas, as each individual Torrens Title land owner will have the right to pave garden areas and also to develop the lot under single dwelling complying development.

The implications of allowing Torrens Title subdivision on small lots can be seen in the below example where demolition has occurred, but will also be an issue with individual dwellings being able to enact unilateral alts and adds without overall consultation of a body corporate overseeing and maintaining consistency within the entire development site, resulting in very poor outcomes for the streetscape, neighbours and local character.

Recommendations:

- Remove all Torrens Title subdivision from the Codes SEPP complying development route. Council must retain control of setting minimum subdivision sizes across the LGA, including for dual occupancy.

- Council must retain control of the current minimum lot size for any multi-dwelling development site (1200sqm for Ku-ring-gai)
- All medium density housing must operate under Community or Strata Title.
- Council must retain control of subdivision pattern for strategic public infrastructure such as new roads, public open space and land use intensification.

Under the complying development proposal, Ku-ring-gai and all other Councils lose their ability to plan and manage subdivision patterns that may deliver new public streets well-located, coordinated with broader strategic infrastructure, new public spaces and managing natural assets. This has serious implications in context of the MDH Codes SEPP and MDDG definitions and use of terms for 'streets', 'roads' 'lanes' and 'frontage'.

Example of small lot subdivision outcomes in medium to high density area now being seen across Sydney where individual Torrens Title developments have exerted their right to demolish/ rebuild regardless of the impacts on adjacent properties, streetscape, and area character. The inclusion of Torrens Title subdivision for medium density housing through the complying development route will result in more of these types of long term issues, which will have generational impacts on Sydney and NSW.

F. AMBIGUITY, INCONSISTENCIES, LACK OF CLARITY

The exhibited documents, MDH Codes SEPP and MDDG, must not be adopted in their current form due to the numerous areas of ambiguity and inconsistency that may be misinterpreted and deliver outcomes that fall far below the already reduced standards of development being proposed.

1. Ambiguity of definitions

Dwelling House

Clarity needs to be provided on the differences between definitions regarding 'dwelling house' in the Codes SEPP and those in the Standard Instrument LEP as these are fundamentally different. The exhibited documents appear to indicate that amendments will be made to amend the Codes SEPP definitions to match those in the SI LEP. This must be stated explicitly as the colour coding of certain definitions is confusing and implies a different level of inclusion. All definitions within the Codes SEPP must be the same and follow those within the SI LEP. This will ensure that no ambiguity around permissibility of the dwelling types arises, particularly where permissibility is the only aspect where the complying development path defers to the local LEP.

Roads

All references to any type of road in the MDH Codes SEPP and the MDDG pertaining to complying development pathway must refer to a '**public**' road. This will avoid terrace and other development being provided within deep sites on the premise that internal driveways are 'primary', 'secondary', 'parallel' roads. Enabling internal driveways that operate as private primary, secondary, parallel roads will result in exceptionally dense developments being put forward to maximise on site dwelling numbers by unqualified designers/certifiers, and increase the associated multiplied issues of lack of

integration or consideration of environmental, social and economic impacts beyond the site or beyond the immediate time frame as previously discussed.

Internal driveways are essentially not roads as they serve a development in the same way as a driveway. They are not considered in a strategic manner, as roads are, with connections and links into the local road system, improving urban permeability and vehicular flow. Medium density housing types that result in internal driveway systems that operate as private roads and large areas of hardstand internal to a site must not be advocated or permitted through complying development.

Frontage

Clarification must be provided on the term 'frontage' with clarity that frontage is only achieved to a **public** street or road. Frontage' is not defined in the MDDG, MDH Codes SEPP, EP&A Act or SI LEP. Frontage is a matter of interpretation, for example, developers have justified frontage has been achieved in the following ways:

- achieved by a public or private internal road;
- achieved throughout a site by providing a private road access from a public road;
- achieved by a parent lot before subdivision, or each subdivided lot, or the full extent of a building, or part of a building, or the full width of each individual dwelling, or just a gate, or a path, or door.

The ambiguity around the interpretation of 'frontage', coupled with the misinterpretation of streets as discussed above, will enable the stacking of complying development terraces on deep lots.

The Macquarie Dictionary defines frontage as "the front of a building or plot of land." This definition potentially enables dwellings in a second row behind the front row, provided some part of the building (not individual dwelling) is visible from the street. This is further supported by the diagrams in the MDDG which are open to interpretation and can be pursued through complying development due to the difficulty in integrating the development application pathway with the complying development pathway within the one design document. A private driveway does not provide frontage and is not defined as a street, road or lane.

The term 'frontage' must be defined to mean "*the full extent of a lot boundary and the entire width of the dwelling elevation that provides the main entry to that dwelling must directly address and be seen from the public street/road/lane that provides the access to the dwelling. Frontage is only achieved to a public street or a public road.*"

Deep Soil Landscaping

'*Deep Soil Landscaping*' is different from '*Landscaping*' which can mean shallow planter beds above basements or areas, where plantings are unable to grow to any significant heights or establish deep systemic root structures. The Codes SEPP must include a deep soil definition and include requirements for it across all development types to ensure meaningful planting, including tall shade trees, is facilitated across NSW.

The importance of deep soil landscaping is its fundamental role in the delivery of sustainable environments through enabling substantial landscaping including large canopy trees that are known to result in the following:

- retention of soil integrity through systemic deep root structures;
- stormwater absorption, filtration and runoff management;
- meaningful plantings that deliver shade to reduce heat emission from hard surfaces;
- pleasant character and appearance of urban areas.

Deep soil provision and its benefit is integral to the Government's current sustainability agenda. The growing acknowledgement in State, Federal and International policies and directions of the importance to deliver development that considers the generational impacts on local and greater environments cannot be ignored, as is the case in the exhibited proposal.

In the absence of any definition, the Ku-ring-gai DCP contains the following deep-soil definition:

> ***Deep soil landscaping*** *is the soft landscaped part of the site area:*
>
> *i. that is not occupied by any structure, whether above or below the surface of the ground, except for minor structures such as:*
> - *paths to 1.2m wide;*
> - *storm water pipes of 300mm or less in diameter;*
> - *lightweight fences;*
> - *bench seats;*
> - *lighting poles;*
> - *drainage pits with a surface area less than 1m^2.*
>
> *ii. that has a minimum width of 2m;*
>
> *iii. that is not used for car parking;*
>
> *iv. may be used for water sensitive urban design, provided it does not compromise the ability to achieve the screen and canopy planting required by this DCP.*
>
> ***Note:*** *For the purposes of calculating deep soil landscaping and landscaped areas, any access handle on battle axe sites is excluded.*

2. Lack of clarity and inconsistencies

The exhibited documents use ambiguous language to explain the requirements. For example use of terms such as "should" do not clearly indicate what the certifier is required to check. This goes back to the issue of certifiers being unqualified but having to make merit assessments due to ambiguous language in the documentation.

There are numerous inconsistencies, ambiguities, conflicts between the *Explanation of Intended Effects* and the *MDDG* which are likely to lead to negative outcomes. The confusion and difficultly in navigating the exhibited documents is exacerbated by these numerous errors and inconsistencies across the two exhibited documents, and also by the many errors and inconsistencies within different sections of the documents themselves.

This is especially worrying where numerical standards are different at different places, and where words have dropped off in one section but are retained in another. This leaves the standards and requirements open to interpretation by the designer and a merit assessment by a private certifier who do not hold a town planning degree and do not have the ability to make such interpretation.

The attached review tables at **Appendix 1** and **Appendix 2** provide detailed comments identifying areas that require deletion, further consideration, correction, amendments and/or clarifications for the *Explanation of Intended Effects* and the *MDDG.*

The MDDG attempts to deal with both Complying Development and Development Application pathways. This has resulted in a confusing and difficult to understand document. The MDDG should follow the ADG with a single development application pathway which is clear, concise and accurate, and which as a result is delivering positive outcomes across NSW.

There are broad ranging deficiencies within the MDDG resulting in Objectives, Design Criteria and Design Guidance that is inconsistent with the Nine Design Quality Principles within the document. In its current form, the proposed structure, quality of objectives and design criteria in Part 3 enable

medium density housing development to be certified that is inconsistent with the Design Quality Principles.

Part 2 of the MDDG generally contains sound objectives and design guidance. However, the document structure separates the design guidance (performance) from the design criteria (compliance). The separation of the Design Principles from the Guidelines distances the relationship and dilutes their purpose. The effect is that the performance and merit components of design will be ignored by private certifiers and their unqualified designers. This appears to be a result of attempting to include medium density housing development via the complying development pathway whilst trying to at the same time provide a development application pathway. It is a flaw and will lead to poor design outcomes.

There are inappropriate housing typologies contained in the MDDG such as 'Mews' and all intensified medium density development that proposes at-grade car parking. This will have a significant effect on Ku-ring-gai's urban character and public domain amenity that will be compromised. Appendix 5 to the MDDG is unhelpful as it includes a confusion of medium density types with ranges of development controls all with vastly different outcomes within the one type. Many of the types comprise a mix between poor exemplars, with confused development standards, including Torrens and Strata titling issues, inconsistent with proposed development.

Detailed comment on the 3 dwelling types under the proposed complying development is contained within the Appendices to this submission. A brief synopsis is presented below:

- No medium density housing types that result in internal roads and large areas of hard stand internal to a site should be advocated or permitted in the wording or diagrammatic representations.
- Two Dwellings Side-by-Side: This appears to refer to dual occupancies, therefore it should be labelled as such and include the reference upstairs/downstairs dual occupancy that is contained within the Manor House section. The association of Dual Occupancy with Manor Houses is confusing. The Dual Occupancy criteria must require that the single driveway for each dwelling, each address a '**public'** street, with new definition of 'frontage' (as previously identified).
- Terrace Houses: These must only be permitted where a public rear lane is provided for car parking, otherwise a single driveway to a basement parking limited to the footprint of the building, must be provided. The parent lot size must defer to local requirements for minimum lot sizes for these developments. No Torrens Title subdivision should be permitted so that the status of medium density land is not altered.
- Manor Houses: These should only be permitted in R4 zones and managed under local development controls to ensure their integration into the locality. This typology falls between SEPP 65 /ADG and Medium Density Housing, as such it requires special consideration. They are a BCA Class 2 type that presents complex fire safety compliance issues under the proposed setback standards. They are unsuitable for assessment via complying development pathway or designed by an unqualified person.

Images, diagrams and other graphics within the MDDG are inconsistent. Very few are an accurate representation of the outcomes of the proposed development standards, design criteria and design guidance. Further, many of the photographs show developments that have been designed by qualified architects and not the unqualified groups that are being advocated via complying development.

Recommendations:

- Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing

- Correct inconsistencies within and across the MDH Codes SEPP and MDDG documents, including to diagrams/photos not representational of the standards within those documents.
- Address deficiencies in the structure, objectives, design criteria and design guidance of the MDDG.
- Amend the document structure and function of the MDDG to be the same as SEPP 65 and the ADG, removing the complying development pathway.
- The definition of 'dwelling house' must be clarified to align with the SI LEP definition.
- The ambiguity regarding the definition of 'streets' must be clarified and amended. All references to streets/roads/lanes must be changed to be **'public'** streets/roads/lanes.
- Include a definition of 'frontage' as stated above.

Include a definition for 'deep soil landscaping' (as stated above) and include associated development standards for its requirement across all development types.

G. DEVELOPMENT STANDARDS

The scope of the proposed development controls under the exhibited MDH Codes SEPP and MDDG via the complying development route, will over ride local Council controls and result in negative impacts on Ku-ring-gai and other Council areas, particularly where local planning documents deliver higher standards of development.

Ku-ring-gai Council has a suite of integrated planning documents, with recently updated DCPs, that are the result of extensive research and consultation. These documents seek to deliver the required quantum of housing in a sustainable manner that is also integrated into the local established character and aligned with State and Federal directions.

It is imperative that local controls prevail to enable local integration particularly in areas such as Ku-ring-gai where there is a fine grain established urban character that is highly valued from an aesthetic as well as sustainability point of view.

1. Ku-ring-gai's suite of coordinated KLEPs and DCPs

The exhibited *Explanation of Intended Effects* states:

"*Complying development is not intended to override a council's strategic planning, but work with the controls developed through strategic planning to efficiently deliver simple housing forms."* However, the proposed complying development mechanism overrides the very controls that determine broader strategic planning objectives contained in local LEPs and DCPs including:

- Height
- FSR
- Subdivision
- Front, rear and side setbacks
- Landscaped Area
- Earthworks
- Bushfire prone land
- Tree removal
- Driveways and parking

This over ruling of local standards coupled with the inconsistencies, ambiguities, and conflicts between the *Explanation of Intended Effects* and *Medium Density Design Guide* have the potential to fail fundamental strategic planning principles for controlled, coordinated, and strategically well-located development.

Development lodged under the complying development pathway has no means of being effectively coordinated with Ku-ring-gai's development controls, and as such will result in development that cannot interface with the strategic directions for this area.

There is no development standard for complying development to consider and respond to existing and desired urban character required under local LEPs and DCPs, where the outcomes will be significantly different to the surrounding established urban fabric. The use of private certifiers cannot assess character and integration into the streetscape as this as it is a merit assessment.

The Codes SEPP does not include this development standard despite the fact that the policy will have broad reaching and rapid impacts in its delivery of housing.

It is noted that both *SEPP Seniors and People with a Disability* and *SEPP Affordable Rental Housing* require approval via Council's development application due to the often varying complexity and scale of development. These are similar features of medium density housing and again indicate the inappropriate inclusion of medium density housing into the Codes SEPP via complying development.

Following a detailed review of the MDH Codes SEPP and MDDG, it is clear that the quality of urban outcomes, resident amenity, and public interest is far higher under Ku-ring-gai's existing LEPs and DCPs. All development lodged under the MDH Codes SEPP therefore will be of a poorer standard than Ku-ring-gai can achieve under the development application pathway. The use of private certifiers further erodes any oversight of poor outcomes as there is little to no coordination required with Council, nor any independent verification of the certified development.

Detailed review and comment regarding the proposed standards are tabled within **Appendix 1** and **Appendix 2** attached. A synopsis of areas of key concern that will deliver the greatest negative impacts are listed below.

2. Areas and standards of greatest negative impact

All development standards, objectives, design criteria and design guidance must be developed to achieve design excellence and tested to protect against the worst outcomes that can be achieved by them. This will ensure the worst development will still achieve acceptable outcomes while enabling high quality development to proceed unencumbered.

Heritage

Medium density complying development must not be permitted on any site adjacent to the Heritage Item or a Heritage Conservation Area. The curtilage of Heritage Items and the integrity of Heritage Conservation Areas are affected by sites adjacent to them. Ku-ring-gai seeks to avoid the placement of medium and high density development adjacent to Heritage Items and Heritage Conservation Areas, and sets standards to ensure adjacent properties respect the importance of heritage.

Landscaped Area

The loss of every Council's authority over landscape fails to consider the variety and specific character of each LGA throughout NSW and does not provide a mechanism to achieve the variety that a city and NSW needs.

Deep soil landscaping is a key and important element that defines Ku-ring-gai's urban character. The MDDG Objectives and Design Criteria for landscape are manifestly inadequate for Ku-ring-gai and will not result in the trees being viable due to the high probability they will be removed, or replaced with smaller planting, or areas of paving extended post approval. Cumulative impacts resulting from the proposed Landscaped Area development standards have the potential for loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect.

Ku-ring-gai's urban character is predicated on the quality of its landscape, and has in place, detailed development objectives and controls for all setbacks, site coverage, total landscape area, deep soil and

tree removal that ensure all development of every scale sits within a dominant landscape setting characterised by canopy trees and deep soil planting. The loss of landscape controls, therefore, has a particularly negative impact on the strategic planning of urban character within this local area.

Protection of canopy trees that may have value in either providing links between areas of biodiversity significance, or contributing to the background view between allotments or internal site character is very important. This has a function as a public asset, which is not recognised in the Codes SEPP or MDDG.

The types of development that have had the greatest impact in Ku-ring-gai are those advocated in the MDDG that prioritise at-grade car parking deep within the site. These have an adverse impact on the protection of existing and diminishing landscape. These outcomes are in direct conflict with the NSW Government's *A Plan for Growing Sydney* and its *Urban Green Cover Policies*, commonwealth policies for greening cities, and housing adapted to climate change, and inconsistent with the United Nations, General Assembly *Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*.

The focus on streetscape landscape controls is important in achieving urban character, however, the exhibited complying development documents fail to adequately value the rear yard landscape assets throughout NSW and in Ku-ring-gai specifically; their importance climatically; their role protecting against further fragmentation of biodiversity significance and loss of green corridors; and, their aesthetic contribution to urban character.

In a recent November 2016 Court case, *(Vanovac Tuon Architects Pty Ltd v Ku-ring-gai Council [2016] NSWLEC 1558)*, a court judgement refused a medium density housing development at 32-36 Dumaresq Street of 10 dwellings. The case was defended on the critical grounds of setbacks, site coverage, and deep soil that could not achieve Ku-ring-gai's urban and landscape character of buildings within a landscape setting (and all the DCP objectives for this).

Had this development been assessed under the proposed Codes SEPP as Multi-Dwelling Housing (Terraces) with a basement, it would have complied with the MDH Codes SEPP proposed development standards for landscape and setbacks.

A clear illustration of how the proposed standards and assessment through complying development will erode the local established area character, particularly as medium density housing will have multiple cumulative spreading impacts.

Impact of vehicles

All medium density types that prioritise vehicles over pedestrians that require car access deep into the site, or impact public domain with multiple driveway cross-overs on public roads create flow-on impacts to landscape, sustainable stormwater/water management, climate impacts and urban heat sink effect, and impact on public amenity. These types must be deleted from all design guides. They are inconsistent with advocating design quality principles.

Building separation

The current standards within the MDDG achieve less amenity than was achieved under AMCORD.

Building separations are inadequate to address visual and acoustic privacy without the use of high fencing and screens over windows/openings (maladaptive solution for visual privacy only, acoustic privacy not addressed). All design criteria for visual privacy advocate the use and control of privacy

screens. None relate to well-designed internal layouts as a compliance criteria checklist. Privacy screens are the wrong response to addressing visual privacy as a compliance criterion.

Necessity of extensive screens is indicative of inadequate building separation, inadequate setback controls, and absence of sound design principles that would ensure good internal layouts (location of rooms and their function). The use of privacy screens must be avoided at all times except in exceptional circumstances which would need to be assessed on their merits.

The ADG already contains development standards for building separations that apply equally to all types of development regardless of the height of the building. The MDDG must apply the same standards for consistency and to ensure minimum levels of amenity are not less than demanded of higher density housing.

Proposed building separation is inadequate and will result in poor landscape outcomes between developments, and where detached dwellings are proposed, between the single dwellings. The inadequate building separation standards also will result in amenity that is inconsistent with the proposed Design Quality Principles.

Related to 'Setbacks', building separation applies to the separation between buildings on one site, and between buildings on adjoining sites. Medium density housing must achieve the same visual and acoustic amenity expected for high density development, if not greater.

Setbacks

The issues are similar as raised as for building separation. There is an added loss of landscaping along side boundaries, functional space between buildings, and loss of light to all rooms other than service rooms. The ADG building separations must be implemented along with Council's local controls around setbacks. Setbacks must relate to the internal planning layout, room function and aspect.

The proposed development standards for setbacks will result in poor amenity and be inconsistent with Ku-ring-gai's landscape character. The front setback will rely on the private certifier to make merit assessments on whether a proposed setback is consistent with the existing streetscape. The wording is ambiguous whether '*the average of two closest dwellings*' means closest to the street or closest to the proposed lot.

In Ku-ring-gai, because of the large front setbacks that would be needed to be consistent with surrounding building lines, assuming that of the two nearest dwellings applies, will result in the scenario where the proposed requirement for 25% of the landscape in the front setback would also result in the entire proposed landscape requirements being satisfied in the front setback zone. This means the rear of the site and side setbacks can be fully hard paved or pervious with no vegetation. It is unlikely the intended trees will ever be planted.

The only criteria for setbacks are based on building height not related to internal dwelling layout. This will have a detrimental impact on internal site character for Ku-ring-gai and unacceptable amenity for the occupants and their neighbours. Setbacks influence urban character, and landscape. They also provide building separation so sound design principles can be used to address visual and acoustic privacy. The level of amenity achieved with the proposed setbacks is below that required for high density housing.

Side and rear setbacks have no design criteria that distinguishes internal layout with the required setback. The only criteria is building height. This will lead to the worst amenity and urban outcomes as side boundary setbacks of 1.2m result in bedrooms with no outlook and often heavily screened for privacy. Where windows face side or rear boundaries must have greater setbacks and enable screening through planting to neighbouring/adjacent properties.

The proposed design criteria checklist has no requirement for internal planning layouts in relation to setback. It is possible for a living room to be 1.5m from a fence with an opposing living room of the neighbour 1.5m from the fence that would achieve the minimum building separation of 3m between strata titled buildings on the same site; or, habitable rooms including the living room could be 1.2m from the neighbouring lot if Torrens Titled.

In Manor House development there is the likelihood of alternative solutions for BCA compliance with fire safety. Proposed development controls would permit the dwellings being orientated around a small central courtyard (with a minimum dimension of 3m). Likewise the same dire amenity can result in a primary outlook for a living area being 3m from the rear boundary. The building separation controls for setbacks permit a fully compliant development to have its living area 3m off the rear boundary separated by a colourbond fence to another dwelling 3m from its rear boundary.

Under the complying development pathway, the outcomes from the proposed setback controls will be significantly poorer than is achieved with Ku-ring-gai's LEP and DCP controls and lead to inconsistent urban character, and loss of valuable landscape.

Attics

Attics must not be permitted under complying development as it will result in the repetitive outcome of attics within hipped roofs, with dormers and skylights throughout medium density development. Skylights must be prohibited as the primary source of daylight into attic rooms as they do not deliver internal amenity. Attics result in heavy reliance of mechanical ventilation to make the space habitable. Attics within 3 storey development must only progress through development application so that the typology can include a variety of innovative design, including the design of good dormer windows.

Ceiling heights

The floor-to-ceiling height of **every** storey of **every** type of medium density housing **must** require a minimum of 2.7m. If not, only the ground floor will be 2.7m as all first and second floors will nominate 'bedrooms' to comply with the lower 2.4m permitted for bedrooms. This can enable a living room to have a floor-to-ceiling height of 2.4m and if a fan is provided, it would be non-compliant. The proposed 2.1m clearance is inadequate and does not enable a person (unless very short) to safely dress in the vicinity of the bed.

The BCA is designed for minimum standards of health and safety; it does not address design quality, qualitative perception of space, and sense of well-being. The ADG demands a minimum 2.7m floor-to-ceiling height for **all** habitable rooms because of the recognised inadequacy of the BCA minimums. A finished floor-to-ceiling height of 2.7m also enables flexibility over the life-cycle of the dwelling consistent with the objectives of the policy.

Dwelling size

The proposed FSR controls for some medium density housing types can result in dwellings of up to 360m2 whilst providing no deep soil and sustainability measures around the building footprint. This is inconsistent with fundamental policies for reducing energy consumption, climate adaptive housing, WUSUD, healthy cities and other sustainable development policies to manage and mitigate environmental impacts. Existing Federal and State government policies and research has recognised the impacts of dwelling size on the environment caused through cumulative impacts and increased consumption of resources required to build them.

Housing policy predicated on design quality must address the unsustainable and social aspects of existing models that have been identified as failing to address equity and housing adapting to climate change.

Multiple driveway cross-overs

Medium density development types that propose individual car parking for garages or car spaces for each dwelling accessed directly from the public street has a detrimental impact on existing public amenity and streetscape character. Rows of terraces with no rear lane access and minimum lot width results in a streetscape dominated by vehicles and garages, a loss of existing on-street car parking (the minimum lot width does not allow a car to park between driveways) unless angle parking can be provided and would require the consent of Council.

This typology (terraces with no rear service lane) is not in the public interest, which apart from delivering poor elevational outcomes, results in open surveillance of streets and is contrary to Crime Prevention Through Environmental Design CPTED standards. There is no mechanism for Council to coordinate and control how this type can be managed. This type should be deleted and replaced with single driveway into basement parking under the footprint of the building.

Excavation

The proposed development controls can enable 3m deep excavation to be as close as 1m from the boundary. This will prevent landscape in the setback area and destroy root systems of trees and vegetation on adjacent properties, thus eroding the landscaping which is a feature of Ku-ring-gai's urban character and will have long term environmental impacts. It also raises concerns for conflicts between the desire to develop maximum dwelling on sites regardless of existing trees, topographical challenges, stormwater and impacts to neighbours.

Recommendations:

- Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing.
- The role, document structure and function of the MDDG must be the same as SEPP 65 and the ADG to respect local character by deferring to local planning instruments.
- In All MDDG objectives, design criteria and design guidance must be aligned with the ADG.
- Retain local Council as the consent authority as medium density development is better suited to the development application pathway to enable transparent and accountable assessment, including merit assessment when required.
- Ku-ring-gai is to retain the local LEPs and DCPs for all development submitted via the development application pathway.
- Should the Department proceed to amend the Codes SEPP, provision should be made for Councils to seek exemption where they can demonstrate that their local planning documents are consistent with the requirements of the District Plan and consistent with the design intent of the MDDG.

With regards to development standards:

- Include requirements for all complying development typologies to have every dwelling address a **public** street/road.
- Include the requirement for all terrace development to occur only where serviced by rear lanes.
- Delete dwelling types that propose multiple garages and vehicular cross-overs under complying development. This typology must go through a development application pathway.

- Stipulate effective deep soil area requirements for all proposed typologies, retained under strata title to ensure their long term retention and maintenance and contribution to the shading and greening of the local environment, and include requirements for meaningful vegetation including canopy trees.
- Building separation must be the same that applies to SEPP 65 for visual and acoustic privacy for development up to 4 storeys.
- Building separation must relate directly to the internal planning arrangements to allow for adequate private open space, landscape screening and amenity between dwellings without the heavy reliance on privacy screens.
- Setbacks must be retained in Council's authority and the same as those that apply to SEPP 65 including consideration of internal planning layouts of dwellings.
- Side setbacks must be increased to a minimum of 3m where basement car parking is proposed.
- Remove attics from all complying development. Buildings with attics developed must go through a development assessment to ensure amenity is achieved and to avoid poor elevational outcomes of a typology with numerous dormers and skylights.
- No medium density complying development is to be permitted adjacent to a Heritage Item or within a Heritage Conservation Area.

Appendix 1

Table of Assessment

Explanation of Intended Effect - Medium Density Housing Code (MDH Codes SEPP)

Item	Commentary and Recommendation
1.1 **Introduction**	Ku-ring-gai Council supports any improvements that will promote and deliver higher quality residential development to all market levels within NSW. SEPP 65 and the Apartment Design Code has been successful in setting a positive precedent in lifting high-density residential design quality, whilst enabling the preservation and integrity of local area character and geography.
1.1 (cont'd) **The Missing Middle**	*A planning system that facilitates a diverse range of housing options is important in delivering greater housing choice to support the growth population and changing demographics of NSW.* This statement (pg.5) is supported in principal as it is acknowledged that this housing typology would increase housing diversity. *The State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development (SEPP 65) ensures that the assessment and delivery of apartment buildings are guided by clear, effective, evidence based planning requirements.* It is agreed that SEPP 65 with the associated ADG has facilitated the successful delivery of Residential Flat Buildings (RFB.) The key strength of SEPP 65 and the ADG is that it fully enables local LEP and DCP provisions, which ensure the RFB is integrated into the local context; it applies the DA process, which ensures thorough consideration of all specific fields and the implications of design and delivery; it provides a comprehensive Design Guide consistent with the SEPP, and which can be used by those Councils which do not have in place controls to deliver quality RFBs. *…The aim is to make approvals for these housing types more efficient and provide greater consistency with approvals. This will make it easier to increase supply and choice to the market, putting downward pressure on housing costs.* Whilst complying development will fast-track approvals, the efficiency is questionable, it is unlikely that the in-depth due diligence and consideration will be given to specialist areas (such as Storm water, Landscaping, Accessibility for all, Crime Prevention Through Environmental Design, Overshadowing etc.) Whilst supply may be increased, the quality of the end product will not compare to the DCP Multi-Dwelling models developed to integrate into the established character of Ku-ring-gai. However, given Ku-ring-gai's high land value and appeal due to its location of railway and bus routes, excellent schools and facilities, and its quality urban and landscape character, downward pressure will not be put on housing in this area. In fact, given the ability of wealthy overseas investors to purchase land and property in Australia, the price of property, regardless of type, will not be decreasing. In November 2016 a Multi-Dwelling housing development site at 18-20 Bent St, Lindfield with DA for 8 dwellings sold for $13M (at least $1M per dwelling once constructed) In terms of affordable housing, it is a priority in the provision of medium density housing, there is a 10% mandated allocation of every Complying Development should be dedicated for affordable housing provisions. *To ensure that housing delivered in this way is well designed, the Discussion Paper also recommended that a design guide for low rise medium density housing be developed similar in nature to SEPP 65 and the Apartment Design Guide (ADG).* Whilst the MDDG is s supported, comparing it or trying to model it on the ADG is an impossible task, as the ADG is linked to a SEPP that does not override local Council LEP or DCP provisions, and as such is able to consistently deliver residential flat buildings across the state that are successful in the context of their local area. The fact that the MDDG is linked to Complying Development, which overrides local controls, means that the outcomes of the MDDG can only deliver development that is blind to site factors (like existing trees), blind to neighbouring sites (like Heritage Items), blind to streetscape and area character, and blind to other systems and infrastructure needs beyond the walls of that building.
1.1 (cont'd) **The value of low rise medium density housing**	*Low rise medium density housing provides a low cost and sustainable way to achieve higher densities with minimal impact on the existing urban form.* This statement is only correct if the delivery mechanism of the medium density housing has a means to ensure developments adopt and reflect a sustainable approach and reduce impacts through considered assessment of the integration of the development into its context. This will not be possible through complying development with private certifiers unqualified and unable to make merit assessments or apply rigor of checks on development documentation.

	The costs of delivering medium density housing through a fast-track system, may be low in the short term with the delivery of basic housing; however, the medium and long term costs of development whose design has given little to no attention to impacts on the urban character and infrastructure, will be exceptionally high, with the burden of those costs being put onto local Councils which will be expected to fix the problems generated by poorly considered fast track development.
1.1 (cont'd) **Medium density housing as complying development**	*Complying development is not intended to override a council's strategic planning, but work with the controls developed through strategic planning to efficiently deliver simple housing forms.* While it is intended to only allow the medium density complying development where it is permissible under the Council LEP zoning, complying development will still override a Council's strategic planning work, particularly with regard to the controls and requirements within Council DCP. The complying development standards and criteria are less sensitive than the controls within the DCP which seek to ensure that medium density developments are sympathetic to the streetscape and local character. This statement at p.7 is inconsistent with the entire premise of the document. It is clear that all Council's principle development standards are intended to be overridden by the Codes SEPP. A 'one-size-fits-all' approach will not respond to or deliver urban character specific to local government areas, nor will it have the capacity or due diligence to integrate new development with the local geographical, topographical and infrastructure systems. In November 2016 a court judgement (*Vanovac Tuon Architects Pty Ltd v Ku-ring-gai Council [2016] NSWLEC 1558)* refused a medium density housing development at 32-36 Dumaresq Street of 10 dwellings. The case was defended on the critical grounds of setbacks, site coverage, and deep soil that could not achieve Ku-ring-gai's urban and landscape character of buildings within a landscape setting (and all the DCP objectives for this). Commissioner Brown said *"it is of such importance that the application should be refused for this reason alone"* referring to Council's DCP controls on setbacks, site coverage, and deep soil. He found the proposed setbacks: - were inadequate to achieve Ku-ring-gai's urban built form character - led to excessive site coverage which could not provide sufficient deep soil to achieve Ku-ring-gai's landscape character of buildings within a landscape setting. - are significantly less than Council's DCP were: *"contrary to the relevant building setback objectives"….* The development was refused in a very comprehensive judgement that reinforced the importance of Ku-ring-gai's DCP controls. Had this development been conducted under complying development through the exhibited Codes SEPP, it would be classified as Multi-Dwelling Housing (Terraces) with a basement and would have complied with the MDH Codes SEPP proposed development standards for landscape and setbacks. https://www.caselaw.nsw.gov.au/decision/58362714e4b0e71e17f55699 **Private Certification:** The NSW Government has recently undertaken a review into the effectiveness of the building regulation and certification system in NSW, the final report was released in September 2016-http://www.bpb.nsw.gov.au/news/strengthening-certification-nsw. The review outlined that there is a strong case for reform of the building regulation and certification system, and included a number of recommendations and required outcomes of the reform. The Government review noted *'It is essential that there is full confidence in the integrity and effectiveness of the complying development scheme if it is to continue to be expanded as a Government strategic priority'* (p173) The review outlined that one of the targeted outcomes of the reform needs to be *"Providing a robust foundation for the expansion of complying development*". The review noted that 'The evidence is that the system is not as effective and thorough as needed to have confidence in the outcomes generated through the complying development process.' (p309)

	Noting the outcomes of the independent review into the effectiveness of the current building and certification system in NSW, the Government should not be expanding complying development when the current system is not effective and thorough, and has been found to be in need of reform. It is naïve to believe that the private certification process will achieve better quality outcomes than the traditional DA process. Certifiers in general are NOT qualified nor trained to undertake planning assessments of this complexity. Current training courses offered by universities in relation to planning and development assessment are inadequate and do not equip certifiers to undertake a meaningful planning compliance assessment. To expect certifiers to ensure "compliance with the Design Criteria" overestimates the abilities of most current certifiers. The ICAC -The ICAC submission regarding A New Planning System for NSW (Green Paper) 2012 stated the following: *The Commission also makes the observation that the introduction of increased flexibility into a system will create a corruption risk, especially when combined with the potential for proponents to obtain huge windfall profits through obtaining an approval. For this reason, where a zone emphasises market based processes, flexibility, innovation and limited development control mechanisms, it is important to have strong decision−making and governance processes in place.* *These processes should include requirements for evidence based justifications for land uses, defined design quality standards, including those related to density and scale, and oversight mechanisms. This will help ensure that conflicts about permitted uses and design principles are resolved in an objective and robust manner. Other elements of strong decision−making processes are discussed below.* *Streamlined Approval -The green paper raises the possibility of excluding councillors from development determination processes. The Commission recognises that decisions about whether the state government or local councils should determine development applications are a matter of government policy and has previously observed that there is no reason to suppose that a minister or state−level planning official is any more or less susceptible to corrupt approaches than a local−level councillor or professional planning officer.* *The Commission's key concern is the adequacy of the in−built anti−corruption safeguards in decision−making processes, in the interests of efficiency, adopted safeguards should be commensurate with the level of corruption risk involved in a decision.* https://docs.google.com/file/d/0B1phj5J6584wV3ZpbEFJQnQ3Znc/edit The role of PCAs for this scale of development fails to address the complexities of medium density housing, lacks transparency is inconsistent with the ICAC's recommendations above to protect against corruption effectively transfers the existing independent, transparent assessment process from local councils to one absent of transparency, that is dependant, with inherent conflict of interest where both parties (the developer and the PCA) have vested financial interest in the speed and success of a development approval with little governance removes independent mechanisms to verify the certification places unreasonable responsibility onto a party that is not trained, qualified, or experienced in performing the assessment tasks required. PCAs unqualified to perform merit assessment- removing the consent authority from Ku-ring-gai Council requires PCAs to determine urban design, architectural design quality, heritage, landscape, engineering and all other specialist discipline compliances for all aspects requiring a merit assessment where the MDDG does not provide numerical performance benchmarks. DAs invariably are inconsistent and very often have poorly resolved designs that are poorly coordinated. A typical example in Ku-ring-gai requires trees and topography as fundamental considerations on the majority of developments. The majority of medium density development is lodged proposing often complex stormwater designs that will not work when integrated into the broader system and indeed prevent landscape, or proposed development from occurring as architectural or landscape plans indicate. This assessment requires a multi-disciplinary team of qualified professional to consider the impacts between each discipline. Even with numerical benchmarks, certification relies on PCAs to verify that each discipline has complied with the numerical

	benchmarks and has coordinated their input. There is little incentive for them to do this and there is a great question over their ability to do this. Rather, the incentive is to approve the development by relying on the checklist provided by the designer or other consultant that will, by definition, confirm each of the items is compliant and that the Design Verification Statement indeed confirms the development meets the design quality principles. Separately they may but coordinated they may not. Rather, the incentive is to approve the development by relying on the checklist provided by the designer or other consultant that will, by definition, confirm each of the items is compliant and that the Design Verification Statement indeed confirms the development meets the design quality principles. Separately they may but coordinated they may not. PCAs are not trained, qualified, nor have the expertise to perform either the verification or a merit assessment for the many disciplines captured by the Codes SEPP and MDDG. Of particular concern is the terrace type with basement car parking, and manor house that is a Class 2 building that could result in many more dwellings than is intended under the EOIE, or where separate but concurrent applications are proposed that results in a single large development with cumulative impacts. In effect, the role of PCAs means the MDDG cannot be applied because most of the design criteria, design guidance and objectives all contain terms such as 'should' which can only be determined by merit assessment and/or are not numerical. There is high probability that very few developments that are certified will achieve the compliance required and the Design Quality Principles. This problem will be exacerbated by the broad range of complexity in models of medium density housing and the absence of the requirement for a registered architect to prepare the design. The use of PCAs in context of existing serious deficiencies - The review of Building Professionals Act identified serious weaknesses and deficiencies currently experienced with the use of PCAs that remain unaddressed. The Environmental Defenders Office (EDO) submission to the Department for the Discussion Paper proposing medium density housing under the Codes SEPP found: *Community and authorities' concerns about governance and oversight of private certification must be addressed before any attempt to expand code-based assessment. There is ample evidence of private certifiers certifying non-compliant developments, or issuing construction certificates in contravention of consent.* As noted by Justice Pepper in 2013 in Kogarah City Council v Armstrong Alliance Pty Ltd: *"Once again before the Court is an application for declaratory relief sought by a council occasioned by the unlawful certification by an accredited certifier of a development that is markedly different to the approval granted by that council. Regrettably this is becoming an all too common occurrence in this Court. It must not be tolerated. It brings the certification system into disrepute and undermines the planning regime of this State." Ongoing breaches not only undermine community confidence in the certification and planning system, but leave councils with the responsibility of managing resident concerns and in certain instances commencing proceedings in the Land and Environment Court.* *Of further concern is the Building Professionals Board (BPB) poor enforcement record. This issue, and the related potential conflicts of interest, were highlighted by George Maltabarow in his 2013 report:* *…the BPB has a key role in accreditation, education and training, professional support as well as compliance investigation, audits, discipline and monitoring. There are both real and perceived conflicts between some of these roles. Indeed, the BPB has been criticised as being too reluctant to exercise its disciplinary powers and too slow in conducting investigations. There is a perception by some that the BPB is more focused on the support role than on supervisory elements and this could be a reflection, to some extent, of current legislative provisions.* We concur with the EDO NSW's submission summary that emphasises: exempt and complying development processes must only be used for genuinely minor, low-impact developments; exempt and complying development should not occur in environmentally sensitive areas; and cumulative impacts of multiple developments must be taken into account. We also submit that use of the code should not be extended, even for low-impact developments, until serious accountability, quality

	control and transparency issues are addressed in relation to the use of private certifiers, and until building efficiency and sustainability standards have been strengthened. https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2648/attachments/original/1456972057/sub_Expanding_Complying_Development_EDONSW_1602.pdf?1456972057https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2648/attachments/original/1456972057/sub_Expanding_Complying_Development_EDONSW_1602.pdf?1456972057 None of the ICAC's recommendations have been followed and none of the NSW Local Government, Court, and community group concerns are addressed in the proposed legislation despite the intent to expand the role of PCAs to certify often highly complex medium density housing development. The question of independence and rigor of the private certification process remains. A private certifier has a fundamental conflict of interest in undertaking public responsibilities as a regulator and providing this as a service to a client for a fee. In this regard, the recently completed review of the Building Professionals Act identified a number of inherent weaknesses in the certification process that remain unaddressed. Private certifiers must be provided with detailed tick charts to enable them to check every standard, every design objective, and guideline against including citing the Design verification statement. This would make them more accountable where decisions and approvals are flawed. There needs to be a more robust and accountable system at state level to manage and monitor complaints regarding Complying Development. An increasing burden is being placed on Council with community dissatisfaction with the lack of an effective route for complaints, or effective punishment for lack of compliance in the final built outcomes of Complying Development certified by private developers. There needs to be an opportunity for community consultation wherever an increase in density on adjoining properties is proposed. Recommendations: a) Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing with a Design Code that achieves the design quality of the ADG. b) Retain local council as the consent authority. c) 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. Government review into the effectiveness of the building regulation and certification system – **Design:** Building Designers are also allowed to design these developments and there is no requirement for them to be designed by Architects only. Building designers have NO formal registration or accreditation requirements in NSW. ANYONE can practice as a Building Designer and there is no requirement to be qualified, have experience or have any credentials whatsoever. Accreditation by the Building Designers Association of Australia (BDA) in NSW is not regulated, is entirely voluntary and can be considered 'informal' at best (only Building Designers in Tasmania, Queensland and Victoria are regulated). It is also questionable whether Building Designers would be able to secure the necessary liability insurance as is required for architects. Architects must: • have a formal tertiary education / degree in architecture • be covered by the necessary liability insurance (this is required for registration)

	• be officially registered as an architect with the governing architecture body in their state or territory Building Designers have none of these requirements. Increased risk and liability issues are inevitable. In addition, this approach will have a detrimental impact on Heritage Items (HI) and Heritage Conservation Areas (HCA). Complying development must not be permitted on lots that adjoin, or are on opposite sides of the road, to HIs and/or HCAs. Substantial front, side and rear set-backs are required to separate any unsympathetic Complying Developments from Heritage properties to protect their curtilage. A landscape buffer is required to separate any proposed unsympathetic Complying Development from the established built form and garden setting of HIs and/or HCAs. *This scale of development is able to be delivered by a large range of builders with simple and often less expensive construction methods.* The development standards and design criteria are not aimed at the highly skilled architects, building designers, developers and builders who are already innovating design, but rather they are targeted to developers, architects, building designers, and planners currently providing the lowest quality of medium density housing. *…it* (the MDH Codes SEPP) *is aimed at a simple small scale, low rise development without the additional design challenges found in residential flat buildings, such as common areas, privacy and scale impacts.* This is an overly simplistic view – medium density development and even low density development can and does result in privacy and scale impacts. Medium density development types are more appropriate to the Development Application pathway of assessment, which allows merit assessment and appropriate consideration of impacts such as local character, amenity, and privacy. **Impacts of Complying Development on the Environment** 'Deep soil area' in preference to 'Landscaped area' - to achieve retention of existing significant vegetation as well as long term establishment of new sustainable tree plantings, deep soil as a minimum area with minimum width (such as SEPP Seniors) should be a design standard on medium density developments as it is on apartment buildings. The 'landscaped area' definition under the Code SEPP and the Principal Standard LEP has a proposed minimum width of 1.5m however there is no minimum depth. The proposed medium density controls allow the entire site as basement with all landscape area as planters as little as 200mm soil depth with a slightly larger planter of 800mm soil depth at the front and back for a small and medium sized tree. Both 'deep soil area' and 'landscaped area' could be design standards for medium density developments, particularly where basements are likely, such as in terraces and townhouses, as used in SEPP Seniors. A portion of land which is subject to riparian and biodiversity provisions should not be considered suitable for Complying Development of any kind. It should not be dependent on a definition of "Environmentally sensitive land" or an "Ecologically sensitive area" to exclude these areas. Additionally, the provision for obtaining separate permit/approval for removal of trees prior to the issue of a CDC is extremely undesirable. By way of example, an appeal is currently under way surrounding the refusal of a DA for removal of four trees in order for the applicant to undertake construction of a Complying Development dwelling on a steep lot which is subject to both riparian and biodiversity mapping. When assessing such an application, Council is fettered in its assessment of impacts on the riparian and biodiversity values, replenishment planting and landscaping of the site not to mention a lack of arboricultural reasons for removal of the trees. Additionally, there is no certainty once DA consent is in place that the proposed CDC will be pursued. Complying Development should not extend to these sites and should not rely on attaining prior consent/permits for removal of healthy trees. It is believed that implementation of the proposed code SEPP will result in increased impact to our local biodiversity, including our urban forests. This continued direct and indirect impact to our urban forest reduces available habitat for both local and migratory species, leading intern to decreased species diversity, pollination, as well as a reduction in the Sydney's ability to adapt to climate

	change. In addition to values for flora and fauna, our urban forest also provides significant benefits to the human population, including: Reducing energy consumption - Urban forests and green spaces provide major economic benefits through shading buildings in summer, thereby reducing both the need to air conditioning and the costs associated with its use. Health benefits - Australia has the highest rate of skin cancer in the world. The major cause of skin cancer is exposure to UV radiation from the sun. Good-quality shade can reduce UV exposure by up to 75% (Cancer Council NSW. 2013, *Guidelines to Shade*, Cancer Council NSW, Sydney). Our urban forest provides the best form of natural shade and thereby provides clear health benefits within the LGA. Carbon storage and pollution - Our urban vegetation plays a vital role in ameliorating air pollution and greenhouse gases (including Carbon dioxide). Increasing property values and identity -The urban forest plays a role in defining Ku-ring-gai and enhances the areas aesthetics and consequently its property values. Studies have estimated that properties in tree-lined streets are valued around 30% higher than those in streets without trees (Sander H., Polansky S., Haight R.G., 2010. The value of urban tree cover: a hedonic property price model in Ramsey and Dakota, Minnesota, USA. Ecological Economics 69(8), 1646-4656) Reduce nutrient loads and stormwater - The urban forest (canopy and roots) influence the volume, quality and timing of stormwater flows and nutrient loads that end up in our creeks. Tree canopies reduce erosion, delay runoff; whilst healthy tree roots can absorb stormwater, and reduce its nitrogen, phosphorus and heavy metal content. Protection of this vital resource is paramount (particularly within an urban area). Development that fails to protect or simply seeks to replace these assets is simply contributing to the decline in our natural and human environments, as well as failing to maximise the financial benefits these assets provide. Our urban forests provide a value above simple replacement costs. Protecting our natural systems is often more cost-effective than technological substitutes or building new infrastructure. Replacement of trees is often a poor substitute for protection, due to the risk of failure to plant or plant survival, loss of genetic integrity as well as the loss of habitat (including irreplaceable mature habitat features such as hollows). Due to space constraints within the urban area, onsite replacement is often unachievable and would seldom be undertaken without appropriate planning provisions. The impacts and risks associated with the long term changes in weather due to climate change are strongly influenced by the characteristics of each location. In Ku-ring-gai the topography is one of deeply incised valleys, stabilised by forested slopes with ridge top urban development. In such an environment the potential risks associated with poorly planned development include impacts by bushfire, impacts by flash flooding, destabilisation of slopes, erosion, sedimentation, loss of canopy trees, vulnerability to storms and infrastructure failure. The extreme weather events most likely to impact and cause damage in Ku-ring-gai are: Storms - According to OEH, (2016) rainfall extremes and average rainfall is likely to increase but become more variable. Compounding the effect of this transition are the occurrence of east coast low (ECL) events can happen up to ten times per year and bring heavy rain and strong winds. OEH reports that climate change is likely to already be affecting the intensity, frequency and duration of these ECL events. As a result many NSW councils are already looking to upgrade stormwater drainage systems to cope with increase in flow volume and intensity. (OEH, 2016 Impacts of Climate Change – East Coast Lows, http://climatechange.environment.nsw.gov.au/Impacts-of-climate-change/East-Coast-Lows (accessed 21/11/16) If the land use planning system permits a poorly planned and controlled increase in impervious area in the three major catchments in Ku-ring-gai the result is a likely shift in the foreseeable risk of flash flooding and significant impacts occurring to both council and community assets. Controlling stormwater flows requires not only expensive, long term engineering retrofitting of stormwater infrastructure but also the retention vegetation cover particularly around the steeply sloping valleys. Loss of vegetation cover will almost certainly cause rapid and destabilising effect on soils and slopes in the landscape. The substantial costs associated with

	these impacts have the potential to motivate litigation against those decision makers who disregarded these foreseeable risks. Flash floods have caused considerable damage to infrastructure and homes in Ku-ring-gai in the past; increasing this risk will likely lead to loss of insurance cover and in turn see an increased demand on disaster recovery funding by council and the community. Heatwaves - Ku-ring-gai, like many other areas has an aging population. As people age they become more vulnerable to heat stress. Heat waves are recognised by the NSW Department of Health and the Red Cross as a major risk associated with climate change. Land use modifications, especially those that reduce the area of shade from the destruction of the tree canopy and reduce air flow across the region combine to increase not only daytime temperatures but more importantly night time temperatures. (http://climatechange.environment.nsw.gov.au/Impacts-of-climate-change/Heat, (accessed 22/11/16)) According to UNSW – Built Environment (2016) as the urban footprint increases in density the risk of creating urban heat islands rises accordingly. Transitioning to greater densities requires particular planning skills to ensure the risk of creating heat islands across an area is minimised. Ignoring this requirement once again creates a scenario of a significant increase in foreseeable risk of hospital admissions and deaths related to extreme heat events. Deaths that are preventable. OEH a, (2016) notes that heat waves kill more people than any other type of natural disaster. Other notable impacts of increasing heat emissivity particular at night include a rise in domestic and drunken violence, increase demand on the energy supply network, obesity and loss of amenity value. (UNSW – Built Environment, 2016 http://www.be.unsw.edu.au/events/multi-scale-research-urban-climate-sustainable-development (accessed 21/11/16)) **Development Contributions** The key issue for development contributions in extending the role of private certifiers in approving medium density development is ensuring that contributions conditions are accurately incorporated and paid. At present certifiers tend to put in a 'catch-all' condition in CDCs which basically says that if contributions apply they must be paid and leaving the onus on the applicant to liaise with council. Contributions relate to the size of the development and larger developments incur higher contributions. It is important that certifiers liaise with Councils and correctly advise their clients. It has been council's experience that this frequently does not happen with smaller scale development; extending the scope of complying development to medium density development, will create considerable issues with providing accurate advice to developers during assessment. Current Medium Density Zones & Private Certifiers - In Ku-ring-gai currently, R3 as well as R4 zones are generally located in close proximity to the local centres and are included in these catchments for the purposes of development contributions under the current s94 contributions plan. The Local Centres catchments have higher contributions that the lower density areas due to the infrastructure required by intensive redevelopment. Future Medium Density Zones - Scope for Council to investigate and plan for future medium density zones is preferred to the scenario of permitting medium density in lower residential areas on an ad hoc basis. Planning for future medium density areas permits Council to identify areas well served by public transport and local retail and commercial facilities and identify, cost and plan for future infrastructure requirements arising from co-located cumulative development. This planning process allows for a contributions plan to be updated, revised or drafted to cater for the increased demand concurrent with other strategic planning processes. Lower Density Zones - The extension of medium density to lower density zones encourages piecemeal development and inhibits the process of planning for the delivery of supporting infrastructure – and its funding. Infrastructure such as intersection upgrades and new parks and playgrounds will be particularly affected because they have the greatest reliance on close geographic nexus. Checklists and Graphics - Any checklists / graphics should also remind a planner or certifier that the Contributions Plan (CP) should be considered as well as the LEP and DCP.
1.1 (cont'd) **Medium Density Design**	The intention to deliver medium density development that is *well designed, respectful of the environment, and contribute positively to the existing built form (p7)* is supported in principle.

Guide	However, the proposed Development Standards and inability of local Council's to set principle development controls is not supported and will lead to very poor urban outcomes.
1.1 (cont'd) **Medium density housing as development application**	This section appears inconsistent with the *Steps For Preparing a Development Application if Council has adopted the Design Guide* in the MDDG. The Codes SEPP development standards override the LEP development standards and thus any applicable controls that sit in the body of the DCP (not within the DCP section on multi-dwelling housing) could not be applied if in conflict with achieving the Codes SEPP standards. This has critical impacts to controlling desired local urban character.
1.2 **Existing Provisions**	The traditional Development Application process considers appropriate subdivision planning. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. The ability to maintain trees on lots of 200m^2 is particularly limiting. Small trees have little impact on the storage of CO--$_2$. Australia's annual greenhouse gas emissions were estimated at 592 million tonnes and have been projected to increase to 690 million tonnes in 2020. It is critical that traditional forms of subdivision are not compromised to ensure that tree retention in the suburbs is maintained. Presently, approved developments can be Strata Subdivided. Strata subdivision ensures that maintenance of common property and that building facades are maintained in a common fashion. It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application. It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard.
1.3 **Proposed Development Types**	Particular concern is raised with respect to the proposal to enable the Torrens Title Subdivision of small lots and its impact on future generations. The *Environmental Planning and Assessment Act 1979* specify the objectives under Part 5 as: *(a) to encourage:* *(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,* *(ii) the promotion and co-ordination of the orderly and economic use and development of land,* *(iii) the protection, provision and co-ordination of communication and utility services,* *(iv) the provision of land for public purposes,* *(v) the provision and co-ordination of community services and facilities, and* *(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and* *(vii) ecologically sustainable development, and* *(viii) the provision and maintenance of affordable housing, and* *(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

	(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment. In this regard, the provision of the SEPP must ensure that development is properly managed with the assurance of co-ordinating orderly and economic use of development land. Essentially, the SEPP must also ensure that development is ecologically sustainable; and, provide an appropriate level of public involvement and participation in environmental planning and assessment. It would appear that the current provisions as proposed would not meet these objectives. The definition of ecologically sustainable development under the *EP&A Act 1979* is derived from Part 6 (2) of the *Protection of the Environment Administration Act 1991*. Concern is particularly raised with respect to intergenerational equity with respect subdivision plans. The redevelopment of 200m^2 allotments under Torrens Title is likely to place significant pressures on the future redevelopment of sites within the next 40 to 60 years. We are only now seeing the implications of previously subdivided terrace housing and attached semi's in Sydney. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space. The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same light. Further concern is raised with respect to the redevelopment of the created small lots potentially approved under this scheme. Ironically, under the proposed controls, the redevelopment of a site approved for such development would not be able to be re-developed in the event of a fire or demolition under the very controls which approved the development in the first instance. Setback controls to the existing boundaries would prohibitively restrict the redevelopment of the site to achieve compliance. Lot amalgamation to redevelop urban areas is an expensive exercise. The Strata Act was changed to enable Strata Plans to be redeveloped even where not all owners are in agreement. All three proposed development types must include the requirement for each dwelling to have a frontage to a Public Road. The ambiguity and successful court cases can deliver outcomes that appear unintended through this instrument. The Development Standards at Part 3 in the MDH Codes SEPP are inconsistent regarding frontage each dwelling to a Public Road. Medium Density Housing types **-** Ku-ring-gai supports the inclusion of only 3 of the types advocated in the MDDG. 1 Two Dwellings Side-by-Side – single driveway for each dwelling, both addressing a **public** street with new definition of 'frontage' (as previously identified). 2 Terrace Houses - **only** where a **pubic rear lane** is provided for car parking. 3 Multi-dwelling Housing - **only** where basement car parking is provided (more than 4 dwellings or FSR is around 0.7:1) (terrace/row type or townhouse). NOTE: Manor Houses are a potentially positive type that could be used in Ku-ring-gai but should only be permitted in R4 zones and managed under local development controls. Manor Houses fall between SEPP 65 /ADG, and Medium Density Housing so require special consideration. They are a BCA Class 2 type that presents complex fire safety compliance issues under the proposed setback standards. They are unsuitable for assessment via a CDC pathway or design by an unqualified person. No medium density housing types that result in internal roads and large areas of hard stand internal to a site should be advocated or permitted.

	Appendix 5 is very unhelpful. It includes a confusion of medium density types with ranges of development controls all with vastly different outcomes within the one type. Many of the types comprise a mix between poor exemplars, confused development standards (Torrens and strata titling issue) inconsistent with proposed development a) Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing. b) Delete all maladaptive housing types that prioritise vehicles over pedestrians, and/or landscape and/or result in large areas of hard stand. c) Structure the document similarly to the Apartment Design Guide d) The ADG contains all the required amenity standards, which can be easily transferred to medium density housing. e) Retain independent, well-governed, and accountable assessment through local councils and their qualified consultants. Development controls poorly manage outcomes between Torrens titles and strata title development. A 'lot' for strata and Torrens title means two different things (or can do). The minimum lot sizes therefore must be consistent and differentiate whether they apply to Torrens title (land size) or dwelling /car parking of strata title. Many of the site requirements and development standards are inconsistently referenced and it is unclear whether the controls relate to the parent lot or completed subdivision. **Recommendations:** a) Test, and amend wording, and categories of development standards that are consistent with desired strata or Torrens title outcomes.
1.4 **The Role of the Design Guide**	*The Medium Density Design Guide (MDDG) will supplement the complying development standards. The purpose is to provide a resource to improve the planning and design of medium density housing by providing benchmarks for designing and assessing these developments.* In its current state the MDDG is inconsistent and unachievable particularly through the Complying Development route. The design criteria do not deliver the intentions stated in the Design Principles and there is no clear way for an unqualified private certifier to make merit assessments around how those Principles have been achieved or how a development complies with the Design Guidance. *The MDDG has been developed to:* *- deliver quality design for housing that responds appropriately to the character of the area, landscape setting and surrounding context.* *- improve liveability through enhanced internal and external amenity ensuring functional room sizes, solar access, privacy and natural ventilation.* *- provide options for well-designed houses that are connected to existing communities and infrastructure.* *- improve neighbourhood streetscape* *- enable diversity in built form.* The development outcomes stated in the MDDG do not respond appropriately to the character, landscape setting and surrounding context of established areas, such as Ku-ring-gai. The outcomes that will be delivered through Complying Development and its 'fast tracked' process alongside unqualified designers and private certifiers will not enable broader considerations including how the development will be connected to existing communities and infrastructure. In fact, these developments will not be integrated with

	local infrastructure and will place a burden on Council who will have to facilitate the lack of integration and assimilation. These developments will not improve neighbourhood streetscapes in high quality, established areas as the Development Standards are in direct contrast with existing provisions, particularly for an area like Ku-ring-gai which has developed a suite of fine grain planning documents to make sure all typology of development is delivered in a manner that is integrated into the local character and that responds to state wide policies on environmental, social and economic issues. **Tools for Local Councils, Planning and Urban Design Professionals** *The MDDG has been prepared to be used by local councils, planning and urban design professionals to assist with the strategic planning and preparation of local controls to create successful communities.* Given that the MDDG wipes out key Development Standards in established local areas and does not operate from a strategic planning level, considering long term generation impacts, it is highly unlikely that the MDDG will contribute to the creation of successful communities. **Tools for Designers and Applicants** *The MDDG provides further explanation of the development standards under complying development, and guidance on the finer design details of the development that lead good design outcomes and liveable housing.* In its current state, the MDDG does not provide guidance on the finer design details and will not lead to good design outcomes This is because it relies on the most part on merit assessment to achieve fine design, but there is no requirement for registered architects to deliver the design or for qualified town planning professionals to under merit assessment. **Using the Design Guide for Complying Development** A private certifier with no town planning degree qualifications will not have the knowledge or expertise to check that the design verification statement (produced by architecturally unqualified applicants) and will simply accept and 'tick the box' on its content.
1.5 Permissibility	Clause 1.18 of the Codes SEPP will apply to the new Medium Density Complying Development Code – which outlines that to be considered complying development the development type must be permissible on the subject site under the LEP zoning. This is supported and resolves some of the major objections raised in the previous submission however it is understood that this is still a concern for many other parts of Sydney which permit medium density development types within low density R2 zones. Whilst it is noted that Clause 1.18 of the Codes SEPP will apply to the medium density development types, there is an ambiguous point in the "key considerations" for Manor Houses on page 195 of the MDDG which states that they are allowed on land zoned for low and medium density residential development. The notes on page 16 of the Explanation of Intended Effects qualify that a Manor House will be allowed as Complying Development on any land where multi-dwelling housing is permitted. Would there realistically be many instances where Councils allow multi-dwelling housing within the R2 zoning and, if not, should the reference to low density zonings in the "key considerations" be omitted?
1.6 Subdivision	It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application. It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space.

	The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same light. **The Opportunity** *Most local environmental plans have standards such as minimum lot size and minimum lot width that apply to sites where medium density is permissible. These are often large and reflect the size of traditional detached dwelling houses with large gardens – even in areas zoned for medium density housing.* The current exhibited documents downplay the impacts that will result by relating the outcomes of the proposed medium density complying development types to the existing single dwelling complying development type based on the final outcomes of a single dwelling on a single 200sqm lot and the height limits of 2 storey plus attic as might be found in a single dwelling complying development. There is no regard to the fact that medium density deals with housing multiples possible across many sites at the same time and as a result creating impacts are cumulative, high intensity and generational. **If it looks like Torrens Title it Should be** *The complying development proposed for medium density housing will result in the dwelling have a frontage to a public road. Therefore, the multi-dwelling housing will essentially look like a terrace house. If there is no common area there is no need for it be strata titled.* No consideration has been given to how the creation of Torrens Title Single Dwellings, initially developed as Multi-Dwelling housing will alter the permissibility of the development within the zone and change of the status of the land. Common areas in Multi-dwelling housing is essential in established areas such as Ku-ring-gai as it provides provision for the deep soil landscaping to house the planting, including canopy trees which are integral to the character of the area and which are fundamental to preserving generational impacts on the environment and protection of sustainable communities into the future. **Solutions for Complying Development** Under no circumstances should Torrens Title Subdivision be enabled through Complying Development on Multi-dwelling sites. It is only acceptable on Dual Occupancy sites. Sydney is seeing a swathe of problems where individual terrace houses are being demolished or modified to the detriment of adjacent properties. In addition, changing the status to medium density to low density single housing on a single lot opens the pathway for single dwelling complying development to be conducted on each individual lot. No indication has been to how dual occupancy sites will be prevented from re-subdividing in the future. **Recommendation for Efficient State Wide Consistency** *The standard minimum size of lots has generally been formulated on the basis of a conventional subdivision for a single dwelling.* No evidence has been provided to justify this statement. Subdivision patterns vary from area to area, and within Ku-ring-gai the requirements are far higher, than stipulated here. In addition, it is inappropriate to compare a Single Dwelling to a Multi-dwelling development, because Multi-dwelling development deals with multiples of dwellings, whereas Single Dwellings deal with single dwellings, at no time will a Multi-dwelling housing development comprise one single dwelling. Therefore this comparison and justification is flawed. **Concurrent Consent For Dwelling and Subdivision** It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application.

	It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space. The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same light. It is essential that roof stormwater capture and disposal for each dual occupancy and multi-dwelling housing is independent prior to supporting a Torrens title subdivision in order to avoid messy 88b instruments implications on the roofs of each dwelling which will inhibit future redevelopment of each dwelling, especially if a storey is added to one dwelling. Further, each dwelling should be designed to be structurally independent of the other so it could be intensified without requiring structural works to be undertaken on the party wall and/or to the remainder of the dwelling not part of the future development. Future re-development in R3 Medium Density Residential Zones- The R3 zone is typically located at a transitional zone to R4 and it is capable of accommodating a large proportion of the population, now and in the future. By allowing Torrens title subdivisions in the R3 zone you are stifling the ability to consolidate sites for future redevelopment in the medium to long term by making it difficult for developers to achieve large enough area to develop at a future desired density.
1.6 (cont'd) **Recommendation for efficient State wide consistency**	In principle, state wide consistency is encouraged, however it is highly unrealistic to expect that a 'one size fits all 'will result in good outcomes across the state. The content of the draft standards, and implementation of this policy through Complying Development is so deeply flawed, it will have a devastating impact on existing suburban subdivisions and the considered orderly development of precious resources which many state policies seek to preserve. This proposal fails to coordinate with federal and other state government policies around city planning and place making. The only obvious driver for the policy is to speed up the approval process. This may have validity as the planning process currently can be excessively cumbersome. The problem arises because of the structure of the document and delivery through Complying Development, and the structure of the development standards. The merit in application of the Medium Density Housing Code (MDH Codes SEPP) will be in new subdivisions on greenfield sites in where the Code can play an important role in increasing density in a controlled and strategic way. With a developer considering sub-division beyond a single site, and integrating the public domain layout – street network, public parks and open spaces. The street layout is critical for establishing a subdivision configuration that will maximise the benefits of the proposed MDH Codes SEPP. The MDH Codes SEPP will fail without specific street layouts and subdivision patterns that suit the typologies and that integrate the new housing into its local amenity provisions. By contrast, implementation of MDH Codes SEPP in existing subdivisions will be ad hoc and randomised. This fails in the first principles of strategic city planning. This is contrary to Federal Government policy, the Greater Sydney Planning Committee charter and many of the NSW State government's other planning instruments. Within established area, such as Ku-ring-gai, the imposition of the MDH Codes SEPP development and sub-division that is unable to successfully integrate into an established neighbourhood and infrastructure unless fine grain site analysis, development integration and management of local and wider impacts can be undertaken.

The effect will be to devastate all suburban areas (similar to the demonstrated medium density failure of SREP12 and SEPP 25 that resulted in their repeal approximately 7 years after implementation). Historical evidence indicates around 92% of development of dual occupancy and granny flats under SEPP 25 was speculative (*The Perils of Urban Consolidation*, *Patrick Troy, 1996, cit. Urban Scrawl, 1994)* the impact of the typology on local communities was a demonstrated failure causing its repeal some seven years after its introduction.

The reality of the controls being advocated may be seen in the following figures:

As-built Two Dwellings Detached

Multi-Dwelling Housing – Row Housing As-built back to back with minimum setbacks

Large-scale, long-term impact on the environment of standardised and inadequate setbacks and landscape controls

The MDH Codes SEPP will only work in existing suburban subdivisions where ***all*** of the following existing conditions are present:

1. Street and laneway pattern with high levels of pedestrian amenity and reservation width of primary streets sufficient for canopy street tree planting
2. High quality public domain – parks and open spaces in close walking distance to areas where these developments can occur
3. Public transport infrastructure within walking distance of the developments
4. Local services and amenities to support increased density
5. Established subdivision pattern compatible with the proposed Development Standards.

The fact is there are very few areas of the existing urban and suburban areas of NSW that meet any, many, or all of these basic requirements.

Therefore, the result will be that the State will be presiding over a randomised, as hoc application of a policy with no strategic basis other than reducing approval time.

	It is critical that increasing density within the 'missing middle' be applied thoughtfully and strategically. Local Councils need to be given the tools to implement increased densities but done in such a way that responds to the vastly different urban conditions – topography, infrastructure, street layout and public domain networks, subdivision patterns – of their LGA. The economics in Ku-ring-gai should be further investigated to confirm whether there is economic viability of the medium density types that would be most compatible with Ku-ring-gai's urban character (Side-by-Side houses or Manor Houses). Poor design quality in a bid to cut costs would be an unacceptable outcome for the locality of the city and NSW. The KLEP's do not include this model provision - Clause 4.1B Minimum lot sizes for dual occupancy multi- dwelling housing and residential flat buildings Of great concern is the ambiguity around permissibility of all MDH types in the various zones, particularly within R2 zones. Whilst the *SEPP (Exempt and Complying Development Codes) 2008* 1.18 states that the development types will be permissible only where stated within the Local LEP, the lack of clarity and inconsistency of definitions between the Codes SEPP and the Standard Instrument LEP (replicated in Ku-ring-gai's LEPs) provide the opportunity to override LEP definitions with SEPP definitions, and make development types permissible in zones where they are not supported through the local LEPs. For example, the interpretation of the Standard Instrument LEP definition of 'dwelling house' as *'a building containing only one dwelling'* implies detached dwelling in one existing lot. It does not mean detached single houses or dwellings stacked on top of each other in strata title, or a row of dwellings abutting each other in strata title or Torrens Title. The danger is that row housing, terrace housing, townhouses are consistent with the definition of a 'dwelling house' under the Codes SEPP and therefore can override the LEP and what is permitted in R2 Zones. Therefore it is imperative the SEPP definitions align with the SI LEP definitions. In addition, as the walls are attached but not shared, see *Figure 2: Options for Subdivision* p18, there is concern about the dwellings being developed as medium density development, yet being vested single dwelling status through the proposed Torrens Title sub-division that can form part of the Complying Development application: Multi-dwellings of any type must only operate under Strata Title to ensure any future demolitions, alterations and additions are conducted in a holistic manner across the entire multi-dwelling site; further Strata Title will ensure the status of the land remains 'multi-dwelling' and not change to "single dwelling" status with individual Torrens Title dwellings. This change in status also then opens the avenue for those individual lots to utilise single dwelling complying development to make changes that may not be congruent with the original multi dwelling development. The figure below illustrates the worst possible outcomes now being seen across Sydney where individual Torrens Title developments have exerted their right to demolish or rebuild regardless of the impacts on adjacent properties.

Example of outcomes now being seen across Sydney where individual Torrens Title developments have exerted their right to demolish or rebuild regardless of the impacts on adjacent properties. The inclusion of Torrens Title subdivision for medium density housing through the complying development route will result in more of these type of long term issues which will have generational impacts on Sydney and NSW.

Villa typologies have been a disastrous type as illustrated in the below figure and should be omitted in all their forms unless internal driveways are fully designed public streets.

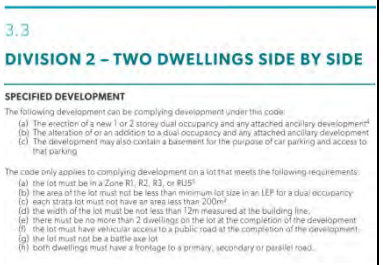
Example of Villa typology. Large-scale, long-term impacts on the environment of standardised and inadequate setbacks and landscape controls.

The proposed development standards under the MDHC Code will effectively destroy Ku-ring-gai's established urban character that is defined by buildings within a landscaped garden setting with large canopy trees supported by deep soil provision.

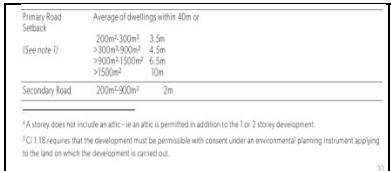
Concurrent consent for dwelling and subdivision	Sub-division of Complying Development for medium density housing stands to detrimentally alter the fabric of large swathes of Ku-ring-gai.
2.0 DETAILED DESIGN	
2.1 **Design Principles**	The design principles listed in the MDH Codes SEPP are not aligned with the proposed development standards. There are numerous inconsistencies. The fundamental issue is that the proposed standards are suited to the highly urbanised ring of suburbs within a 5-10km radius of Sydney's city centre. They are not unsuitable for outer ring suburbs where randomised implementation will occur that is not coordinated with local planning strategies, nor will they enable high quality development. The delivery of single dwelling through Complying Development has resulted in a lower standard of built form in Ku-ring-gai, with dwellings having little or no relationship to the site, to the street, or to the neighbourhood character and do not reinforce the fundamental long-term or future desired character of Ku-ring-gai which is built form within a deep soil landscaped garden setting including canopy trees. The result is that buildings lack innovation and are poor contributors to existing high quality streetscapes within Ku-ring-gai. Below is an example of two dwellings recently developed with very different outcomes for the streetscape.

	 **Complying development delivery** – poor connection/integration of built form with the site itself, and lack of contribution to streetscape and Ku-ring-gai's character of built form within a deep soil landscaped garden setting including canopy trees.  **DA Delivery** – dwelling integrated into the site and in relation to neighbouring dwellings. Considered architectural treatment of elevations contribute to high quality streetscape character. Inclusion and retention of existing and new canopy trees to front and rear setbacks respects the overall Ku-ring-gai character of built form within a deep soil landscaped garden setting including canopy trees.
2.2 **Torrens Vs Strata Titling**	The intended move towards Torrens Title will impact on Council's DCP controls for all setback zones to be primarily in common ownership. Common ownership of setback areas and recreation areas on a medium density site ensures the retention of deep soil landscapes and the associated layered landscaping and tall tree provision that is typical of Ku-ring-gai's garden visual setting to all building typologies. Subdivision has been demonstrated to impact on the long-term quality of the landscape character because the land falls into the control of each owner who can choose to maintain or remove planting within what becomes their private garden. The proposed types, size of allotments, and development standards in combination with landscape control being privatised, will all have a detrimental impact on the deep soil landscape character of Ku-ring-gai, particularly from the cumulative impacts of this development.
2.3 **Two Dwellings Side by Side**	Ku-ring-gai Council does not permit dual occupancy development anywhere in the LGA. This housing typology is not consistent with the area's large lot subdivision pattern (minimum 930sqm under the KLEPs) nor the character of large style houses within a landscaped garden setting. However, there are certain sites within Ku-ring-gai which retain dual occupancy status under Schedule 1 of the KLEPs. These sites were generally a direct translation from the KPSO. The DCP integrates and manages denser dual occupancy buildings into the established areas typically through standards around setbacks, building separation and The type could work well in Ku-ring-gai only where council retains control of FSR, building height, site coverage, and landscape standards. If this is achieved, the scale and appearance of this type of development would be able to integrate into established R2 zoned areas. Consideration of impacts on adjoining properties is an important requirement.
2.4	The intended application is restricted to R3 development. However, this is not reflected in the examples in *Appendix 5 Recommended Principle Controls for Different Types* of the *Medium Density Design Guide,* which recommends <u>all</u> types be

Multi-Dwelling Terraces (3+ dwellings side by side)	implemented in low and medium density zones. This will lead to a state-wide planning failure of uncoordinated poorly implemented R3 types into sprawling R2 zones due to technical loopholes created in the MDH Codes SEPP and documents.
2.5 **Manor Houses and Dual Occupancies where a Dwelling is Above or Below Another**	This type is supported in principle as being suitable for R2 zones. NOTE: Dual occupancies in the rear yards of existing detached houses present a poor landscape outcome in Ku-ring-gai because of the permitted loss of canopy trees that define Ku-ring-gai's 'green' urban character. This is also inconsistent with the new DCP Multi-dwelling Housing that clearly intends the internal site character to include deep soil areas to break up the domination of strata'd fencing (that would be made worse with Torrens subdivision).
3.0 DEVELOPMENT STANDARDS	
3.1 **Background**	No comment
3.2 **Medium Density Housing Code**	There is no information about what would comprise *Division 5: Tertiary Development Standards* See Appendix 1 for detailed Division 2, Division 3 and Division 4 comments. **General comments on the proposed Development Standards** Controls need to be tested before they are ready for public comment. Local council strategic planning will be overridden. Local council principal LEP development controls will be overridden. Local council DCP controls will be overridden. Outcome to urban character likely to be worse than under SEPP Seniors and People with a Disability, SEPP ARH for boarding houses. The economics in Ku-ring-gai should be further investigated as to the economic viability of the medium density types that would be most compatible with Ku-ring-gai's urban character (Side-by-Side houses or Manor Houses) due to high land and housing prices, and construction costs. Fast track delivery will not result in affordable housing prices. Ku-ring-gai is a highly desirable locality and is seeing large scale overseas buy up of development sites. The wording and structure of the draft Development Standards is inconsistent, lacks clarity around whether FSR and lot sizes provisions are for the parent lot or the new subdivided allotments. This has major implications to urban character depending on the interpretation. The *Recommended principal development controls for different types* at Appendix 5 of the MDDG are largely non-compliant with the draft Development Standards for FSR and lot sizes, and contain images that do not represent the proposed controls (superior outcome to what the Standards permit). If we assume the FSRs are for the *subdivided* allotment, in the Ku-ring-gai context for a lot complying with Ku-ring-gai's minimum lot size (>500m2), proposed FSR is 2 to 3 times more (0.6:1) than existing KLEP 2015 controls for R2 zones (0.2 to 0.3:1 generally)**.** Minimum landscape at 35% does not include a provision for deep soil to ensure meaningful landscape plants can occur. The MDH Codes SEPP appears to override council landscape controls although section 2C of the MDDG states *Landscaped area is best controlled in the LEP for low and medium density development where it can effectively preserve the landscaped character.* There are no site coverage controls to maximise area available for landscaping and ensure the 'landscape' and 'deep soil' definitions are consistent with the Codes SEPP definition (Note: all hard paved areas are excluded from landscape and there is no

	requirement for deep soil).
3.3 **Two Dwellings Side by Side**  3.3 DIVISION 2 – TWO DWELLINGS SIDE BY SIDE SPECIFIED DEVELOPMENT The following development can be complying development under this code: (a) The erection of a new 1 or 2 storey dual occupancy and any attached ancillary development[2] (b) The alteration of or an addition to a dual occupancy and any attached ancillary development (c) The development may also contain a basement for the purpose of car parking and access to that parking. The code only applies to complying development on a lot that meets the following requirements: (a) the lot must be in a Zone R1, R2, R3, or IRU5[3] (b) the area of the lot must not be less than minimum lot size in an LEP for a dual occupancy (c) each strata lot must not have an area less than 200m² (d) the width of the lot must be not less than 12m measured at the building line, (e) there must be no more than 2 dwellings on the lot at the completion of the development (f) the lot must have vehicular access to a public road at the completion of the development. (g) the lot must not be a battle axe lot (h) both dwellings must have a frontage to a primary, secondary or parallel road..	Complying development must not be permitted on lots that are adjacent, or are on opposite sides of the road, to HIs and/or HCAs. Attic rooms must only be permitted where they can provide good dormer windows. Design Guidelines must be provided to guide attic development, particularly design and location of dormer windows. Skylights must not be allowed as the primary light source within a habitable room in an attic. The Development Standards must state that a skylight is not permitted. a) R1, R2 and R3 zone (isolated sites) appropriate for this type. Ku-ring-gai has one (1) area Zoned R1. This is subject to site specific Master Plans, which therefore coordinate the broad range of permitted housing types within a specific major development precinct. These should be amended to read: *(a) the lot must be in a Zone R1, R2, R3 or R4 but **not permitted** on sites that have been Master-planned for specific outcomes* b) KLEP nominated Schedule 1 properties permitting dual occupancy has a minimum lot size of 550m2 - see comments for Division 4). KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP. Retaining local control of minimum lot size will be critical in retaining Ku-ring-gai's urban character. c) Lots of 200sqm would significantly change existing subdivision pattern of all Ku-ring-gai R2 zones. It is more compatible with R3 zone character. However, this type of development is unlikely to be taken up in R3 zone due to lower FSR than multi-dwelling housing currently permits. The MDH Codes SEPP places no control on future sub-division of each 550sqm dual occupancy site within Ku-ring-gai to be further sub-divided into two (2) further lots of minimum 200sqm as permitted in this MDH Codes SEPP. d) Ku-ring-gai's KLEP4.1(3A) min lot width of 18m. This conflicts with the MDH Codes SEPP (12m). The MDH Codes SEPP min. width assumes rear lane access which generally does not exist in Ku-ring-gai. MDDG Appendix 5 example recommends min 15m lot width for sites where garages face street and is thus inconsistent with the proposed Standard. In addition, the 18m frontage for dual occupancy enables the built form to be integrated into the local single dwelling context of buildings in a garden setting with landscapes to all setbacks. The clause should be amended to read: *(d)The width of the lot must not be less than 15m measured at the building line or as stated in the Local LEP, whichever is the greater.* e) Supported f) Supported g) Supported h) Supported
SUMMARY OF DEVELOPMENT STANDARDS TABLE 4: DEVELOPMENT STANDARDS STANDARD SUMMARY DEVELOPMENT STANDARDS PRINCIPAL DEVELOPMENT STANDARDS Maximum Height of Building: Dwelling with frontage to a primary, secondary or parallel road- 8.5m Maximum FSR (for each lot): 200-300m² 0.75:1; >300m²-400m² 0.70:1; >400m²-500m² 0.65:1; >500m² 0.60:1	**Height:** Supported. It is unclear why the statement includes reference to street frontage relating to height when Site Requirement (h) is that *both* dwellings must have a street frontage. The statement should clarify where height is measured and read: *Dwelling with frontage to a primary, secondary, parallel road- 8.5m from natural ground line.* Concerns Regarding Impact on HIs and HCAs - in the event the development is adjacent to a HI or HCA, the heights of proposed buildings should be the same or lower than the adjacent HI or HCA. **FSR:**

	The FSR ratio control of ratio control of 0.6-0.75:1 is excessive for R2 zoned land and is likely to result in large dwellings that will not provide an affordable housing option. In Ku-ring-gai there is R2 zoned land on which dual occupancy is permitted to a maximum floor space ratio of 0.4:1. The gross floor area of an attached dual occupancy on a 900m2 allotment would be 585m2 under the proposed medium density code and 360m2 under the Ku-ring-gai LEP. At all times the maximum gross floor area should be that specified in the LEP that applies to the land. If there is no floor space ratio control in an LEP the maximum floor area should be that specified for dwelling houses in the General Housing Code (whichever is higher). FSR is less than the 0.8:1 that generally applies to R3 zones in Ku-ring-gai. The proposed 0.6:1 FSR would permit GFA of 360m2 on a 600m2 site, 330m2 on a 550m2 site which is double to triple the current KLEP density. Ku-ring-gai policies seek to encourage a balanced integration of built upon area and deep soil landscaped areas on every site to avoid overdevelopment due to inadequate site coverage controls that result in loss of landscape that we see typically occurring in Sydney's new subdivisions. Loss of deep soil landscaping results in increased heat emissions, increased reliance on artificial cooling systems, loss of soil integrity and denudation during rainfall events, loss of canopy trees and substantial vegetation, including threatened species, due to cut and fill around root balls and loss of soil from increased poorly managed stormwater runoff. The MDH Codes SEPP should encourage larger green garden areas and keep them in communal areas to preserve their long term integrity, and encourage smaller dwelling sizes to sit within those gardens for this typology – otherwise there is little to differentiate the typology from an apartment building which also has limited external garden area allocated to each unit, but worse than the apartment building in that there is no provision for open communal areas within the development as there is for apartments in most Council areas. This would also avoid the increased demand for air-conditioning and energy generally. The MDH Codes SEPP document contradicts itself. On the one hand it is setting principal development standards that override Council's LEP while on the other stating the MDH Codes SEPP is not intended to override Councils' strategic planning. Setting FSR effectively overrides LEP standards which contradicts the stated intention of the Codes SEPP at p7, 8. Implications of the proposed FSRs mean that the scale of buildings in the Ku-ring-gai R2 context will be double to triple those currently permitted. Two 330m2 side-by-side dwellings will have a significant impact on the streetscape and appear as an anomaly in the established setting, particularly as the Complying Development route will not facilitate any negotiation of integrating into the existing high quality fabric of the area. The FSR as proposed is diametrically opposed to the Federal Government's 'Green Cities' policy (announced 01/2016 by Minister Greg Hunt… *"cities with high levels of trees, foliage and green spaces — provide enormous benefits to their residents. Increasing urban canopy coverage decreases heat, which improves health and quality of life.*
Minimum Landscaped Area (for each lot): 200m²-300m² 20%; >300m²-400m² 25%; >400m²-500m² 30%; >500m² 35% (Min width 1.5m) Landscaped area forward of building line.: 25% minimum	Landscape: The landscaped area requirement of 25% in front of the building line is very low and is unlikely to reflect the character of existing streetscapes in R3 zones. This requirement should be increased to 50%, to match the control in the General Housing Code that applies to sites which have a frontage of more than 18m. The proposed 35% assuming Council retains control of min lot size will have a significant impact on R2 zone due to the overriding FSR controls being x2 to x3 more density on smaller sites. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 25% landscaped area forward of the building line will not be sufficient and will not relate to the traditional garden setting of HIs and/or HCA. An increase in front setback landscape area is necessary to provide amenity to the HI and/or HCA to maintain the visual integrity of the HI and/or HCA.



Primary Road Setback	Average of dwellings within 40m or	
(See note 1)	200m²-300m²	3.5m
	>300m²-900m²	4.5m
	>900m²-1500m²	6.5m
	>1500m²	10m
Secondary Road	200m²-900m²	2m

[1] A storey does not include an attic – ie an attic is permitted in addition to the 1 or 2 storey development.

[2] Cl 1.18 requires that the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.

Primary Road Setbacks:

This control should refer to existing buildings rather than dwellings, as unlike R2 zoned sites, sites zoned R3 may not be adjacent to dwellings.

Proposed 10m (assuming sites >500m2) also permits a further encroachment of 1.5m articulation zone.

It is important that the standard retains the provision for existing building lines of neighbouring dwellings to set the street setback. However, the Standard appears to be worded as a choice of: *Average of dwellings within 40m* ***or*** the nominated minimums. Therefore, this is likely to be tested through a court appeal process given the lesser range 3.5m to 6.5m proposed would be more attractive to maximise FSR.

The proposed minimum setbacks to the primary road will significantly alter the existing deep soil landscape character of Ku-ring-gai, and therefore this clause should read:

Primary Road Setback: Average of dwelling within 40m or

200m^2-300m^2 3.5m

>30mm^2 – 900m^2 4.5m

>900m^2-1500m^2 6.5m

>1500m^2 10m

Whichever is the greater

Concerns Regarding Impact on HIs and HCAs:

In the event the development is adjacent to a HI or HCA, the front setbacks should be in line or behind adjacent HI and/or HCA. The proposed first floor level should be well set back from the front building line and the proposed front boundary fences should not exceed the height of adjacent fences of the HI and/or HCA.

Road Setbacks: Existing streetscape character offers protection for retaining Ku-ring-gai's quality streetscape character of built form within landscape garden settings that include substantial vegetation.

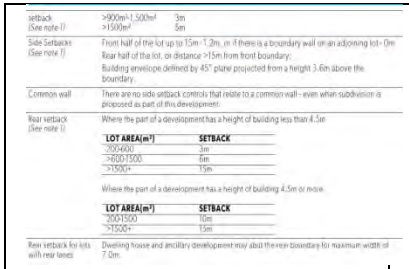
Controls proposed in the MDH Codes SEPP will have a detrimental effect on achieving adequate landscape in the rear of side-by-side dwellings (see also comments Division 4 on impacts from rear subdivisions to dual occupancy).

The MDH Codes SEPP provisions are generally diametrically opposed to Federal Government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments.

Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state.

http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx

http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening



setback (See note 1)	>900m²-1,500m² 3m >1500m² 5m
Side Setbacks (See note 1)	Front half of the lot up to 15m - 1.2m, or if there is a boundary wall on an adjoining lot - 0m Rear half of the lot, or distance >15m from front boundary: Building envelope defined by 45° plane projected from a height 3.6m above the boundary.
Common wall	There are no side setback controls that relate to a common wall - even when subdivision is proposed as part of this development.
Rear setback (See note 1)	Where the part of a development has a height of building less than 4.5m

LOT AREA(m²)	SETBACK
200-600	3m
>600-1500	6m
>1500+	15m

Where the part of a development has a height of building 4.5m or more

LOT AREA(m²)	SETBACK
200-1500	10m
>1500+	15m

Rear setback for lots with rear lanes	Dwelling house and ancillary development may abut the rear boundary for maximum width of 7.0m.

Side setback: A greater side setback (2m) should be stipulated for 2 storey buildings. This will ensure deep soil planting to side boundaries consistent with R2 Zoned development in Ku-ring-gai.

Concerns Regarding Impact on HIs and HCAs:

In the event the development is adjacent to a HI or HCA, the proposed 1.2m side setback for the lot will encroach on the visual curtilage of HIs and HCAs and should be increased.

Rear setback: Codes SEPP is more consistent with Ku-ring-gai's R3 controls, but will have detrimental impact on R2 zones in Ku-ring-gai that generally require 12m setback irrespective of building height while Codes SEPP will permit 3m for height <4.5m and 10m for height >4.5m.

A very poor landscape outcome will be achieved with the 3m setback for both R3 and R2 zones. In context, this would achieve a worse outcome than SEPP Seniors or People with a Disability. The proposed setback does not take into account whether or not a rear lane is present to provide building separation for visual and acoustic privacy, outlook, daylight access, does not consider internal layout and location of living areas for separations, and will not achieve Ku-ring-gai's landscape character.

However, Ku-ring-gai's subdivision pattern provides some protection providing the KLEP 2015 can control the lot size and configuration.

Concerns Regarding Impact on HIs and HCAs:

In the event the development is adjacent to a HI or HCA, the proposed rear setbacks will not be sufficient and will encroach on HIs and/or HCAs. A landscaped buffer is required to separate the proposed building from the established garden setting of the HI and/or HCA.

These provisions are diametrically opposed to Federal government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments.

Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state.

http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx

http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening

DESIGN STANDARDS

Design Criteria — The development must comply with the design criteria listed in Part 3.1 of the Medium Density Design Guide.

A design verification statement is required to be provided by the person who designed the development that provides evidence of compliance with the design criteria.

A template for the design statement is provided in the appendix to the guide.

Note:
1. The current exceptions to setbacks will still apply.
2. Existing provisions with respect to tree removal, bushfire prone land and flood affected land will continue to apply.
3. Existing provisions for vehicle access will still apply.

Overall amenity falls to the Design Guide. The current wording and structure of Division 2 (see screen shot to left) then captures the Design Criteria of the MDDG as "Design Standards". However, the preamble of the MDDG clearly states its intended use to be as a 'tool' and does not define it in terms of providing 'development standards'. This leaves a grey area as to its status. All references to *"the person who designed the development"* must be amended to read: *"the registered architect."* This will ensure some quality and innovation in the outcomes of medium density housing. Otherwise, the outcomes will be the result of plans which seek to fit the maximum on the site, and elements that are determined by the plan layout and as an afterthought rather than the architectural consideration of elevational treatment.

3.4 **Multi-Dwelling Housing (Terraces)**	Complying development must not be permitted on lots that are adjacent, or are on opposite sides of the road, to HIs and/or HCAs. Attic rooms must only be permitted where they can provide good dormer windows. Design Guidelines must be provided to guide attic development, particularly design and location of dormer windows. Skylights must not be allowed as the primary light source within a habitable room in an attic. The Development Standards must state that a skylight is not permitted. Comments on Specified Development: The Standards nominate 1 or 2 storey development. This is inconsistent with MDDG Appendix 5 Recommended Principal Controls – Terrace Houses that recommends 3 storeys with height of 10m.

3.4

DIVISION 3 – MULTI-DWELLING HOUSING (TERRACES)

Specified development

The following development can be complying development under this code:

(a) The erection of a new 1 or 2 storey multi-dwelling housing (terraces) development and any attached ancillary development[2]

(b) The alteration of or an addition to a multi-dwelling housing (terraces) development and any attached ancillary development

(c) The development may also contain a basement for the purpose of car parking and access to that parking

The code only applies to complying development on a lot that meets the following requirements:

(a) the lot must be in a Zone R1, R2, R3, or RU5[3]

(b) each strata lot must not have an area less than 200m²

(c) each strata lot must have a width at the building line not less than 6m,

(d) the lot must have vehicular access to a public road at the completion of the development,

(e) the lot must not be a battle axe lot

(f) all dwellings must have a frontage to a primary, secondary or parallel road.

Comments on Site requirements:

a) R2 sites generally unsuitable for this type of development -in Ku-ring-gai and suburban areas, generally in NSW. R3 zone is appropriate for this type but needs to be located and coordinated with Ku-ring-gai's zoning strategy. The only R1 zoned sites in Ku-ring-gai are subject to site specific Master Plans, which therefore coordinate the broad range of permitted housing types within a specific major development precinct. Complying Development in Master-planned sites should not be permitted. The MDH Codes SEPP should enable Council to nominate specific sites that are not able to be considered through Complying Development.

b) There is no reference to LEP in Site Requirements for minimum lot size of parent lot. KLEP 2015 cl 4.1 (3) does not permit Torrens subdivision as proposed in the MDH Codes SEPP. Therefore the clause must be included to say:

The area of the lot must not be less than the minimum lot size in the LEP for the multi-dwelling house.

MDDG Appendix 5 Recommended Principal Controls – Terrace Houses recommends lot sizes of 100-150m2, which is non-compliant with the MDH Codes SEPP Development Standards.

Only strata development is included in the draft Site Requirements. Yet Torrens Title subdivision is the stated aim of the Codes SEPP (section 1.6 Subdivision - Explanation of Intended Effects). There appears no minimum lot size of the parent lot for such a subdivision.

c) Inclusion of Torrens Title of 200m2 lots would significantly change existing subdivision pattern of all Ku-ring-gai and have significant cumulative impacts on the ability to continue to provide deep soil landscaping and significant vegetation essential to not only the character of the area, but also vital to the retention and stability of soil and sub-strata at the ridge and slope topography of this area. Small lot size precludes the possibility of common areas on multi-dwelling sites that can provide substantial landscaping, including large canopy. 6m is not an acceptable street frontage for a dwelling within Ku-ring-gai. The KLEP cl 4.1(4) does not apply to strata subdivision hence, 200m2 lots could be proposed as a side-by-side strata or community subdivision, which would be detrimental to Ku-ring-gai and result in possible court proceedings. Note: The image used in MDDG Appendix 5 Recommended Principal Controls – Terrace Houses shows a terrace with garaging that has a minimum width 10m-12m which is double the recommended standard and therefore not representative of the outcome that is proposed and also is indicative of the inadequacy of a 6m lot width.

d) This appears to enable a battle-axe type and makes no sense in context of (f). It is unclear whether the lot referred to is the completed subdivision lot or the parent lot.

e) Conflicts with (d) depending on interpretation. Ambiguous.

f) Supported. However a statement must be provided to clarify that this refers to existing primary secondary or parallel roads, and stipulates that the creation of private roads within a site will not permit Complying Development to occur fronting that new private road. Without clarity in the prohibition of MDH Complying Development within deep sites, there is a real danger of 'gun barrel' type development being created and justified where the internal access driveways are given the status of private roads.

Further, there is unacceptable ambiguity regarding Torrens Title, which will result in multiple lots that can operate as a single "dwelling house" on a "single allotment".

The type takes no account of existing subdivision patterns, provides no mechanism for Councils to implement uptake strategically, and is a type that would have adverse effects on the existing landscape in established areas, such as Ku-ring-gai.

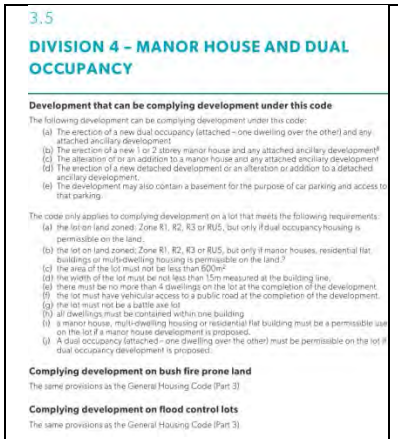
There is no requirement to meet LEP minimum lot sizes. This will result in subdivisions proposing the minimum 200m2 lots.

The lack of control and coordination with Ku-ring-gai's strategic planning will have detrimental impacts on low density areas and destroy much of the existing landscape character.

The type can work well in R3 medium density zones. However, the fatal flaw is that the type assumes rear lane access as optimal,

	which is not available in Ku-ring-gai. This development type enables multiple driveways in conflict with Ku-ring-gai's urban character for basement car parking in multi-dwelling housing development. Poor wording, clumsy coordination, and conflicts between the MDDG recommendations of Principal Development Standards will present difficulties in interpretation and application.
TABLE 5: DEVELOPMENT STANDARDS MUTI DWELLING HOUSING (TERRACES) **STANDARD** **SUMMARY DEVELOPMENT STANDARDS** **PRINCIPAL DEVELOPMENT STANDARDS** Min lot size for each dwelling 200m² 6m wide. Maximum Height of Building 9.0m Maximum gross floor area (for each lot) 200-300m² 0.80:1; >300m²-400m² 0.75:1; >400m²-500m² 0.65:1; >500m² 0.60:1	**Min Lot:** 200m^2 not appropriate in Ku-ring-gai. Takes no account of existing subdivision pattern or suitability of type on existing lot configurations. Will lead to 'random' quasi up-zoning with very poor outcomes to urban character. Terrace type is not suitable adjacent to low density zones, particularly adjacent to Heritage Items or Heritage Conservation Areas, as no provision for interface, separation or deep soil landscaping has been factored into this building type. Lot size is more compatible with R1 and R3 zone. Building type is consistent with R3 zone. **Height:** 9m is supported**;** however *MDDG Appendix 5 Recommended Principal Controls – Terrace Houses* recommendations of 3 storeys and height of 10m is inconsistent MDH Codes SEPP standards. Concerns Regarding Impact on HIs and HCAs - In the event the development is adjacent to a HI or HCA, heights of proposed buildings should be the same or lower than the adjacent HI and/or HCA. **FSR:** A 0.8:1 FSR in Ku-ring-gai has been challenging to achieve the desired deep soil landscape character and topographical repute, therefore the 0.65:1 and 0.6:1 are questionable within Ku-ring-gai.
Minimum Landscaped Area (for each lot) 200m² 300m² 20%; >300m²-400m² 25%; >400m²-500m² 30%; >500m²+ 35% (Min width 1.5m) Landscaped area forward of building line. 25% minimum	Landscape: The MDH Codes SEPP makes no provision for Deep Soil. The Landscape definition is inadequate as it could be above basement structure and comply. The application would be disastrous for Ku-ring-gai specifically and all suburban areas (except inner city urban areas) of Sydney, regional cities and towns. There is no requirement for placement of deep soil landscaping to front, side or rear boundaries for streetscape or screening to neighbours. Ku-ring-gai relies on significant vegetation, including large canopy trees being provided within all sites to ensure long term sustainable outcomes for medium and high density developments and to ensure their integration within Ku-ring-gai landscape and local character.. The 20%-35% landscaping could be achieved with in front setbacks. Strata title assumes common areas but it is unclear how this translates given side setbacks for terraces at either ends of a row would comprise a significant component. Torrens Title lot sizes and inadequate landscape requirement will not enable sufficient area for planting to achieve Ku-ring-gai's landscape character. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 25% landscaped area forward to the building line will not be sufficient and will not relate to the landscape areas of HI and/or HCA. An increase in landscaped area is necessary.
Primary Road Setback (See note 1) Average of dwellings within 40m or 200m²-300m² 3.5m; >300m²-900m² 4.5m; >900m²-1500m² 6.5m; >1500m² 10m 1 A storey does not include an attic – ie an attic is permitted in addition to the 1 or 2 storey development. 2 Cl 1.18 requires that the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.	**Primary Road Setbacks:** Within Ku-ring-gai street setbacks are key to providing the streetscape character of buildings within a landscaped garden setting of substantial vegetation, including large canopy trees. As such, the DCP requires 10m primary street setback to multi-dwelling housing sites. The MDH Codes SEPP setbacks will destroy any possibility of maintaining the garden setting with substantial trees within Ku-ring-gai. The MDH Codes SEPP permits a further encroachment of 1.5m articulation zone into what could be a front setback of 3.5m to 6.5m. The Standard must retain the provision for existing building lines of neighbouring dwellings to set the street setback. However, the Standard appears to be worded as a choice of: *Average of dwellings within 40m* ***or*** the nominated minimums. Therefore, this is likely to be tested through a court appeal process given the lesser range 3.5m to 6.5m proposed would be more attractive to maximise FSR.

	Concerns Regarding Impact on HIs and HCAs- in the event the development is adjacent to a HI or HCA, the front setbacks should be in line or behind adjacent HI and/or HCA. Provisions generally diametrically opposed to Federal Government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments. Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state. http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening
 Secondary Road setback (See note 1) 200m²-900m² 2m; >900m²-1,500m² 3m; >1500m² 5m Side Setbacks for development site (See note 1) Front half of the lot up to 15m - 1.2m, or if there is a boundary wall on an adjoining lot - 0m. Rear half of the lot, or distance >15m from front boundary: Building envelope defined by 45° plane projected from a height 3.6m above the boundary. Common wall There are no side setback controls that relate to a common wall – even when subdivision is proposed as part of this development. Rear setback (See note 1) Where the part of a development has a height of building less than 4.5m LOT AREA(m²) SETBACK 200-600 3m >600-1500 6m >1500+ 15m Where the part of a development has a height of building 4.5m or more: LOT AREA(m²) SETBACK 200-1500 10m >1500+ 15m Rear setback for lots with rear lanes Dwelling house and ancillary development may abut the rear boundary for a maximum width of 7.0m	Secondary Road Setback: Ku-ring-gai DCP requires an 8m setback to secondary Roads to integrate within the remainder of the street. MDH Codes SEPP should defer setback requirements to the local standards to ensure integration of the multi-dwelling housing type. Side Setback and Rear Setback: No consideration has been given to setback requirements for side setback and rear setback requirements for habitable and non-habitable rooms. Side and rear setbacks should defer to the Local Planning Instruments. Ku-ring-gai DCP has considered onsite amenity and neighbouring amenity as well as deep soil landscaping within setbacks. The standard is poorly worded and constructed. Setbacks appear to relate to a parent lot size (consistent with a strata type) but are inconsistent with both FSR and landscape lot areas that are for subdivided lots. The provision for the dwelling to abut the rear boundary will be disastrous in Ku-ring-gai and enable the destruction of existing landscape in rear gardens and likely loss of canopy trees under the provisions for tree removal to enable development in the Codes SEPP. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 1.2m side setback, and the rear setbacks, are not sufficient and will encroach on the visual curtilage of HIs and HCAs, and should be increased.
 DESIGN STANDARDS Design Criteria The development must comply with the design criteria listed in Part 3.2 of the Medium Density Design Guide. A design verification statement is required to be provided by the person who designed the development that provides evidence of compliance with the design criteria. A template for the design statement is provided in the appendix to the Medium Density Design Guide.	Overall amenity falls to the MDDG. The current wording and structure of Division 3 then captures the Design Criteria of the MDDG as "Design Standards". This approach can be supported in principle (performs similarly to clause 6A of SEPP 65), however the numerous errors and inconsistencies between the documents is confusing and disturbing as they override Ku-ring-gai's high quality standards and in consideration of the impacts of medium and high density development, and the necessity to make them sustainable and pleasant build forms. However, the preamble of the MDDG clearly states its intended use to be as a 'tool' and does not define it in terms of providing 'development standards'. This leaves a grey area as to its status. The meshing of an ADG type document with Complying Development is incompatible and results in the inevitable poor development. The MDH Codes SEPP and MDDG must stipulate that all works be commenced by a registered architect and not *"person who designed the development."* These medium density developments have significant cumulative impacts and therefore it is inappropriate to allow their design to be decided by unqualified people.
3.5 **Manor House and Dual Occupancy**	Complying development must not be permitted on lots that are adjacent, or are on opposite sides of the road, to HIs and/or HCAs. Attic rooms must only be permitted where they can provide good dormer windows. Design Guidelines must be provided to guide attic development, particularly design and location of dormer windows. Skylights must not be allowed as the primary light source within a habitable room in an attic. The Development Standards must state that a skylight is not permitted. This standard is confusing and ambiguous. With the unusual pairing of Manor House and Dual Occupancy, as they are very different typologies. In Ku-ring-gai, it deals with development that is permitted in R2 areas (Dual Occupancy) and a new



3.5

DIVISION 4 – MANOR HOUSE AND DUAL OCCUPANCY

Development that can be complying development under this code

The following development can be complying development under this code:

(a) The erection of a new dual occupancy (attached – one dwelling over the other) and any attached ancillary development.
(b) The erection of a new 1 or 2 storey manor house and any attached ancillary development.
(c) The alteration of or an addition to a manor house and any attached ancillary development.
(d) The erection of a new detached development or an alteration or addition to a detached ancillary development.
(e) The development may also contain a basement for the purpose of car parking and access to that parking.

The code only applies to complying development on a lot that meets the following requirements:

(a) the lot on land zoned: Zone R1, R2, R3 or RU5, but only if dual occupancy housing is permissible on the land;
(b) the lot on land zoned: Zone R1, R2, R3 or RU5, but only if manor houses, residential flat buildings or multi-dwelling housing is permissible on the land;
(c) the area of the lot must not be less than 600m²
(d) the width of the lot must be not less than 15m measured at the building line,
(e) there must be no more than 4 dwellings on the lot at the completion of the development,
(f) the lot must have vehicular access to a public road at the completion of the development,
(g) the lot must not be a battle axe lot
(h) all dwellings must be contained within one building
(i) a manor house, multi-dwelling housing or residential flat building must be a permissible use on the lot if a manor house development is proposed,
(j) A dual occupancy (attached – one dwelling over the other) must be permissible on the lot if dual occupancy development is proposed.

Complying development on bush fire prone land

The same provisions as the General Housing Code (Part 3)

Complying development on flood control lots

The same provisions as the General Housing Code (Part 3)

development type that will only be permitted in R3 areas (Manor House). For consistency and clarity, the Dual Occupancy provisions should be grouped with the other Dual Occupancy provisions of Division 2 – (renamed as) Dual Occupancy (instead of Side by Side). It should be clarified that Manor House is a medium density type and only permissible within R3 Zoned land where permitted.

No reference is made to LEP for minimum lot size of parent lot. KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP of the permitted subdivision lots. This must be included.

The only R1 zoned sites in Ku-ring-gai are subject to site specific Master Plans, which therefore coordinate the broad range of permitted housing types within a specific major development precinct. Therefore the standards should indicate it is not applicable on existing Master Planned sites.

Comments on Complying Development:

d) Refers to detached development but this is inconsistent with (h) of site requirements.

Comments on Lot requirements:

a) Dual occupancy is not permitted in KLEP R2 zones apart from nominated Schedule 1 properties. Anecdotal experience in Ku-ring-gai for dual occupancy as rear yard subdivision of existing lots is generally not supported unless sites are excessively deep and can preserve significant canopy and deep soil landscape. Dual Occupancies tend to result in very large dwellings with very little landscape and, in the Ku-ring-gai context on smaller lots, inevitably lead to loss of canopy and deep soil landscape. Side-by-side dual occupancy or other creative dual occupancy has less impact on landscape and will achieve a better streetscape and internal site character outcome provided the standards encourage the built form to be the appearance of one large house rather than the look of two dwellings that are separated through lack of design consideration of the individual and adjacent build character.

b) Whilst Manor Housing might be in principle well suited to low and medium density zones, providing appropriate development controls are in place to control desired local urban character, particularly reinforcing the built form so that it has the appearance of one large dwelling, whilst accommodating two to four dwellings.

Manor House is supported in R3 zones, as it may promote more housing choice with other multi-dwelling types within the same development; or provide more flexibility on isolated R3 zoned sites. Nevertheless, the requirements of deep soil landscaped settings prevail.

Concern is raised that only strata development is included in draft Site Requirements. Yet Torrens Title subdivision is the stated aim of the Codes SEPP (see section 1.6 Subdivision in Explanation of Intended Effects). There appears no minimum lot size of the parent lot for such a subdivision, nor is there any reference to local LEPs as to the determining document for lot size.

c) KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP for R3 zone.

d) 15m proposed under Code SEPP Conflicts with KLEP for 18m site width

e) Supported.

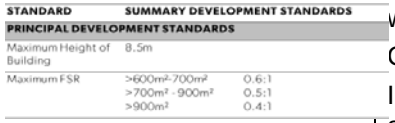
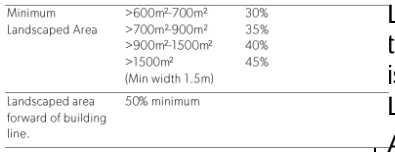
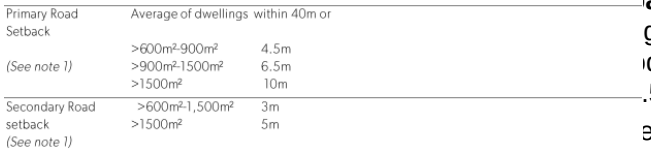
f) Supported.

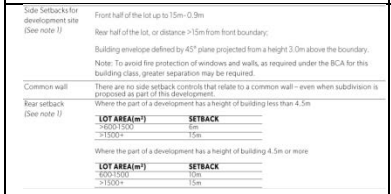
g) Supported.

h) Supported for Manor House. Requirement to be in one building conflicts with item (d) of 'detached' development nominated under this complying development category.

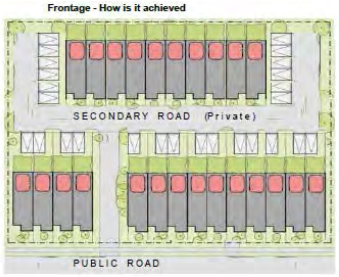
i) Supported.

j) This type of development needs to be amended to only state attached Dual Occupancy, and all Dual Occupancy standards

	must be relocated to Division 2.
 **STANDARD** **SUMMARY DEVELOPMENT STANDARDS** **PRINCIPAL DEVELOPMENT STANDARDS** Maximum Height of Building 8.5m Maximum FSR >600m²-700m² 0.6:1 >700m² - 900m² 0.5:1 >900m² 0.4:1	**Height:** KLEP permits height of 9.5m in R2 zone and 11.5m in R3 complementing the Codes SEPP. However, the inconsistency will result in cl 4.6 submissions to vary the SEPP Design Standard. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, heights of proposed buildings should be the same or lower than the adjacent HI and/or HCA.
 Minimum Landscaped Area >600m²-700m² 30% >700m²-900m² 35% >900m²-1500m² 40% >1500m² 45% (Min width 1.5m) Landscaped area forward of building line. 50% minimum	Landscape: No provision has been made for Deep Soil landscaping, which enables the planting of substantial vegetation, including tall trees which ensures that long term preservation of soils and substrata that are fundamental to stormwater catchment and which is a basic requirement for alignment with State Policies on Climate Change and sustainable cities. The Standard Instrument LEP Landscape definition is inadequate as it could be entirely above structure and comply with the MDH Codes SEPP. Application of SEPP minimum requirements would be disastrous for Ku-ring-gai specifically and all suburban areas (except inner city urban areas) of Sydney, regional cities and towns. Standards states total landscape areas of: >900-1500m2 @ 40% and >1500m2 @ 45% There is no site coverage requirement in the MDH Codes SEPP Standard that is otherwise available in Ku-ring-gai DCP controls. The provisions are generally diametrically opposed to Federal government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments. http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening Councils must retain development controls for FSR, setbacks, landscape including deep soil, site coverage to achieve site/precinct/local specific controls for the desired urban character. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 50% landscaped area forward of the building line may need to adjust to suit the adjacent HI or HCA.
 Primary Road Setback (See note 1) Average of dwellings within 40m or >600m²-900m² 4.5m >900m²-1500m² 6.5m >1500m² 10m Secondary Road setback (See note 1) >600m²-1,500m² 3m >1500m² 5m	**Primary Road Setbacks:** Setbacks must be consistent with local DCP controls. The MDH Codes SEPP has small setbacks g-gai, which utilises setbacks to contribute to streetscape and areas character by enabling substantial planting. des SEPP will result in buildings that are an anomaly in the streetscape particularly as the MDH Codes SEPP .5m articulation zone encroachment into the already small street setbacks. etain the provision for existing building lines of neighbouring dwellings to set the street setback instead of being worded as a choice of: *Average of dwellings within 40m* ***or*** the nominated minimums. The ambiguity is likely to be tested through a court appeal process given the lesser range 4.5m to 6.5m proposed would be more attractive to a developer seeking to maximise achievable FSR. Proposed MDH Codes SEPP minimum setbacks to the primary road will significantly alter the existing landscape character where R2 low density housing existing urban character in Ku-ring-gai.

	Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the front setbacks should be in line or behind adjacent HI or HCA. **Secondary Road Setback:** Proposed 3m setback is significantly less than Ku-ring-gai DCP for similar development.
	**Side setback:** MDH Codes SEPP is significantly less than other multi-dwelling housing controls and will not enable any screening landscape between buildings. If the SEPP Complying Development for General Housing is also implemented, it would negatively impact on landscape provision alongside boundaries between buildings and result in streetscape that are incongruent with the character of Ku-ring-gai- of buildings with deep soil landscape setting to all sides to the buildings. Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed 0.9m side setback will encroach on the visual curtilage of HIs and HCAs, and should be increased. **Rear setback:** These setbacks will have a damaging impact on R2 zones in Ku-ring-gai that generally require min 12m setback irrespective of building height while MDH Codes SEPP will permit 6m for height <4.5m , 10m for sites 600-1500m2 for walls >4.5m. Note: 15m for height >4.5m would achieve improved potential for positive landscape outcome although it only applies to sites >1500m2. The MDH Codes SEPP standard is poorly worded and constructed. Setbacks appear to relate to a parent lot size (consistent with a strata type) but are inconsistent with both FSR and landscape lot areas that are for subdivided lots. The ambiguity opens the standards to misinterpretation, which would have to be settled through Court decisions. The provision for the dwelling to abut the rear boundary assumes rear lane conditions which generally do not exist in Ku-ring-gai. As such, the result will be disastrous in Ku-ring-gai and enable the destruction of existing landscape in rear gardens and likely loss of canopy trees under the provisions for tree removal to enable development in the MDH Codes SEPP. The provisions are generally diametrically opposed to Federal Government Cities policy for greening cities and the value of canopy trees and landscape in air quality, population well-being, cooling urban environments. Development controls for setbacks must be given to local councils to manage the desired urban character that differentiates locations around the state. http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening Concerns Regarding Impact on HIs and HCAs: In the event the development is adjacent to a HI or HCA, the proposed rear setbacks will not be sufficient and will encourage on HIs and/or HCAs. A landscape buffer is required to separate the proposed building from the established garden setting of HIs.
3.6 **Subdivision Code**	The traditional Development Application process considers appropriate subdivision planning. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. The ability to maintain trees on lots of 200m^2 is particularly limiting. Small trees have little impact on the storage of CO--$_2$. Australia's annual greenhouse gas emissions were estimated at 592 million tonnes and have been projected to increase to 690 million tonnes in 2020. It is critical that traditional forms of subdivision are not compromised to ensure that tree retention in the suburbs is maintained. Presently, approved developments can be Strata Subdivided. Strata subdivision ensures that maintenance of common property and that building facades are maintained in a common fashion.

	It is essential that the Codes SEPP does not unintentionally negate the appropriate path for planned subdivision – through a traditional form of assessment of a Development Application. It is essential that the servicing of allotments is holistically considered with respect to water, sewer, gas, electrical, telecommunication and stormwater services. It is questionable as to whether certifies have sufficient training is assessing all aspects of the development in this regard. Particular concern is raised with respect to the proposal to enable the Torrens Title Subdivision of small lots and its impact on future generations. The *Environmental Planning and Assessment Act 1979* specify the objectives under Part 5 as: *(a) to encourage:* *(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,* *(ii) the promotion and co-ordination of the orderly and economic use and development of land,* *(iii) the protection, provision and co-ordination of communication and utility services,* *(iv) the provision of land for public purposes,* *(v) the provision and co-ordination of community services and facilities, and* *(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and* *(vii) ecologically sustainable development, and* *(viii) the provision and maintenance of affordable housing, and* *(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and* *(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.* In this regard, the provision of the SEPP must ensure that development is properly managed with the assurance of co-ordinating orderly and economic use of development land. Essentially, the SEPP must also ensure that development is ecologically sustainable; and, provide an appropriate level of public involvement and participation in environmental planning and assessment. It would appear that the current provisions as proposed would not meet these objectives. The definition of ecologically sustainable development under the *EP&A Act 1979* is derived from Part 6 (2) of the *Protection of the Environment Administration Act 1991*. Concern is particularly raised with respect to intergenerational equity with respect subdivision plans. The redevelopment of 200m^2 allotments under Torrens Title is likely to place significant pressures on the future redevelopment of sites within the next 40 to 60 years. We are only now seeing the implications of previously subdivided terrace housing and attached semi's in Sydney. In a Greenfield site, appropriate areas for outdoor activities can be accommodated in the Master Planning of an area. However, existing larger lots in historical subdivision plans are often not in close proximity (walking distance) to public parks. Under the provisions of the SEPP as proposed, there is little consideration to the provisioning of minimum allotment sizes and the provisioning of useable outdoor open space. The traditional Development Application process considers appropriate subdivision planning. High Density Development provide for communal open spaces for occupants. It is essential that the development within the 'missing middle' is considered in the same

	light. Further concern is raised with respect to the redevelopment of the created small lots potentially approved under this scheme. Ironically, under the proposed controls, the redevelopment of a site approved for such development would not be able to be re-developed in the event of a fire or demolition under the very controls which approved the development in the first instance. Setback controls to the existing boundaries would prohibitively restrict the redevelopment of the site to achieve compliance. Lot amalgamation to redevelop urban areas is an expensive exercise. The Strata Act was changed to enable Strata Plans to be redeveloped even where not all owners are in agreement.
3.7 **Definitions**	**Interpretation of Frontage-** The term 'frontage' must be defined to mean the full extent of a lot boundary and the entire width of the dwelling elevation that provides the main entry to that dwelling must directly address and be seen from the public street/road/lane that provides the access to the dwelling. Frontage is only achieved to a public street or a public road. Frontage is not defined in the MDDG, MDH Codes SEPP, EP&A Act, Standard Instrument LEP. Frontage is a matter of interpretation, for example, developers have justified frontage has been achieved in the following ways: • achieved by a public or private internal road • achieved throughout a site by providing a private road access from a public road • achieved by a parent lot before subdivision, or each subdivided lot, or the full extent of a building, or part of a building, or the full width of each individual dwelling, or just a gate, or a path, or door. The Macquarie Dictionary defines frontage as *"the front of a building or plot of land."* This definition potentially enables dwellings in a second row behind the front row, provided some part of the building (not individual dwelling) is visible from the street.  **'Frontage'** must be defined to mean "the full extent of a lot boundary and the entire width of the dwelling elevation that provides the main entry to that dwelling must directly address and be seen from the public street/road/lane that provides the access to the dwelling. Frontage is only achieved to a public street or a public road." **Interpretation of Primary Road-** The ambiguity regarding the definition of 'streets' must be clarified and amended. Courts have defined a primary street (or road, lane etc.) as being public ***or private*** and accepted frontage as "land abutting on a street" *Langford v Copmanhurst Shire Council/1994* (82) LGERA 262 and *McGinn v Ashfield Council/2012* (NSW CA 238) The proposed use of the words 'primary', 'secondary', and 'parallel' roads/streets/lanes becomes an enabling mechanism to permit development outside the intended scope of complying medium density development. This is development of a type that has been demonstrated to achieve the worst urban outcomes across Sydney, and indeed nationally. Commonly known as 'villa' type development (attached or detached) with dwellings that are fully internalised to a site, with a driveway and vehicles impacting the full length of the site, dwellings with no public domain address, and with poor amenity due to inadequate building separations where habitable rooms are oriented to side boundaries. They result in large areas of hard stand effectively prioritising vehicular access over landscape. This can now be extended to all the proposed medium density housing types. They are permitted because these ambiguous terms have led the courts to interpret a private driveway as a

	primary/secondary/parallel 'street' if a dwelling addresses it. This is of particular concern in Ku-ring-gai due to the existing street layout that has set a very deep and often long block pattern that results in very deep subdivisions with an absence of mid-block public connections. Medium density housing models that use a private driveway as a 'street' are in direct conflict with the NSW Government's A Plan for Growing Sydney and its Urban Green Cover Policies, commonwealth policies for Greening Cities and Housing adapted to climate change. It is also worth noting, failure to comply with these policies is inconsistent with the United Nations, General Assembly Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda. Medium density housing that defines a driveway as a 'street' are advocated in the MDDG despite failing to achieve the required design quality principles. Recommendations: a) All streets, roads, lanes must be defined and referenced as public streets, roads, lanes etc. only and must exclude private driveways What is a street, or road, or lane? Private driveways are NOT streets, roads or lanes The inclusion of 'internal streets' that are not public streets/roads/lanes are really a network of internal private driveways. Their inclusion: - has the effect of an enabling clause for types of development not intended to be via the CDC pathway; - facilitates a pathway and provides financial incentive for corrupt behaviour; - enables very large developments (similar to those at MDDG Part 3, Design Criteria 3.3 Multi-Dwelling Housing and Master Planned Communities) to be excised from any independent assessment or verification for development in R3 zones where multi-dwelling housing is permitted; - has the effect of excising large developments of a high-impact housing type from broader State and Local strategic planning. The effect is in conflict with the intent of the policy. The housing type also results in development that fails to meet other objectives of the MDDG and is in conflict with other State and National policies. Recommendations: a) All references to streets/roads/lanes must be changed to be public streets/roads/lanes b) Should this not occur, The Department must remove from the Codes SEPP all development that proposes vehicle access via internal streets/roads/lane that are not public. These developments must be determined by DA pathway. The ambiguity regarding the definition of 'streets' must be clarified and amended. The proposed use of the words 'primary', 'secondary', and 'parallel' roads/streets/lanes becomes an enabling mechanism to permit development outside the intended scope of complying medium density development. This is development of a type that has been demonstrated to achieve the worst urban outcomes across Sydney, and indeed nationally. Commonly known as 'villa' type development (attached or detached) with dwellings that are fully internalised to a site, with a driveway and vehicles impacting the full length of the site, dwellings with no public domain address, and with poor amenity due to

	inadequate building separations where habitable rooms are oriented to side boundaries. They result in large areas of hard stand effectively prioritising vehicular access over landscape. This can now be extended to all the proposed medium density housing types. They are permitted because these ambiguous terms have led the courts to interpret a private driveway as a primary/secondary/parallel 'street' if a dwelling addresses it. This is of particular concern in Ku-ring-gai due to the existing street layout that has set a very deep and often long block pattern that results in very deep subdivisions with an absence of mid-block public connections. Medium density housing models that use a private driveway as a 'street' are in direct conflict with the NSW Government's A Plan for Growing Sydney and its Urban Green Cover Policies, commonwealth policies for Greening Cities and Housing adapted to climate change.[1] It is also worth noting, failure to comply with these policies is inconsistent with the United Nations, General Assembly Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda. Medium density housing that defines a driveway as a 'street' are advocated in the MDDG despite failing to achieve the required design quality principles. This leads to the flow-on implications with the term 'frontage'. Recommendations: a) All streets, roads, lanes must be defined and referenced as public streets, roads, lanes etc. only and must exclude private driveways. **Interpretation of Dwelling House** – The intention to make all Codes SEPP definitions consistent with the SI LEP definitions is supported, to remove ambiguity around permissibility of types. Existing definitions of 'dwelling house' between the Codes SEPP and SILEP permit vastly different types of development. Under the existing Codes SEPP 'Dwelling house' is defined as a building containing one dwelling, an attached dwelling or a semi-detached dwelling, but does not include any part of the building that is ancillary development or exempt development under this Policy. Under the Standard Instrument LEP 'dwelling house' is defined as a building containing one dwelling. While the intention appears to be that the Codes SEPP definition be amended and aligned with the SILEP definition, if this does not occur, the effect is essentially a blanket rezoning all R2 land to R3, extrapolated across NSW resulting in serious, long term negative impacts. This is the worst of planning implementation. This has huge strategic planning implications for NSW that should sound alarm bells for the Greater Sydney Planning Commission and NSW Planning and Environment such that this broad-reaching policy proceeds with caution and be reconsidered, coordinated, and well implemented. Recommendations: a) The definition of 'dwelling house' must be amended to align with the SILEP definition. **Amendment to definition of multi dwelling housing** – This amendment to the definition is supported and will hopefully see an end to development which has been designed in such a way that, whilst technically it provides direct access at ground level, the reality is that the development reads as a residential flat building. This has occurred within the Ku-ring-gai area whereby the development was determined to meet the LEP definition of multi-dwelling housing but also triggered SEPP 65 and had to address the SEPP 65 Design Quality Principles. The applicants used the RFDC to justify non-compliances when the relevant control to assess a multi-dwelling housing development against was considered to be the Local Centres DCP. However, the Explanation of Intended Effects notes at page 6 that low rise medium density housing as Complying Development is characterised by the entry and private open space being at ground level. Manor Houses do not fit within this definition by virtue of

	the fact that one dwelling can sit above another and the dwelling entry can be at first floor level and the private open space can be provided by the use of balconies in the rear of the site. This seems to be already blurring the line and allowing dwellings above others (albeit only two storeys high) which can provide principal open space areas at a high level thereby increasing opportunities for overlooking and acoustic impacts on adjoining properties. There needs to be further clarification as to the relationship between the definitions of 'manor house' and 'multi dwelling housing (terraces)'. Are these uses intended to be a sub category of 'multi dwelling housing' or are they intended to be standalone land uses. This clarification needs to be made as it will have significant implications for the drafting of land use table in future LEPs. Recommendations: a. The proposed amendment to the definition of 'multi dwelling housing' in the SILEP is supported. b. The relationship of the definitions for 'manor house' and 'multi dwelling housing (terraces) with multi dwelling housing' needs to be clarified and made explicit. **Inclusion of a definition for Deep Soil Landscaping -** in the Codes SEPP and in the SI LEP. 'Deep Soil Landscaping' is different from 'Landscaping' which can mean shallow planter beds above basements or areas where plantings are unable to grow to any significant heights. The importance of deep soil landscaping is its fundamental role in the delivery of sustainable environments through enabling substantial landscaping including large canopy trees, which result in • Retention of soil integrity through systemic deep root structures, • Stormwater absorption, filtration and runoff management, • Meaningful plantings that deliver shade to reduce heat emission from hard surfaces, • Pleasant character and appearance of urban areas. Deep soil provision and its benefit is integral to the current sustainability agenda and the growing acknowledgement in State, National and International policies and directions of the importance to deliver development that considers the generational impacts on local and greater environments. The Ku-ring-gai DCP contains the following definition which can replicated: ***Deep soil landscaping*** *the soft landscaped part of the site area:* *i.) that is not occupied by any structure, whether above or below the surface of the ground, except for minor structures such as:* *-- paths to 1.2m wide;* *-- storm water pipes of 300mm or less in diameter;* *-- lightweight fences;* *-- bench seats;* *-- lighting poles;* *-- Drainage pits with a surface area less than 1m^2.* *ii) that has a minimum width of 2m;* *iii) that is not used for car parking;* *iv) May be used for water sensitive urban design, provided it does not compromise the ability to achieve the screen and canopy planting required by this DCP.* *Note: For the purposes of calculating deep soil landscaping and landscaped areas, any access handle on battle axe sites is excluded.* **Interpretation of Environmentally Sensitive land** - A portion of land which is subject to riparian and biodiversity provisions should not be considered suitable for Complying Development of any kind. It should not be dependent on a definition of "Environmentally sensitive land" or an "Ecologically sensitive area" to exclude these areas.

Appendix 2

Table of Assessment

Draft Medium Density Design Guide (MDDG)

ITEM	COMMENTARY AND RECOMMENDATION (ALL QUOTES FROM MDDG ARE SHOWN IN ITALICS)
Minister's Forward	*We need affordable housing solutions for families. We also need to increase the variety in the types of housing available to give people more choice, provide an interesting and vibrant built environment and ensure housing supply caters for the needs of changing demographics into the future.* This method of delivery through Complying Development does not mean that **affordable housing** will result in an area where high land prices and ongoing increase in demand, particularly by overseas investors able to pay high prices. Unaffordable prices for housing in Ku-ring-gai will remain regardless of dwelling type supply. For example, a DA approved site for 16 townhouses at 18-20 Bent Street, Lindfield sold for $13m to an overseas investor. The likely price of these dwellings will be over $1m each. The Minister makes reference to **aged population**; however the MDH Code SEPP and MDDG have no integrated standards on site design and access for people with a disability from street into housing. Ku-ring-gai has a requirement for 100% Liveable Housing with accessible paths of travel across sites. The Minister refers to *"a fast-track assessment process for development consistent with existing land zoning."* The proposed MDH Code SEPP and MDDG are **not** consistent with the intention of the zoning within Ku-ring-gai and many other local Councils. The R3 Zone in Ku-ring-gai has been applied as a planning mechanism to create a well-designed interface between high density development and low residential development. An interface zone that enables a new housing typology within Ku-ring-gai that integrates into the high quality local built fabric and is consistent with the Ku-ring-gai character of built form within a landscaped setting of substantial planting and tree canopy. The Ku-ring-gai DCP has a developed model for the delivery of multi-dwelling housing that integrates into the high quality local built and landscape fabric. The MDH Code SEPP and MDDG are in direct contrast to the local integrated models and stand to destroy the integrity of zoning application in this locality, particularly with regards to permitting Torrens title subdivision which will remove the ability to maintain long term homogeneity across medium density development particularly the retention of deep soil landscaping and consistent built form to streets. The Minister states that there was *"strong support…*(and) *had acted on that feedback, taking on board the wants from Councils, the community and industry."* However, no address or justification is given to the many **concerns** raised previously through response to the Discussion Paper exhibition. **No response** has been given to those Councils who are seeking to protect the local fabric and have requested the missing middle be delivered in a more transparent and accountable manner- in the way high density dwelling are delivered through SEPP65 and the Apartment Design Guide (ADG). **No justification or evidential testing** of how the Complying Development route will deliver quality housing that meets local character standards, or that is **aligned with State Policy**. *Councils also highlighted the importance of ensuring that development respects an area's existing local character and streetscapes. As a result, the draft Medium Density Design Guide includes proposed building height limits, setbacks, landscaping and other building standards to help ensure existing local character and neighbour privacy are maintained.* Removing Council's ability to set primary development standards for lot size, FSR, Height Limits, Site Coverage, Setbacks and Landscaping unfortunately effectively negates the entirety of the Minister's statement. The MDDG is not consistent with the local

	controls stipulated within Ku-ring-gai's and many other local DCPs. It is not possible for a 'one size fits all' to accommodate every area in NSW and its unique character. The MDDG operates on a lowest common denominator and basically enables swathes of quality areas to be wiped out and developed with little to no innovative thought or design. The only way to truly align the "missing middle" with local character is to ensure a delivery mechanism similar to SEPP 65 and the ADG, and not Complying Development. This way, Council's primary development standards will be retained.
PART 1. Introduction	
1.1 **About this Guide** **Aims of the Guide**	Comments regarding Objectives p4. *The MDD objectives are to:* • *deliver better quality design for buildings that respond appropriately to the character of the area, landscape setting and surrounding built form;* The intent to deliver design quality to all housing types is supported. However, the proposed Standards do not reflect this objective because they codify the very criteria that define an area's local character (Lot Size, FSR, Building Height, Setbacks etc.) Attempting to apply a 'one-size fits all' set of development controls fails to respond to first principle strategic planning for city and place making - local topography, differing street layouts, differing subdivision patterns, differing infrastructure, differing public domain assets and quality, and differing strategic planning objectives for different regions within a state. Inner Sydney LGAs are completely different to western Sydney, to the northern suburbs, to the western suburbs, to regional coastal and inland NSW cities and towns. This cannot be codified as if they are the same, without resulting in long term negative consequences throughout the State, and certainly will have detrimental impacts on local character. SEPP 65 Clause 6A and the ADG have successfully implemented design quality which should be at the forefront of all development as its legacy is for the next 50-100 years. SEPP 65 and the ADG are working well in our experience from both the architectural, developer, and assessment perspectives across all Councils. Similar design quality should be the aim and must be achieved with medium density housing. • *improve the quality of neighbourhoods and precincts;* The intent is supported in principle, but will not be achieved. In terms of urban outcomes, the long term effects the proposed Standards will have on Ku-ring-gai and Sydney will be detrimental to landscape, and the corresponding impacts that will result in ever increasing heat gain within the Sydney basin, poor amenity, pedestrian amenity, loss of streetscape, loss of connected biodiversity, increased water run-off, and increased energy demands etc. • *improve liveability through optimal internal and external amenity, including functional layouts, ceiling heights, solar access, natural ventilation and visual privacy;* The intent is supported in principle, but will not be achieved as amenity is less than is expected in higher density apartment

	design. This is counter intuitive and flawed. For example, the enabling of 2.4m ceiling heights to the upper floor habitable rooms which prevents installation of ceiling fans. The ADG has a 2.7m requirement. • *deliver improved sustainability, greater building adaptability and robustness, improved energy efficiency and water sensitive urban design;* The intent is supported in principle, but will not be achieved with the proposed Development Standards as there is no provision made for meaningful deep soil landscaping, which provides soil surface and vegetation that positively contributes to stormwater runoff and heat emissions. • *improve the relationship of dwellings to the public domain including streets, lanes and parks;* The intent is supported in principle, but will not be achieved because there is no scope for local Councils to plan for the proposed housing types strategically. The current wording and structure of the draft Code and proposed recommended types fail to address street and subdivision patterns existing in almost all of broader metropolitan Sydney, and NSW. There are no laneway networks anywhere except inner Sydney LGAs, and can only be controlled in master planning new housing subdivisions on greenfield or large brownfield sites. • *deliver design guidance and assist in providing a diverse housing mix and choice;* The intent is supported in principle but must result in strategic planning at local level that increases density in a controlled and coordinated way that responds to other NSW and Federal city policies. The proposed Code fails to achieve this. • *support councils in developing planning controls and master plans through improved guidance.* The proposed Code effectively removes the ability of local Councils to manage strategic planning responsive to local conditions. The strength of the proposed code is in application through master planning of large Brownfield and Greenfield redevelopments. It is inappropriate for established, high quality areas such as Ku-ring-gai, which has developed a suite of documents to enable development in a co-ordinated and responsible manner for the short and long term benefits of the locality and of the Sydney Basin.
1.2 **Structure of the Guide** **Part 2 Design Guidelines**	The overall structure of the document is generally supported; however, there is a contradiction between the stated intended application of the MDH Code Development Standards and LEP Development Standards. The stated intent in this section is for the MDDG to be used by Councils in establishing precinct plans and principal controls. However, the MDH Code contains development and site requirements that override LEP principle Development Standards. Councils need to retain principle Development Standards for: • Location of specific medium density types within strategically appropriate land use zones • Minimum parent lot size • Minimum applicable subdivided lot size • FSR • Setback

	• Landscape • Deep soil • Site coverage.
1.3 **Planning Context** **Role in Strategic Planning**	*The future character of an area is to be determined by the local council and community. The Design Guide encourages a design-led strategic planning process to determine the type, scale and built form of medium density housing permitted in an area. The development controls established as a result of this process will be expressed in the Local Environmental Plan (LEP) and Development Control Plan (DCP) that applies to the site. (p6)* This statement ignores the fact that many Councils and communities have already considered their areas future character and have integrated area wide strategic approaches reflected in their LEPs and DCPs. This is certainly the case for Ku-ring-gai. Council loses all strategic planning control for applications lodged under Complying Development in complete contradiction to the above statement. This will result in ad hoc, randomised applications that may be poorly located and be inconsistent with strategic planning of individual LGAs. In addition, there is no requirement for the developments to be designed by qualified people (registered architects), and enables private certifiers who do not have planning, architectural or legal qualifications to assess and apply due diligence in certifying developments under planning and other legislation. The result is that the majority of these developments will deliver nothing more than dwelling numbers and be regardless of the long term urban design, architectural and environmental benefits. Principal Development Standards for medium density housing should not be contained within SEPP Exempt and Complying Development (Codes SEPP) 2008. The SEPP Medium Density Housing should be structured similarly to SEPP 65 and clause 6A.
1.2 (cont'd) **Relationship with other Environmental Planning instruments for DAs**	The provisions of the following also relate to development applications to which this section applies: • *State Environmental Planning Policies applying to the land or development* • *The relevant Local Environmental Plan applying to the land.* *If inconsistencies exist between this guide and the above listed environmental planning instruments, the environmental planning instrument prevails.* (p6) There is persistent ambiguity about the status of LEPs as they are overridden by SEPP Development Standards. It is also unclear how the MDDG can be applied where there are multiple inconsistencies with its own Design Guidance and the MDH Code Development Standards that will not achieve the Nine Design Quality Principles. As discussed at Section 3.1 Principal Controls for 3.1B FSR where KLEP has significantly different FSR Standards to the Codes SEPP. The Complying Development pathway legitimises the randomised uptake of the MDH Code that has vastly different

	Development Standards to KLEP and KDCP. This will result in poor strategic planning outcomes affecting the huge majority of all land available for urban development that is land zoned R2 and R3 across the entire city and state. These types of inconsistencies and ambiguity raises concern regarding Court cases that will eventuate due to the interpretation and triggering of the word 'inconsistencies' between LEP and SEPP Standards and the effect on Local LEPs particularly where poor typologies, inadequate controls, and inconsistencies within the MDDG are contrary to the Nine Design Quality Principles at 1.5 of MDDG.
1.4 **Obtaining Consent**	The existing status is ambiguous as adoption of the MDDG is apparently optional. In practice, Council loses control of strategic planning because the two streams available to applicants are either: **Complying development Pathway:** All Council's principal development standards are overridden by the MDH Code and applicable to R2 and R3 zoned land. This forms the vast majority of land use zones in all LGAs except the City of Sydney. Ad hoc development disconnected from local strategic planning controls and objectives. The impact will be extensive due to the proportion of R2 and R3 zoned land within Council areas. Under the existing Codes SEPP development penalties for non-compliance are not a deterrent. The role of private certifiers in certifying Non-Compliant Development is becoming more and more evident, sometimes with serious impacts to personal safety. Small fines and the reluctance to require demolition of privately certified development makes it an attractive path for developers to build first and factor in a small fine to their construction costs should they be exposed. The process is therefore flawed and open to corruption. **Private Certification:** It is naïve to believe that the private certification process will achieve better quality outcomes than the traditional DA process. Certifiers in general are **not** qualified nor trained to undertake planning assessments of this complexity. Current training courses offered by universities in relation to planning and development assessment are inadequate and do not equip certifiers to undertake a meaningful planning compliance assessment. To expect certifiers to ensure "compliance with the Design Criteria" overestimates the abilities of most current certifiers. The question of independence and rigor of the private certification process remains. A private certifier has a fundamental conflict of interest in undertaking public responsibilities as a regulator and providing this as a service to a client for a fee. In this regard, the recently completed review of the Building Professionals Act identified a number of inherent weaknesses in the certification process that remain unaddressed. **Design:** Building Designers are also allowed to design these developments and there is no requirement for them to be designed by Architects only. Building designers have NO formal registration or accreditation requirements in NSW. ANYONE can practice as a Building Designer and there is no requirement to be qualified, have experience or have any credentials whatsoever. Accreditation by the Building Designers Association of Australia (BDA) in NSW is not regulated, is entirely voluntary and can be

	considered 'informal' at best (only Building Designers in Tasmania, Queensland and Victoria are regulated). It is also questionable whether Building Designers would be able to secure the necessary liability insurance as is required for architects. Architects must - • have a formal tertiary education / degree in architecture • be covered by the necessary liability insurance (this is required for registration) • be officially registered as an architect with the governing architecture body in their state or territory Building Designers have none of these requirements. Increased risk and liability issues are inevitable. In addition, this approach will have a detrimental impact on Heritage Items (HI) and Heritage Conservation Areas (HCA). Complying development must not be permitted on lots that adjoin, or are on opposite sides of the road, to HIs and/or HCAs. Substantial front, side and rear set-backs are required to separate any unsympathetic Complying Developments from Heritage properties to protect their curtilage. A landscape buffer is required to separate any proposed unsympathetic Complying Development from the established built form and garden setting of HIs and/or HCAs. Development Application Pathway: LEP and DCP set the strategic planning controls for the local area and deliver coordinated strategic planning outcomes. At present, it appears Council has a choice to adopt the MDDG for DA Pathway; however there is no certainty that this will be ongoing. This is of concern, as the MDDG development standards will not result in considered or integrated results for the local area. The best urban outcomes will be achieved by local strategic planning instruments retaining this role. Similar to the application of SEPP 65. Penalties that will be effective in deterring non-compliance should be mandated and be significant, given the profit margins associated with mass housing of this type.
Development Applications	The introduction of Private certifiers effectively removes the obligation to any DCP controls as these do not comprise the MDH Code development standards. This further reinforces the disconnect between sound strategic planning outcomes and ad hoc, randomised medium density development. Private certifiers are not qualified to assess the urban design merits and complexities associated with medium density design. As is, the single dwellings being delivered by private certifiers have poor architectural resolution and connection to a site, its streetscape and surroundings. The introduction of private certifiers effectively places control of local character and strategic planning into the hands of individual practitioners rather than under the coordination of Councils who are implementing planning policies that dovetail with State and Federal development objectives - a more complex urban design skill set that is best provided by Local Councils. Private Certifiers should play no role in the design approval stage. It is unclear whether the intended effect of a Council adopting the MDDG means it retains local control over LEP principal

	development controls and DCP for urban strategy and desired future character; or if not adopted, is the intent that Council loses the control over all principal development standards.
1.5 Design Principles	Rename as 'Design **Quality** Principles' to be consistent with Part 2 of the MDDG (and SEPP 65). They are sound urban design categories that are intended to improve design quality. They are consistent with the structure of SEPP 65 Design Quality Principles, which are achieving improved design outcomes for high density development. However, the proposed Medium Density Design Criteria performance requirements are inconsistent with achieving the Design Principles and as such significant amendments are required to many Design Criteria. See detailed comments in Section 3 Design Criteria of this table. Many of the Design Guidance points do not appear to have been tested and will lead to dire outcomes on many urban design indicators for amenity, environment, and streetscape.
PART 2. Design Guidelines	
2.1 Relationship to Design Quality Principles and Design Elements	This section should include the requirement for a site analysis as required in the ADG. Multiple terms with vague connectivity such as design criteria, development controls and design standards confuse comprehension of the document. The flow diagrams should relate more directly to all parts of the document. 2.1 The Matrix should include additional relationships: 4. Sustainability – C 5. Landscape – D, E and M 6. Amenity – C The Matrix as a tool has a poor relationship to the achievement of the design criteria in Part 3 and 4. None of the Design Guidelines can be initiated as they are merit based unless Councils retain strategic planning control and control of the principal Development Standards. They will not be delivered through the complying development pathway as the private certifier cannot make merit assessments. Setbacks are a critical element in Ku-ring-gai's landscape character, yet is absent from the Principal Development Controls. An amendment is required to include Site coverage and setbacks in Primary Development Controls
Principal Development Controls	Locally established and meaningful DCP Development Controls have no statutory effect in Complying Development if separate controls are contained within the MDH Codes SEPP. Therefore, all principal Development Controls should be removed from the MDH Codes SEPP and retained in the LEPs for Land Use, Height of Buildings, FSR, Landscaped area.
Setting and Testing the Controls	*The appropriate principal controls are the result of identifying future character, appropriate heights, building depths, spaces*

	between buildings and ensuring good amenity. Control testing should also consider: • *Orientation to control sunlight and daylight access and limit overshadowing;* • *Natural ventilation;* • *Visual and acoustic privacy;* • *Private open space;* • *Communal open space;* • *Deep soil zones;* • *Ceiling heights ;* • *Dwelling sizes;* • *Public domain interface; and* • *Noise and pollution.* *The controls must be checked to ensure they are co-ordinated and that the desired built form outcome is achievable. The controls should ensure the optimal density and massing can be accommodated within the building height and setback controls.* (p14) This testing as relates to the LEP and DCP has no effect under the proposed MDH Codes SEPP, which overrides LEP and DCP controls. Therefore, the inclusion of Land Use, Height of Buildings, FSR, and Landscaped Area in the MDH Codes SEPP assumes all medium density development will achieve the same results, which could in fact be quite contrary to the local existing and desired urban character. This has been the experience of development under SEPP (Housing for Seniors and People with a Disability) 2004 and SEPP (Affordable Rental Housing) 2009 for boarding house type development. Testing through Land and Environment Court Appeals is a poor method of strategic planning. Councils are best placed to retain these controls as they have a holistic understanding of the local area strengths and constraints, and are able to deliver development that preserves the long term integrity of its most precious resource- land. The performance criteria being tested must be robust and in the draft form, many of the proposed elements are inadequate or have demonstrated to achieve poor outcomes. All principal Development Controls should be removed from the MDH Codes SEPP and retained in the LEPs for Land Use, Height of Buildings, FSR, Landscaped area. See detailed comments Part 3 Design Criteria regarding quality of the design criteria performance benchmarks.
Complying Development	Amendments must be made to MDH Codes SEPP and MDDG for better amenity and meaningful performance benchmarks that will achieve the MDDG Design Quality Principles. Further, private certifiers do not have academic training through the rigour of a 5 year Town Planning degree study and therefore are ill placed to be assessing whether development outcomes are complying or acceptable across all layers (landscaping, stormwater, water management etc.) Private certification of medium density housing must not be permitted due to its complexity and cumulative impacts on local character, long term sustainability alignment with other local, state and federal plans. Private certifiers are not qualified, nor interested in the analysis required to determine whether testing of controls has been adequate, or even carried out. The premise of Complying Development is that it provides a simple checklist certification that

	does not need to consider any of the broader urban design considerations that are critical at local level in achieving the desired local planning objectives and urban outcomes. A separate SEPP for Medium Density Housing should be developed similar to SEPP 65 and the ADG that better manages the more complex urban design issues.
PRINCIPLE CONTROLS	
2.A **Building Envelopes – Heights and Setbacks**	**Building Envelope**s: The list of 'special sites' (p16) should include significant vegetation and watercourses. **Setbacks**: The proposed minimum dimensions for front, side and rear setbacks are insufficient to provide landscape area that enables retention of existing trees particularly large remnant gum trees that have tree protection zones in excess of 10m radius that are typical in Ku-ring-gai. (Guideline 15) (p19). The setbacks give a building footprint expectation to applicants and without strong tree preservation requirements; tree removal is the direct outcome. Ku-ring-gai Council is currently involved in a Land and Environment Court appeal for a development application to remove trees on a residential lot, with the only justification for their removal being to enable development under a CDC. If trees are retained on site, the Code SEPP minimum setbacks and tree protection requirements are inadequate for the preservation of significant trees and inconsistent with the Australian standard for Protection of trees on development sites (AS4970-2009). This is further evidence that this document has not been prepared with advice from the National Arborist Association of Australia. Guideline 15 makes reference to 'deep soil areas' which is not defined in the DMDDG or the Standard Instrument - Principal LEP. The setbacks in Figure 2.7 of 0.9m for front 15m is inconsistent with the design criteria (1.2m) Locally tested controls have no effect under Complying Development as the MDH Codes SEPP controls are imposed. Controls for building height and setbacks must be retained in local planning instruments to ensure some regard to local character.
Building Height Design Guidelines (DG)	Heights are supported generally. **Figure.2-6.2** is misleading as it **shows** medium density housing at the rear of the site and is not fronting a public road. **Figure 2-3** the dotted line is incorrect as it does not follow the natural ground line. **Figure 2-6 and 2.7** demonstrates a very poor building form for the type. It takes no account of aspect to north and the location of massing that may allow flexibility to minimise solar impacts to neighbouring properties. The second storey setback has very little advantage as no habitable room can fit within the form of the two end dwellings resulting in single storey end dwellings which will have to be very long and deep to accommodate the necessary internal layout. The terrace type is therefore seriously flawed in this context.
Setbacks Design Guidelines (DG)	Building separation and setbacks are related categories but are NOT the same as is implied in the description. Setbacks are about achieving landscape character; building separation is about achieving visual and acoustic amenity. **Figure 2-4** is diagrammatic and not based on real life testing. The positive is that there is a network of public streets with a

	generally shallow block pattern, although there are no footpaths, street tree planting that should accompany high levels of public domain pedestrian amenity. It also provides an example of an area that has potential for laneway types of medium density development. Unfortunately, this block pattern is not the condition found in the majority of the Ku-ring-gai LGA and misrepresents the possibility for the area. Analysing the building footprints, they appear to have very poor urban outcomes that reinforce the worst of current project home dwelling sizes (Australia has the largest dwelling sizes in the developed world including the US until just recently). Excessively large dwellings equate to loss of landscape through excessive site coverage. Street setbacks proposed as complying development will lead to a significant reduction in the current setbacks in Ku-ring-gai where setbacks are fundamental to the provision of deep soil landscaping and canopy trees which underpin the character of the locality. The role of private certifiers transfers the task of urban assessment to a person with no training, qualifications, or expertise. By implication, the whole purpose of Complying Development assumes the development is fully complying. A private certifier being paid by a developer does not have the broader public interest vested. The very nature of code based complying development approval is predicated on a checklist. Any requirement to consider existing urban context will rely on the Design Verification Statement that will only state that the proposed development satisfies the Design Criteria and will be regardless of whether or not the MDH Code SEPP controls are inconsistent with the local DCP or LEP. **Figure 2-5** proposed side setbacks demonstrates the Codes SEPP takes no account of existing urban character and does not enable any landscaping between buildings. This will have a negative impact in Ku-ring-gai where development controls for desired urban character are based upon each building being within a landscape setting on all sides between all neighbouring sites. To this effect Ku-ring-gai has developed models for both high density apartment buildings and medium density townhouse buildings that can integrate into the local landscape character while providing the required housing typology. Rear setbacks do not accurately reflect what is possible under the MDH Codes SEPP that could result in back yards with primary living areas separated by as little as 3m to the wall of an adjacent development or have openings to primary living areas only 6m apart separated at 3m by fencing (usually colorbond) due to low expense. Landscape, visual and acoustic privacy will be unacceptable. The fact that basic amenity will be far below that required for high density housing in SEPP 65 and the ADG is of great concern. Controls for building height and setbacks must be retained in local planning instruments. (See detailed comments and amendments for each of the related design criteria in Part 3)
2.B **Floor Space Ratio** **Design Guidelines (DG)**	Locally tested controls have no effect under Complying Development unless the local controls are being tested for new subdivisions and redevelopment requiring master plans. SEPP (Housing for Seniors and People with a Disability) 2004 and SEPP (Affordable Rental Housing) 2009 for boarding houses do not take into account local development standards for FSR, setbacks, landscape (deep soil). They are imposed regardless of the local context and has led to many Land and Environment Court appeals due to the disconnect between the SEPP based 'incentives' appropriated development controls that has so often been in conflict with surrounding urban character.

	These are prime examples of much of the failure of code based planning. Using the Court system to establish Planning Principles is a very poor mechanism for achieving high quality urban outcomes. Much of the "Guidelines" can be supported in principle, but cannot actually be implemented under the MDH Codes SEPP as the standards being put forward will not deliver those outcomes. Only well researched local LEPs and DCPS can deliver such principles as Local Councils have the data and local knowledge to undertake the analysis and specific controls for effective place making. Code SEPP imposed FSRs generally promote excessively large dwellings which are contrary to all other government policy on climate change, reducing energy consumption, affordability, greening of cities, reducing impermeable surfaces for sustainable water management etc. Ku-ring-gai has already seen substantial tree removal on sites preparing for Complying Development dwellings. **DG 9:** Refer to Appendix 5 of the MDDG which contains recommended examples of medium density types that should never be constructed as they deliver the worst urban outcomes from every perspective based on sound urban design, long-term health and well-being, and sustainability benchmarks. Control of FSR should be retained within the LEP.
2.C Landscaped Area Design Guidelines (DG)	The section should define 'landscaped area' as per the Standard Instrument - Principal LEP. The definition provided makes reference to 'deep soil'. Deep soil is not defined in the DMDDG or the Standard Instrument - Principal LEP, the Code SEPP or in the DMDDG. It is also not required as design criteria for Medium Density Houses under complying development. The Guidelines in 2.C recognise the importance of landscape areas for the preservation of the setting, streetscape and the natural environment, including significant existing trees. However this is not reflected in the guide as follows, • the inadequacy of the minimum landscape percentage requirements for medium density developments. • no consideration in Part 3 as part of the Design criteria of increasing the extent of landscaping in accordance with the character of the area despite it being described as an aim of the document • The failure to use deep soil area as a development standard for medium density development • The reliance on unlimited landscape area as planting on structures - a solution that is expensive to construct, maintain and is less sustainable than deep soil planting areas. • The reliance on street tree planting for landscape amenity in higher density areas putting the burden of maintenance for the development amenity on the local authority and in established streets, additional maintenance for tree pruning for overhead wires. • There are no diagrams provided in the document that promotes the benefits of retaining existing trees through an example of a development that has retained existing trees. • The illustration on the front cover is a poor example of sustainable medium density design and does not reflect the landscape principles and guidelines as listed in Part 2. The example should be of tree lined streets, houses in dappled shade of mature canopy trees and privacy, scale and visual amenity created by assorted screen planting of trees and

	shrubs. **Landscape guidelines** The guidelines in general are poorly written, confusing, too vague and unspecific, and are clearly written with little understanding of arboriculture, ecology, landscape architecture or the development assessment process. **Figure 2-10** is an attractive example that will not be achieved under the proposed Code within the allowable minimum lot size and other development setbacks. This picture should be removed as it misrepresents what is possible. **Figure 2-11** shows a large rear setback that is a best case scenario that exceeds the minimum rear setback requirements of the MDH Codes SEPP. Again, not an accurate representation of the reality. **Figure 2-12** is inconsistent with the MDH Codes SEPP as the front setback is insufficient to support trees. The trees are in fact in Council's nature strip. The design is highly articulated and demonstrates skills of an architect, detailing and materials are more costly and not representative of the reality the proposed Code is advocating. **Figure 2-13** a 4.5m front setback for new subdivision areas within established areas provides insufficient area for 'substantial planting' in the front setback and relies entirely on street tree planting. The design criteria only requires one tree with a mature height of 5 metres. Within an established LGA street tree planting is likely to be constrained by overhead wires unlike the more usual underground services provided in green field subdivisions. Historically therefore our planning policies have required a deep front setbacks primarily for the planting of canopy trees that reduce the dominance of the built form. The proposed minimum front setback is considered unsympathetic with our existing streetscape character. The street tree is in the driveway. **DG 9:** The MDH Codes SEPP landscape minimum does not enable locally based landscape requirements to be implemented as suggested in this Guideline. Council must retain landscape controls for both general landscape and deep soil if appropriate urban character is to be achieved. No private certification of medium density housing must be adhered. All diagrams should reflect the minimum Development Standards of the MDH Codes SEPP and MDDG and show illustrative sites in context with development at the rear and sides. In doing this, a very different context emerges that should lead to significant amendments to the SEPP and Design Criteria. The loss of every council's authority over landscape fails to consider the variety and specific character of each LGA throughout NSW and fails to provide a mechanism to achieve the variety that a city and NSW needs. Landscape is the single most important element that defines Ku-ring-gai's urban character. The MDDG Objectives and Design Criteria for landscape are manifestly inadequate for Ku-ring-gai. There is no requirement for any landscape to be deep soil. The required areas are inadequate and will not result in the trees being viable due to the high probability they will be removed, or replaced with smaller planting, or areas of paving extended post approval. Ku-ring-gai's urban character is predicated on the quality of its landscape, and has in place, detailed development objectives and controls for all setbacks, site coverage, total landscape area, deep soil and tree removal that ensure all development, of every scale is within a dominant landscape setting characterised by canopy trees and deep soil planting. The loss of landscape controls, therefore, has a particularly devastating

	impact on Ku-ring-gai's strategic planning of urban character. Protection of canopy trees that may have value in either providing links between areas of biodiversity significance, or contributing to the background view between allotments or internal site character is very important. This has a function as a public asset, which is not recognised in the Codes SEPP or MDDG. Local experience of development currently lodged under *SEPP Seniors and People with a Disability* and *SEPP Affordable Rental Housing* has seen the gradual loss and/or degradation of established trees and vegetation within the Council area where these developments occur. Unlike these two SEPPs, the Codes SEPP has **no** development standard requiring development consider and respond appropriately to existing and desired urban character for landscape nor can it be verified. The types of development that have had the greatest impact in Ku-ring-gai are those advocated in the MDDG that prioritise at-grade car parking deep within the site. These have a devastating impact on the protection of existing and diminishing landscape. These outcomes are in direct conflict with the NSW Government's *A Plan for Growing Sydney* and its *Urban Green Cover Policies*, commonwealth policies for Greening Cities and Housing adapted to climate change.[1] It is also worth noting, these are policies that are inconsistent with the United Nations, General Assembly *Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*. Cumulative impacts resulting from the Landscaped Area development standard have the potential for loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect. The focus on streetscape landscape controls is important in achieving urban character, however, the policy fails to adequately value the rear yard landscape assets throughout NSW and in Ku-ring-gai specifically, and their importance climatically, their role protecting against further fragmentation of biodiversity significance and loss of green corridors, and their aesthetic contribution to urban character. Further to this, the local community demands its protection and the courts have recognised Ku-ring-gai's landscape character in its judgements.
Planting on Structures Design Guidelines (DG)	No deep soil provision shave been includes and there is no corresponding table for trees in deep soil conditions. Table 1 and Table 3 have not been tested with the MDH Codes SEPP setback controls. The nominated planting will not be achieved in the rear gardens in Ku-ring-gai due to the majority of the site landscape being in the 12-14m setback (this will be the general average within 40m as per MDH Codes SEPP). The effect will be that trees will be planted in the front setback with the building pushed to the far rear of the site and may result in parts of the rear boundaries being zero setback, or with a 3m setback that is highly likely to be paved over with no deep soil. The anticipated impact would be that very few if any large canopy trees will ever be planted in the rear setback zone irrevocably altering biodiversity connections, and landscape character. The dimensions of large trees will take up either the full extent of a rear of a site and overhang neighbouring properties and/or subdivision allotments where minimum site requirements and Development Standards are proposed. This effect will be exacerbated by Private Certifiers who will approve developments complying with the tree planting (tick the box

[1] See end of document for clauses of these policies

	of a tree on a drawing), with no expertise about the species suitability, the reality of the tree ever being planted or being viable for its particular root system. There's very limited opportunity to implement the Guidelines and questionable ability to verify compliance on Complying Development.
SITTING THE DEVELOPMENT	
2.D **Local Character and Context**	Generally, the intent can be supported but is only applicable where new subdivisions are proposed. Again, the Private Certifier is not trained or qualified in urban design and cannot certify that development is appropriate to the local context.
Desired Future Character	MDH Codes SEPP Development Standards for complying development take no account of local existing and/or desired context as reflected in local planning instruments. The one size fits all approach cannot have the capacity to address individual area context.
Understanding Influence of Existing Subdivision	*Subdivision and street patterns are very powerful influences on the existing urban fabric and potential future development. (p26)* MDH Codes SEPP Development Standards for complying development take no account of existing subdivision patterns. Street patterns define the subdivision pattern and both define the building types and both therefore are first order elements defining the urban fabric and development potential. The one-size-fits-all approach of the proposed complying development removes the analysis and nuances of subdivision and street patterns so that there is no scope to identify appropriate locations for medium density housing types. This fails the first order steps of sound strategic planning and urban design.
Design Guidance	The title Design Guidance is inconsistent with the title Guidelines appearing in sections of the MDDG. **DG 1**: .....i*n areas with deeper lots, consider how new streets and lanes could be introduced to increase permeability. (p27)*This is a sound strategy for increasing density of the housing types proposed under the MDH Codes SEPP, however it cannot be implemented unless on new subdivisions, or where master planning of large brownfields site occurs where there is control of the street network and subdivision pattern to match the desired housing/development typologies. The MDH Codes SEPP is not intended to amalgamate sites, so the opportunity to introduce new streets to establish a suitable street layout cannot be initiated. Likewise as Complying Development, the ad hoc implementation and certification process via a Private Certifier negates any possibility of addressing the street network and ultimate subdivision pattern suitable for most of the medium density typologies proposed. This is antithetical to sound strategic planning principles.

Public Domain Interface	Written description generally supported as promoting sound objectives for the Public Domain Interface. The Design Guidance cannot be implemented under Complying Development Standards. The impact of a Design Guideline that cannot be implemented will result in the loss of established landscape character due to private certifiers being unable to verify merit assessment. **Figure 2-21** shows an example that is not representative of what the Codes SEPP Design Standards for setbacks permit. This will not occur. **Figure 2-23** is more representative of the Codes SEPP development Standards for front setback. The streetscape does not enable sufficient deep soil for canopy street trees. The front setback demonstrates large canopy trees cannot be supported. This will lead to the destruction of biodiversity corridors throughout the suburbs. The Terrace type shown does not comply with the Codes SEPP side setback standard for the end terrace as it shows the end terrace at zero setback which is not permitted under the MDH Codes SEPP. Lot subdivision therefore incorrect and not representative of the Code.
Design Guidance (DG)	**DG 16:** substations do not appear as a consideration in any of the typologies recommended in Appendix 5 of MDDG. The built form for Complying Development will be certified by a Private Certifier who will have generally no investigation or information of energy upgrading requirements in early design of this scale (or even the majority of high density development), this is left to CC stage. Therefore, there is no way to control this clause and energy upgrading infrastructure will be certified by a Private Certifier and be fully visible in the front setback zone due to the proposed subdivided lot sizes in context of many existing parent lot widths and minimum setbacks permitted.
2.F **Internal Street – Pedestrian & Vehicle Access**	The section name 'Internal Streets' is misleading. Privatised, internal driveways are not streets. The section is about internal driveways. This typology has been and continues to be a failed model that results in poor outcomes to the urban fabric. It has arisen specifically due to inappropriate subdivision patterns, combined with inappropriate housing typologies for the subdivision pattern. This type is a direct response to absent or very poor strategic planning. **(**See also comments 2Q - Acoustic Privacy.) This typology is poor and must not be promoted as an exemplar of design quality. It is counter to the healthy functioning of a city as it privatises a major element that should be a public domain asset, it prevents establishing new through-block street networks – a critical aspect for much of Ku-ring-gai due to the excessively deep lot patterns and contrary to the Design Guidance for 2D Siting the Development. The only application where this typology could be successfully implemented is where all roads have functional public road reservations, where the internal roads are located according to a local strategic plan (as advocated part of DG 2), otherwise this typology should not be included. Historically, at grade vehicle access throughout a site continues to be one of the worst typologies leading to the worst urban outcomes. It prioritises vehicle access, which impacts and permeates the entire site due to AS 2890, visitor parking requirements, and general demand for 2-car garaging. This has very real and adverse flow-on impacts to landscape, ecology, biodiversity, water management, increased heat-sink effect, general well-being and amenity, not to mention urban character, and context.

Figure 2-26 taken from Linwood Estate, Honeysuckle, Newcastle is also not representative of the proposed minimum 'Internal Street' reservation as proposed. Measured from SixMaps, the reservation is a min 9m, and it still does not achieve any meaningful landscape. It should be further noted that the image is of a rear lane in the subdivision and that the dwellings actually address either a full street frontage and/or the Hunter River foreshore. Figure 2-26 is proposing less of a building separation, to be the primary streetscape character and address that is proposed by Figure 2-27. This is unacceptable as a primary aspect for any sort of housing.

Figure 2-27 greatly exceeds the 'street' reservations proposed in Figure 2-28 and is not representative of the proposed controls. **Figure 2-28** It should be emphasised that the proposed building separation for the 'Lane-shared Space' figure is:

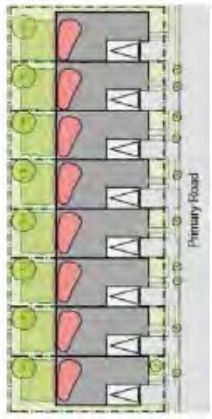
- 50% less than the minimum separations for SEPP 65 apartment development
- 50% less than KDCP 2016 6A.3 and 6A.4
- and notably 30% less than AMCORD the Commonwealth minimum amenity standards from the Department of Health, Housing and Community of the 1990s and early 2000s that was reviewed and replaced by SEPP 65 where the separation increased to current requirements).

It is of great concern that a design standard would be promoting such poor amenity at lower density where amenity arguably should be easily as good as, if not exceeding, high density development. The Carrington Estate on the northern side of the Hunter River at Newcastle shows new primary streets with landscaped medians with building separation of primary aspect to primary aspect of 35m. Note: Even though Carrington would be seen as a 'good example' only due to the subdivision structure of the street pattern of laneways, the amenity is almost entirely derived from the location on a major waterway and public foreshore greenbelt. The comparison of lost landscaped rear yards of the new subdivision compared to the existing housing subdivision that has smaller building footprints is typical of the outcome the MDH Codes SEPP will cause where more site coverage means less landscape.

See real life impacts of this typology demonstrating devastation of landscape, maximised hard paved areas, and overall loss of residential amenity.

As-built Multi-Dwelling Housing with garages facing the street

- Loss of on-street parking
- Narrow private road
- No footpath



Multi-Dwelling Housing (Terraces) with garages facing the street
(MDDG, p99)

Loss of- landscape, deep soil and impact on the streetscape and public amenity.

Design Guidance (DG)	**DG1** - read in conjunction with Figures 2-24 and 2-28 demonstrates no landscape buffer in the private domain with the dwelling to the building line. This places part of the entry portico into the common area. Depending on the width of the garage/carport space, AS2890 car parking requirements will result in wider areas of hard paving to reverse and turn a vehicle. **Figure 2-24** scaling of the internal street zone if at the minimum of 6m (allows for 3m of common landscape (theoretically) + 3m carriageway for a total of 6m leaving no landscaping along the side boundary because traffic requirements will not work. The Design Guidance is unrealistic and Figure 2.24 is not representative of the control. Figure 2-28 goes further proposing an unacceptable typology that will achieve no acoustic separation. **DG2 -** Supported but cannot be implemented. See comments above regarding strategic planning and impacts of proposed Development Standards and implementation of MDH Codes SEPP with Complying Development. **DG3 -** This conflicts with DG2. No dead ends or internal driveways should be permitted. **DG7-** None of the MDDG Appendix 5 recommended examples accommodates any service vehicles which DG7 stipulates. Again AS2890 and Council requirements under KDCP 2016 Section C Part 23.7, 23R.4, 23R.5 and 23R.6 will result in very different built outcomes. **DG10** The proposed reservations for both Lane and New Internal Street types (unless a one-way carriageway within the proposed 12m reservation) does not enable separation of pedestrian and vehicular movement, with any meaningful landscape. **DG11-** Garages will have to be setback from the building line to accommodate vehicle turning templates impacting as previously detailed. **DG12 -** In reality visitor parking will be accommodated at the end of the driveway to maximise FSR and minimise building separation (if any). **DG13 -** Landscape is a positive objective but can be demonstrated as unachievable with the proposed model. **DG14 -** There is insufficient landscape area for meaningful canopy trees within the proposed model unless a one-way carriageway is proposed within the 12m reservation as per DG 15. **DG16 -** This cannot be achieved as per previous condition. **DG17 -** This will not be achieved. The premise of private internal streets is predicated on accommodating vehicles. Therefore, site character, pedestrian amenity and general residential amenity are automatically impacted unless appropriate building separations and street design is mandated as a strategic plan.
2.G **Orientation and Siting**	Section description is supported but is irrelevant in Complying Development. There is no site analysis requirement under the proposed Development Standards. A private certifier is not required to and will not challenge whether a development has responded to the site conditions. **Figure 2-30** does not comply with the setback Standards of MDH Codes SEPP and not is representative of a real development. There is no car parking.

	Figure 2-31 is a poor image of this project. Dating from the 1990s, a more contemporary image shows street trees have now grown softening the built form. However, it is it an example of an inner city LGA, is very out of context with the vast bulk of existing outer ring suburbs and therefore inconsistent with the landscape objectives generally advocated in the MDH Codes SEPP and MDDG. It also appears to not comply with the Design Guidance at Figure 2-57 of 2M Private Open Space requiring a landscape zone separating the private open space from the street nor is it consistent with maximum building length.
Design Guidance (DG)	**DG 10** Delete reference to 'internal streets'. Private driveway networks are not internal if they are streets they require proper street reservations and layouts coordinated with the existing network to provide well located inter-block connections, and building separations to achieve the MDDG design quality objectives.
2.H **Building Separation**	**Figure 2-33** is diagrammatic with no orientation to north, or context. **Figure 2-34** the end terrace illustrates the point of building separation but represents an unrealistic and poor building form. There is insufficient width of the remaining second storey to accommodate a habitable room and thus unrepresentative of the intended outcome.
Design Guidance (DG)	**DG 9** Assumes DCP building controls would prevail for increased building separations than required in DG 10. **DG 10** should be read in conjunction with Visual Privacy at Design Criteria 3.1-P which provides controls entirely predicated on privacy screens. Privacy screen are a last resort for visual privacy not a first order solution. Good design avoids the necessity for any privacy screening. Experience has demonstrated that privacy screens are detrimental to achieving high levels of amenity as they impact on daylight, ventilation and outlook and indicate building separation is actually inadequate. Acoustic privacy is also impacted with inadequate building separation. The MDDG will result in a poorer level of amenity than is being achieved under current local development controls. The effect of Complying Development will be that the minimum building separations will prevail and under Design Criteria 3.1-P, and will be approved as compliant with by a private certifier. The result will be unacceptable for the desired urban character in Ku-ring-gai and throughout NSW. Local control of principal Development Standards must prevail. The building separations should be the same as SEPP 65 ADG for apartments. There is no justifiable reason based on sound urban design principles why a level of amenity less than that expected in apartment development is acceptable in a lower density housing type. If not, landscape will be the casualty with all the related flow-on impacts on social and environmental factors.
AMENITY	
2.I **Solar & Daylight Access**	**Figure 2-38** solar diagram is wrong. There is no solar access achieved at due east or due west in mid-winter, there is no orientation to north on the diagram and is generally meaningless. The diagram within the SEPP 65 ADG Appendix 5 solar diagram including sun altitude ratios must be included. **Figure 2-39** Require amendment**.** The maximum depth for all housing types must limit the depth for an open plan living room to 8m measured from the external window to the rear wall, and 6m to the rear wall of a kitchen/workbench from a window. This is a tried and tested model. The implied limitation applying to only single aspect dwellings promotes a poor dwelling type known as

	single aspect units, and enables excessively deep, dark plans for dual aspect dwellings. This is contrary to good design and contrary to sustainability and energy efficiency objectives.
Design Guidance (DG)	**DG 2** Single aspect dwellings should not be permitted in medium density housing typologies. The minimum subdivision sizes should achieve 100% cross ventilated dwellings in all but extreme site conditions and therefore should only be permitted seeking a variation to performance. **DG 7** refers to Design Criteria. There are no Design Criteria applicable for solar access other than those for Complying Development types in Part 3. The Design Guidance is inadequate and unacceptable as there are no measurable performance benchmarks. A private certifier is not trained, qualified, or experienced in assessing compliance of solar and daylight performance based on the MDDG. It is unclear whether the status of the MDDG, if adopted would therefore negate DCP controls in sections of the DCP that apply to multi dwelling houses. For example if KDCP 6C.3 solar and daylight access controls are also cancelled there will be no measurable solar access other than 15 minutes vaguely indicated by Figure 2-40. **DG 10** This must be deleted. It is inconsistent with DG 15. Excessively deep floor plans are contrary to good design and DG 15 rightly limits their use to service rooms therefore should be deleted. **DG 12** implies side windows of medium density housing in higher density areas should never be included in solar access analysis. The lack of performance benchmarks for basic solar and daylight amenity will result in Ku-ring-gai's medium density residential development area achieving a poorer amenity than high density development. **DG 15** is inconsistent with DG 10**.** Therefore include: **New DG:** There is no specific daylight Design Guidance. All habitable rooms are to have a window in an external perimeter wall. Light must not be borrowed from other rooms. Measurable performance benchmarks for solar and daylight access must be included and be equal to or exceed minimum performance requirements for high density housing under SEPP 65 ADG and apply to all medium density housing.
2.J **Natural Ventilation**	**Figure 2-45** Would need to show ventilation through the rear door to demonstrate true cross ventilation. The dwelling is only partially cross-ventilated with the kitchen and rear of the dwelling not being cross ventilated.
Design Guidance (DG)	**DG 8** Requires amendment**.** Reword to say: "Ceiling fans can help create air movement but do not achieve cross ventilation. They are a mechanical means of ventilation."
2.K **Ceiling Heights**	**Figures 2-49, 2-50 and 2-51** are all good examples; however they are not representative of what is achieved under the proposed Design Guidance. They all show ceilings far greater (1.5 to double) the permitted ceiling height.
Design Guidance (DG)	**DG 1** Requires amendment. All habitable rooms must have a minimum floor to ceiling height of 2.7m. 2.4m results in the perception of oppressive rooms and poor qualitative amenity and where a ceiling fan can be a safety hazard. The BCA

	minimum ceiling heights are not about quality but about safety and do not include provision for ceiling fans. The MDDG must advocate better design than minimum statutory safety standards. The overall maximum building height can more than accommodate full 2.7m floor to ceiling heights on all levels. A ceiling fan in a bedroom with a ceiling height of 2.4m results in the fan being at 2.1m and is a safety hazard as it can be readily touched with an outstretched arm such as when getting changed. Allow floor-to floor height to accommodate 0.4m structural depth for total 3.1m floor-to-floor height (and allows floor covering to be accommodated), resulting in internal ceiling height of minimum 2.7m. **DG 2** Requires amendment. Vague statement with no measurable performance benchmark. Include formula for increasing ceiling height commensurate with room depth. **DG 3** and **DG 4** are both good guidance but unlikely to be checked by a private certifier. **DG 6** Requires amendment. Poorly worded. Appears to permit 2.4m ceiling height in living area and possibly reduced to 2.1 in kitchen. Amend to ensure 2.7m is achieved through the living area with any bulkhead restricted to the kitchen with a minimum ceiling height of 2.4m permitted. **DG 7** and **DG 8** Requires amendment. Require that bulkheads do NOT intrude into habitable rooms at all. Otherwise conflicts with DG 1. Comments for DG 1 applicable. Oppressive internal amenity with low ceiling heights.
2.L **Dwelling Size & Layout** **Defining Floor Area**	Amend the title "Defining Floor Area". Change heading to "Defining Minimum Room Dimension". Floor area relates to FSR and is different to measuring minimum room dimensions. Floor area includes storage consistent with SI LEP and MDDG definition while minimum room dimension is exclusive of wardrobes and fixed joinery.
Design Guidance (DG)	**DG 2** Requires amendment. Clarify so that the larger floor area relates to amenity within rooms not inefficient dwelling layout. **DG 3** Requires amendment to read "A window must be visible from every point in a habitable room". **DG 4** A private certifier assessing a Complying Development is not trained or qualified to determine design on merit. Therefore the incentive is for applicants to claim compliance for certification while it may in fact fail the minimum room size test. This will lead to poor outcomes. **DG 5** Requires amendment to read "All living areas and bedrooms and all habitable rooms must be located on the external perimeter of a building and have a window in an external wall. No habitable room is to borrow light from another room." **DG 9** Requires amendment to read "Provide space for studies. Studies are habitable rooms and must have a visible window in an external perimeter wall that is not more than 8m from the rear wall of the study or study alcove."

2.M **Private Open Space**	**Figure 2-56.** Requires amendment. Windows on side boundaries do not comply with the BCA. **Figures 2-58 and 2-59** are well-designed examples by architects, which is supported as exemplars of high quality design. However, they are not representative of the Complying Development minimum Development Standards nor of what will be built generally and designed by less skilled practitioners. **Figure 2-57** The proposed landscape is unlikely to be able to support canopy trees either in the proposed nature strip or within the site.
Design Guidance (DG)	DGs general comment: Wording of Design Guidance generally contains no performance benchmarks. Words like 'should' 'can' place no obligation to meeting any of the DGs.
2.N **Storage**	DGs general comment: Wording of Design Guidance generally contains no performance benchmarks. Words like 'should' 'can' place no obligation to meeting any of the DGs.
2.O **Car & Bicycle Parking**	**Figure 2.66** shows a dimension of 5.5m from the garage door to the face of kerb. This dimension would be inadequate for vehicle parking/storage in front of the garage, and is likely to result in vehicles protruding into and obstructing pedestrian access on the footpath. The dimension would need to be 5.4m (min) between the garage door and the boundary. The caption under **Figure 2.66** does not relate to the image above it. *Onsite parking may be located:* • *Underground in basement parking;* • *Above ground fronting a primary road;* • *Above ground fronting a rear lane; and* • *Above ground fronting to a private street* (p50) The final point "Above ground fronting to a private street" must be deleted as it is known to deliver poor design outcomes. Examples of impacts to internal site character caused by vehicles within a site can be seen at MDDG Figure 2-78 which provides a prime example of a good architectural design with zero landscape character due to internal driveways.
Design Guidance (DG)	**DG 1** will not be achieved with the Development Standards for Complying Development. Unless there is a new subdivision or there fortuitously happens to be a rear lane with larger sites that are suitable for small lot subdivision. Most of the LGAs where this condition occurs are already of the housing densities proposed. **DG 4** this is supported to enable good streetscapes, however it will not be achieved with the Development Standards for Complying Development. It is inconsistent with 2E **Figure 2-23** where hard stand for a second car is located forward of the building line for all permitted front setbacks, and DG 8 that also allows hard stand parking forward of the building line. **DG 5** On-street parking may not be possible or available to residents in areas where R3 is permitted in Ku-ring-gai i.e. around railway stations and town centres (due to parking demand by commuters and employees), therefore reliance should not be

	placed that on-street parking may be available It may be worth considering the requirement for the applicant to introduce car-share vehicles adjacent to the site (subject to Council approval), to minimise the uptake of a 2nd vehicle and to avoid additional on-street parking pressures. Cannot be achieved with the Development Standards for Complying Development that permits 6m lot widths. This is insufficient space to accommodate on-street car parking and is the reason why the model fails the streetscape. It results in streets being dominated by cross-overs and the loss of existing on-street car parking, and the exacerbated problems of hard areas and issues around stormwater. **DG 6** On-street parking may not be possible or available to residents in areas where R3 is permitted in Ku-ring-gai i.e. around railway stations and town centres (due to parking demand by commuters and employees), therefore reliance should not be placed that on-street parking may be available It may be worth considering the requirement for the applicant to introduce car-share vehicles adjacent to the site (subject to Council approval), to minimise the uptake of a 2nd vehicle and to avoid additional on-street parking pressures. Cannot be controlled unless Councils retain strategic planning control and Medium Density Housing is removed from complying development. **DG 7** is inconsistent with the Development Standards for Complying Development that permits and claim 6m lot sizes that allow for garages/car parking plus the habitable rooms to address the street. 6m min lot width will only work with a rear lane or basement car parking. **DG 11** proposed landscape cannot be achieved with the Development Standards for Complying Development that permits 6m lot widths.
2.P **Visual Privacy**	Privacy screens should never be relied upon for visual privacy. They indicate inadequate building separation as a result of poor design resolution. Inadequate building separation also impacts on acoustic privacy, which is usually only then addressed by closing openings which then affect natural and cross ventilation. **Figure 2-75** Amend to present a true scenario under the MDH Codes SEPP. The scenarios are not representative of minimum separations permitted at 2H DG 10. Amend to show a 1.8m boundary fence separating the living areas of 2 dwellings each setback 3m from the boundary directly opposing. This will be the outcome for Complying Development as proposed by the MDH Codes SEPP and will lead to exceptionally poor residential amenity. **Figures 2-76 and 2-77** are excellent and good examples of medium density housing, however, they are not representative of the minimum Development Standards for Complying Development.
Design Guidance (DG)	**DG 1** contains no measurable performance benchmarks for visual privacy. **DG 3** Should be amended - Privacy screens may only be used where no alternative design options is available due to specific site constraints.
2.Q **Acoustic Privacy**	**Figure 2-78** is used as an exemplar of poor acoustic amenity. It actually demonstrates the proposed typology advocated by Guideline 2F – Internal Streets that would be compliant with the proposed design guidelines and will be constructed throughout NSW. It is also exemplar of poor landscape, sub-standard internal site character and communal amenity. This is evidence of the proposed policy impacts that are contrary to sustainability objectives, basic amenity, loss of biodiversity corridors through lost

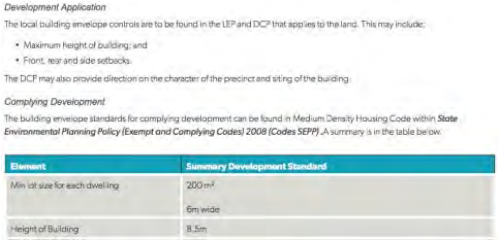
	landscape and critical deep soil. Despite the architectural merit of the built form in the example, the internal street housing type translated into low cost construction (that is without the architectural merit and high end construction quality). This will be a very poor outcome for Ku-ring-gai's landscape character, and more broadly expanded as a type across NSW, will have gross negative impacts counter to all sound strategic cities policies including designing for climate change, WSUD, Greening Cities and Liveable Cities. Refer to comments 2F - Internal Streets.
Design Guidance (DG)	**DG 1** The building separations at 2H are inadequate and should reflect SEPP 65 ADG. All medium density housing must achieve equal or better amenity than high density housing. **DG 5** Acoustic separation between dwellings is a BCA issue. This guideline implies that BCA acoustic standards do not provide sufficient acoustic privacy **DG 6** The proposed types for Complying Development will not meet this guideline and will be exacerbated by the min lot size where there is no rear lane. A bedroom will generally always be above an external garage due to constrained lots and built form and therefore will be less than 3m from self and neighbouring lot bedrooms on the first floor.
2.R **Noise and Pollution**	**Figures 2-79 and 2-80** and the description are generally supported as they demonstrate basic noise barrier planning principles. **Figure 2-81a** is a positive example but unlikely to be representative of actual built outcomes due to the lack of objective measurable performance benchmarks and general inadequacy of Development Standards for landscape, setbacks, deep soil.
Design Guidance (DG)	**DG 4 and General Comments:** There is an inherent conflict between cross ventilation and acoustic privacy for residential development subject to noise and pollution. Cross ventilation requires openings in opposing walls as demonstrated in Fig 2-79 but Acoustic Reports will require all openings be closed to achieve acoustic compliance. Strategic planning at local level must minimise if not avoid residential medium and high density development in adverse health environments.
2.S **Universal Design**	Universal Design is a sound initiative requiring support by the 3 tiers of government housing policies. Generally all the Design Guidance are sound but there is no requirement to provide anything past LHA Silver Level, which is easily attainable in medium density housing types but does not address actual adaptable housing. Ku-ring-gai has strengthened local requirements in KDCP 2016 at 6C.5, which is a good policy responding to emergence of lack of flexibility in much of the medium density housing typologies on the market. It must be noted that these are all compliant with BCA but do not address the functional housing needs of an aging population, or the specific needs of families with young children. Universal Housing under the Liveable Housing Guide is a positive policy (and under regular review as the market implements its strategies). The MDDG provides no measurable performance benchmark for providing adaptable housing. This is a lesser test than under SEPP 65 in the ADG and lesser than Ku-ring-gai's development controls.

	The wording of the MDDG does not reference local development controls around adaptable housing. Unlike SEPP 65, SEPP ARH, SEPP Seniors Development Standards, it will be possible for Complying Development and MDDG design guidance status to override local development controls and without a performance benchmark, there would be no actual requirement to meet the KDCP requirements. This could see a significant proportion of medium density housing, depending on the uptake of the SEPP, providing no adaptable housing and Ku-ring-gai losing the intended 15% adaptable housing (i.e. equating to 1 dwelling lost in every 2, 3 or 4 dwelling new medium density development under the MDH Codes SEPP.
2.T **Communal spaces**	**Figures 2-84 and 2-85** is a good example but not representative of the minimum building separations proposed at 2H Building Separation or the Development Standards for Complying Development. The architectural quality may be achievable within the Ku-ring-gai market but is of a much higher standard than will be rolled out throughout NSW. Again unrepresentative of what the Codes SEPP and MDDG actually permit. No objective measurable performance benchmarks are provided with the concurrent Torrens Title Subdivision being proposed through MDH Codes SEPP there will be no requirement or desire to provide communal open spaces within medium density development as increased sales value would be possible with attached land parcels. Further there is no mandated communal open space requirement.
2.U **Architectural Form & Roof Design**	Generally supported. **Figures 2-86 to 2-91** generally are all examples of architecturally designed medium density housing. Note they are all but one in new subdivisions, many adjacent to public open space. The design quality shows exemplars that are more likely to be constructed in an LGA such as Ku-ring-gai but are largely not representative of the housing stock likely and permitted to be built under the Complying Development Code.
2.V **Visual Appearance & Articulation**	Generally supported. **Figures 2-92 to 2-100** design quality shows exemplars (which is supported as examples of good design). They are models of medium density housing that is more likely to be constructed in affluent LGAs such as Ku-ring-gai. However, being more expensive to build, having the input of an architect (not mandated in the Codes SEPP), they are largely not representative of the housing stock likely and actual development permitted to be built under the proposed Complying Development Code and MDDG and as such are misleading inclusions to the document.
Design Guidance (DG)	**DG 20** Clarification is required. This guidance regards treatment of the third storey note *[Development Applications only]*. Unclear why this is here, if by implication all the other Design Guidance in Part 2 Guidelines is intended for Complying Development only and/or DAs.
2.W **Pools & Ancillary Development**	The section description is largely about rear lane studios but there is no corresponding Design Guidance (apart from Figure 2-105). Expand to clarify whether studios are intended **only** to be permitted where there is rear lane access as implied **and/or** permitted to abut the rear boundary consistent with the Development Standards for Complying Development. Loss of landscape will be a key impact on minimum lot subdivision and unsuitable in the suburban context of established areas such as Ku-ring-gai.

2.X **Energy Efficiency**	*Energy efficient design is about the ability of a dwelling to* *manage thermal performance (thermal comfort), reduce energy consumption and provide for sustainable energy sources. It can provide increased amenity to occupants and reducing energy costs.* (p72) The wording requires amendment as follows: "Energy efficient design considers the development in context of minimising cumulative impacts to urban environments. It is about the ability of a development as a whole, and each dwelling within it, to respond to climate change and sustainable water management; to minimise energy demand (and reduce energy costs); promote renewable energy sources; maximise thermal performance; maximise amenity for occupants; and maximise the liveability of our cities and towns into the future."
Design Guidance (DG)	**Figure 2-106** This is a poor example. While it's a good example of roof-mounted photovoltaics, the building has NO passive solar control of openings through sun-shading devices. **DG 1.** The wording is inadequate. Reword as follows: "Natural light and ventilation must be achieved to all habitable rooms; and to as many non-habitable rooms as possible. " **DG 9** second dot point. Reword: 'maximised' is repeated.
2.Y **Water Management & Conservation**	Section 2Y should contain a reference to locating development clear of overland flow paths associated with trunk drainage systems, watercourses and depressions. Avoiding easements does not achieve this, as watercourses, drainage lines and some older pipes are not always protected by or within easements. **DG. 3** should read "Water sensitive urban drainage systems are designed by a suitably qualified professional engineer." **DG. 4** Runoff from balconies is stormwater and cannot be used internally. **DG.7** appears to discourage the use of rainwater for toilet flushing, whilst encouraging its use for hot water. "Filtered" is not defined. Rainwater can and should be used directly for toilet flushing and cold water washing machine. The use of common rainwater for hot water is not recommended by authorities, according to the BASIX website https://www.planningportal.nsw.gov.au/planning-tools/basix . **Figure 2-115 -** The bioretention garden in the figure is wrongly labelled – it has capacity for retention and treatment of stormwater but not detention unless provided with an orifice plate. **Figures 2-110 to 2-116** images shown cannot be achieved with the proposed Development Standards and building separations at 2H Building Separation. Images are good examples but are not representative of the actual controls. **Figures 2-113 and 2-114** missing.
2.Z **Waste Management**	**Figure 2-117** is unrealistic. Image appears to show waste in vast parkland spaces that cannot be achieved with the proposed Development Standard
Part 3. Design Criteria	

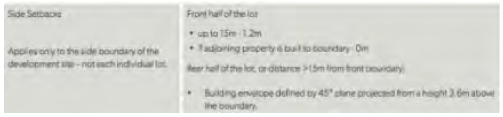
3.1 **Two Dwellings Side-by-Side**	These are commonly called 'semi-detached'. Unclear why the description has been changed. However, it is a type that could work well in Ku-ring-gai providing all dwellings have a frontage to a public road providing Council retains control of the minimum lot size so that deep soil landscape can be somewhat protected in the rear yard. (Codes SEPP provisions that permit tree removal for development have the potential for poor outcomes depending on the depth of the block and existing vegetation).
3.1 (cont'd) **CDC Pathway**	**CDC Pathway –** see discussion in *Review Table - Explanation of Intended Effects Proposed Medium Density Housing Code (MDH Code SEPP)* PCAs can approve development that theoretically must comply with the SEPP Development Standards and Design Criteria. There is no independent, transparent governance of the private certification process other than via costly court appeal. This is also unlikely to require demolition of already constructed development. (The Building Professionals Board has not demonstrated penalties are an adequate deterrent, nor has it effectively governed, enforced or penalised certifiers where proven non-compliant development has been certified. Existing penalties are not an effective deterrent in addressing the already existing serious problems arising from the current use of PCAs during the CC, Construction and Post Construction certification stages identified in National research (including from UNSW City Futures and joint research with the Australian Institute of Engineers). The CDC pathway provides the legal framework for a development process that fosters corruption. The use of PCAs replaces the existing independent, transparent assessment. Corruption within the approvals process of development in NSW has been an endemic feature of ICAC investigations with the common element being the lack of independence, transparency, and an environment of clear conflict of interest. Inconsistencies between the statements in the *Explanation of Intended Effects* for the intent that Council retains permissibility, FSR, building height, lot size, setbacks, are contradicted in the MDDG Part 3 Principal Controls, Council theoretically retains zoning and minimum lot size only. However, this does not appear to be the case because of *Part 3 General Housing Code Division 2 Development Standards for this Code*. All principal LEP and DCP Development Standards for FSR, setbacks, landscape are negated. All KDCP objectives and development controls under the headings nominated in the Design Criteria would be negated by the Codes SEPP. The wording and scope of development standards encapsulated in the Codes SEPP, effectively removes all local strategic planning control. The role of PCAs and ability for ad hoc randomised uptake throughout the LGA R2 and R3 zones will only escalate the impact. Currently KLEP 2015 Schedule 1 limits the number of properties that permit 'dual occupancy' which appear to be the sites nominated as being applicable. Clarification is required in regards to the legal definition of 'dwelling', 'dwelling House' and 'building' as applies to semi-detached types for Torrens or strata title because of impacts on Land Use permissibility. See accompanying document *Explanation of Intended Effects Table 1* (p10). Concurrent subdivision to Torrens title is the mechanism to permit the type. It appears that this type would not be permitted under the SI LEP definitions of 'dwelling', 'dwelling house' and 'building' but could be permitted under the Codes SEPP definition as currently defined. Therefore SEPP definitions

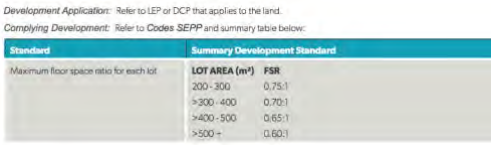
	have to be aligned with Standard Instrument Local Environmental Plans definitions. Ku-ring-gai is concerned about the ad hoc rear subdivision type shown at Figure 3-3, which is not a side-by-side type and unclear why it is included under this heading of Complying Development. Development lodged under the CDC pathway cannot be coordinated with Ku-ring-gai's development controls. **Codes SEPP and MDDG design quality compared to Ku-ring-gai's existing KLEPs and suite of DCPs -** Following the review of the Codes SEPP and MDDG, it is clear that the quality of urban outcomes, resident amenity, and public interest is far higher under Ku-ring-gai's existing LEPs and DCPs. All development lodged under the Codes SEPP therefore will be of a poorer standard than Ku-ring-gai can achieve under the DA pathway. The use of PCAs further erodes any oversight of poor outcomes as there is little to no coordination with council that is required, nor any independent verification of the certified development. **Recommendations:** a) Remove medium density development from the Codes SEPP and implement a new SEPP Design Quality for Medium Density Housing with a Design Code that achieves the design quality of the ADG. b) Retain local council as the consent authority. c) Require all medium density housing to be designed by a registered architect and suitable qualified and regulated professionals for other disciplines d) Ku-ring-gai to retain our LEPs and DCPs for all development submitted via the DA pathway.
3.1 (cont'd) **DA Pathway**	**DA Pathway-** Conflict and contradiction in Table 3-1 compared to 3.1A Development Application pathway. **Figure 3-1** the DA pathway says Council retains zoning and minimum lot size only. All principal Development Standards for FSR, setbacks, landscape would be negated. KDCP 2015 objectives appear to be retained but all local development controls relating to the DCP objectives appear negated by testing against the Design Criteria that becomes the *measurable Standard*. **3.1A Building Envelopes** DA pathway appears to retain all LEP and DCP controls in conflict with the Table 3-1 description. **Figure 3-3** Should be deleted. This is a poor model of the two dwelling housing type. It promotes battle-axe lots and devastates biodiversity corridors because the rear deep soil landscape is irrevocably lost. Rear garden deep soil landscape throughout Ku-ring-gai (and all suburban areas of NSW) defines the canopy tree corridor and urban landscape character. It is a type not permitted in the Site Requirements of Complying Development so must be removed. The example also does not

	reflect an actual development. It is schematic and will not achieve the landscape as proposed. The driveway requirements under AS2890 for swept paths of both vehicles requires approximately 6m driveway width and/or turning bays (depending on driveway, garage width etc.) for reversing. This has not been accommodated and the impacts will be exacerbated by the Codes SEPP small permitted minimum lot sizes and widths. **Figure 3-2** is inconsistent with the provision to avoid/not allow hard stand car parking for a second car forward of the building line. **General comment:** None of the diagrams contain a north point so the types may be completely inappropriate for aspect. **Principal Controls Comments - See Table 3.1 Two Dwellings Side-by-Side** They appear to trigger the Codes SEPP *General Housing Code* site requirements for Torrens title development only. My understanding is that Strata titled development would not comply with the definition of 'dwelling house' in context of the 'building' definition (similar to how an apartment development is understood – multiple dwellings contained vertically in one building, compared to multiple dwellings contained horizontally in one building). Note: If Councils adopt the MDDG 'in its entirety' or the Department imposes the adoption, it will have the effect of negating the existing suite of KDCPs that relate to Multi-Dwelling Housing. Clarification is required regarding actual pathway. Table 3-1 appear incorrect.
3.1A **Building Envelopes**  *Development Application* The local building envelope controls are to be found in the LEP and DCP that applies to the land. This may include: • Maximum height of building; and • Front, rear and side setbacks. The DCP may also provide direction on the character of the precinct and siting of the building. *Complying Development* The building envelope standards for complying development can be found in Medium Density Housing Code within ***State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP)***. A summary is in the table below. **Element** / **Summary Development Standard** Min lot size for each dwelling / 200 m² 6m wide Height of Building / 8.5m	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: Site requirements and min site area: KLEP Land Use Table; KLEP cl 2.6 (2); cl 4.1 (3)(3A); KLEP cl 6.6. **HoB:** KLEP cl 4.3 (2) Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Ambiguity/conflict about status of KLEP controls under Codes SEPP DA and CDC pathways at Figure 3-1 (p80) and statements for Council to retain min lot size and permissibility controls in *'Explanation of Intended Effects'* at p7 when compared to 3.1A (at left) Ambiguity/conflict when read with the *Explanation of Intended Effects'* for *Specified Developmen*t (p32) that states permitted on R2 zoned land. If this type of development is permitted under the SEPP definition of 'dwelling house', as CDC, the application of DCP Dwelling Houses (R2) &/or DCP Multi-Dwelling Housing (R3) would be negated **Comments on Site Requirements:** Minimum site width of 12m is too small when considering living room/entrance (4m wide x 2), garage (3m wide x 2) and side setback (2m x 2) equating to 18m to deliver a reasonable dual occupancy. Some R1, R2 (and R3 zone isolated sites) could be appropriate for semi-detached development type. Dual occupancy rear yard

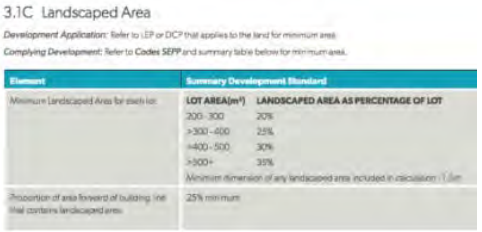
	subdivision type, should not be permitted unless on very large parent lots. Codes SEPP min lot size 200m2 and min width 6m is generally inconsistent with Ku-ring-gai's subdivision pattern and landscape character as Torrens Title. Potential positive outcome could be achieved where uptake is controlled in strategically appropriate locations. Only possible where Council retains the principal Development Standards for permissible uses, site requirements and lot size, FSR and landscape. As proposed, result will be randomised uptake and serious loss of landscape. The only R1 zoned sites in Ku-ring-gai are subject to site specific Master Plans, which are in single ownership and therefore coordinate and can control the broad range of permitted housing types within a specific major development precinct. Codes SEPP min site areas do not specify a min parent lot size suitable for subdivision – assume existing 400m2 lot size could be further subdivided. No specific KLEP standard for this type of subdivision (except those nominated Schedule 1 properties at 550m2 dual occupancy). Lots of 200m2 would significantly change existing subdivision pattern of all Ku-ring-gai R2 and R3 zones if broadly applied and lead to inconsistent streetscape character due to CDC process beyond Council. The min lot size is more compatible with R3 zone character but the type is theoretically compatible with R2 only as side by side on large lot. This type would not be taken up in R3 zone due to lower FSR than multi-dwelling housing currently permits. **Height of Building:** Height limit will result in habitable attic rooms. Attic and roof form standards will need to clear and avoid vertical external walls and balconies/widows walks which could result in adverse visual and acoustic privacy implications from that height. Allows for sufficient articulation of roof forms on flat sites. May be problematic on steep sites. 8.5m height is less than KLEP 2015 9.5m for R2 zone but less than generally permitted in R3 zones (9.5m-11.5m). See comments on Ceiling Heights 3.1K **Minimum Lot Size and Width** A typical lot within Ku-ring-gai with a single street frontage has a lot size of approx. 800-1200m2 and width 18-20m, which would result in 2 x 9-10m wide subdivision of 400-600m2. More attractive narrow side having street frontage (corner lots suitable for other types). Unlikely to result in Codes SEPP 200m2 min lot size for this type of development. 9-10m width can accommodate single car cross-over for each dwelling without seriously impacting the streetscape. KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP. CDC pathway would negate KLEP. KLEP cl 4.1 (3A) min lot widths (18m) conflict with Codes SEPP (12m [2x6m]).

	The minimum widths assume rear lane access which generally does not exist in Ku-ring-gai and a lot of other outer ring suburbs. The MDDG Appendix 5 example recommends min 15m lot width for sites where garages face street and is thus inconsistent with the proposed Standard that would override the MDDG and result in negative impacts to streetscape and dwelling frontage. Pressure from developers likely to advocate 'Market' demands for double garage, which result in poor outcomes for the streetscape character of existing subdivision lot widths. KLEP cl 4.1(4) min lot size does not apply to strata/community subdivision hence, 200m2 could be proposed as a side-by-side strata or community subdivision subject to permissibility under SI definitions of 'dwelling', 'dwelling house', 'building' in R2 zone. Unclear how this would apply subject to status of the SEPP over these site requirement LEP controls. Council's should be allowed to rezoning strategic areas within the LGA to R3 and amend the LEP to accommodate specific medium density housing types to correspond with desired outcome. The role of private certifiers lacks transparency without independent and effective governance of the certification, and codifies inherent conflict of pecuniary interest contrary to good governance and ICAC guidelines.
3.1A (cont'd) **Primary Road Setbacks** **Secondary Road Setbacks**  Primary Road Setback Where existing dwellings are within 40m : average of two closest dwellings Where no existing dwellings are within 40m then: LOT AREA (m²) SETBACK 300 - 300 3.5m >300 - 900 4.5m >900 - 1500 6.5m >1500+ 10m Secondary Road setback LOT AREA (m²) SETBACK 300 - 900 2m >900 - 1500 3m >1500+ 5m	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP6A.3 Councils, such as Ku-ring-gai have developed LEPs and DCPs to deliver outcomes consistent with urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Unclear how the Codes SEPP min lot size, if any resulted in Ku-ring-gai, would deal with the Primary Road and Secondary Road setbacks. Primary Road Setback inconsistent with KDCP 6A.3 (10m) and KDCP 4A.2 (12-14m). Two likely scenarios for the Primary Road Setback: 1) development will be pushed to the rear of a small site with all the landscape in the front setback; or 2) The min permitted setback will be proposed as compliant development. Both will have very poor outcomes for the either streetscape character or landscape internal to the site or both. The inclusion of 1500m2 subdivisions is curious. These are very large sites that seem to make little sense in context of a policy intended to result in small lots. Secondary Road Setbacks inconsistent with KDCP 6A.3 (8m) and KDCP 4A.2 (3.8-4.5m). Councils must retain existing setback controls for both DA and CDC pathways, as this is the only way the urban character of

	established areas, such as Ku-ring-gai, can be retained and managed. The one-size-fits-all approach cannot work with the vast geographical, demographical, economic, subdivision variations across NSW. The proposed street setbacks will materially impact Ku-ring-gai's urban landscape character. The role of private certifiers lacks transparency without independent and effective governance of the certification, and codifies inherent conflict of pecuniary interest contrary to good governance and ICAC guidelines.
3.1A (cont'd) **Side Setbacks** 	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 6A.3; KDCP 4A.2 Councils, such as Ku-ring-gai have developed LEPs and DCPs to deliver outcomes consistent with urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Codes SEPP inconsistent with KDCP 6A.3 for 3m minimum (dependant on orientation of living/habitable rooms). Codes SEPP inconsistent with KDCP 4A.2 for 1.5m-2m. In Ku-ring-gai, if the KDCP setbacks prevails for DAs, under KDCP Part 6, 10m of the front 15m should be landscape) leaving only 5m at 1.2m side setback with the remaining portion according to height plane diagram. Under KDCP Part 4, 9-11m or 12-14m of the front 15m would be landscape leaving only 1-4m at 1.2m side setback and the remainder according to the height plane. Height plane diagrams can lead to very poor built form particularly for minimum lot widths. Ku-ring-gai's existing setback controls achieve the desired landscape character and promote landscape in all side setback zones. This will be lost under Codes SEPP. Councils must retain existing setback controls for both DA and CDC pathways. The proposed setbacks are inadequate in retaining landscape character of Ku-ring-gai and other established Council areas. The policy fails to understand the fundamental structure and value of Sydney's suburban landscape character, and Ku-ring-gai's in particular, that has a block pattern of public street-deep soil landscape front yard-built form-deep soil landscape-boundary-deep soil landscape-built form-deep soil landscape front yard-street. See Peter Meyers' analysis of Sydney suburbs reinforces Ku-ring-gai's approach. http://architectureau.com/articles/the-third-city/
3.1A (cont'd) **Rear Setback** **Lane Setback**	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 6A.3 ; KDCP 4A.2 Councils, such as Ku-ring-gai have developed LEPs and DCPs to deliver outcomes consistent with urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs.

	These controls are totally inadequate and fail to achieve the desired landscape character for Ku-ring-gai if implemented at minimum standards. They fail every amenity test for visual and acoustic privacy, they fail every biodiversity corridor test, and they will result in rear 'landscape' zones largely being paved if the minimum lot sizes are approved. In Ku-ring-gai, the effect would be that all the landscape would in in the front addressing the street, but completely lost at the back. Dual occupancy type houses subdividing the rear garden should not be permitted. They prevent biodiversity corridors and result in loss of landscape that can never be re-gained.
3.1B Floor Space Ratio 	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: FSR: KLEP cl 4.; Flow-on impacts to: KDCP Part 24 Water Management; Part 18 Biodiversity; Part 19R1 Greenweb Maps; Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management The proposed FSR is too high and not in character with most local government areas. An overriding clause should be inserted into the Codes SEPP to impose the Floor Space Ratio (FSR) development standard for Dual Occupancies in the relevant Councils Local Environmental Plan. Codes SEPP FSR ratios are far too high for the lot sizes in R2 zone (0.2 to 0.3:1) Codes SEPP FSR is less than KLEP 0.8:1 that generally applies to R3 zones. Proposed FSRs translate to the following dwelling sizes: - 150-225m2 on 200-300m2 site = OK - 210-280m2 on 300-400m2 site = should be maximum dwelling size for type - 260-325m2 on 400-500m2 site = maximum to irresponsible dwelling size - 330m2 on a 550m2 site = irresponsible dwelling size - 360m2 on a 600m2 site = irresponsible dwelling size Impacts will be to site coverage and landscape. KDCP site coverage for Multi Dwelling housing permits a maximum of 40% site coverage. Proposed FSRs are similar to current Codes SEPP for General Housing Code cl 3.10 and demonstrates the poor appreciation of the translation from code to built form. The proposed FSRs have not been tested. The FSR must be set to reflect responsible dwelling sizes for this type of housing and responds to and is coordinated with all State and Commonwealth sustainability, energy efficiency, and landscape policies. Proposed FSRs for the larger lots are completely inconsistent with the proposed dwelling sizes at 3.1L. Government policy that advocates single dwellings over 360m2 is deeply flawed and must be reduced. Impacts will be to site coverage and landscape and likely flow-on impacts to Ku-ring-gai's DCP initiatives.

3.1C
Landscaped Area



3.1C Landscaped Area

Development Application: Refer to LEP or DCP that applies to the land for minimum area.
Complying Development: Refer to **Codes SEPP** and summary table below for minimum area.

Element	Summary Development Standard	
Minimum Landscaped Area for each lot	LOT AREA(m^2)	LANDSCAPED AREA AS PERCENTAGE OF LOT
	200 - 300	20%
	>300 - 400	25%
	>400 - 500	30%
	>500+	35%
	Minimum dimension of any landscaped area included in calculation 1.5m	
Proportion of area forward of building line that contains landscaped area	25% minimum	

The principal controls for landscaped areas are virtually the same for all development types. Despite reference to variations being necessary dependant on the context (Guideline 9, Part 2C), the controls for landscaped area within the front setback and for each lot require no such sensitivity under the MDDG. The minimum width for landscaped areas of 1.5m is commendable. Unfortunately as there are no specific requirements for screen planting alongside setbacks there is little incentive to provide useful 600mm width garden beds for screen planting between buildings.

The objectives for landscape area are commendable though brief, however the design criteria are limited (there are more for front fences) and unlikely to benefit the residents or neighbours with no requirement for consideration of the landscape design guidelines.

The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 4A.3 for Site Coverage; KDCP 4A.4 Landscape; KDCP 6A.4 Building Separation; KDCP 6A.5 Site Coverage; KDCP 6A.6 Deep Soil Landscape, KDCP Part 18 Biodiversity; Part 19R1 Greenweb Maps; Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management

Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs

KDCP for multi-dwelling housing requires 40% of the landscape area to be deep soil of a minimum 2 metre width. This component alone exceeds the total landscape area of a minimum 1.5m width for sites under proposed Codes Standards. This one Development Standard will have an unacceptable impact on Ku-ring-gai's landscape character if taken up across the LGA. Council's Deep Soil control should be retained and not be overridden by the MDH Codes SEPP and MDDG.

The FSR and landscape area as proposed within the MDH Codes SEPP and MDDG, is diametrically opposed to the Federal Government's 'Green Cities' policy (announced 01/2016 by Minister Greg Hunt)… *"cities with high levels of trees, foliage and green spaces — provide enormous benefits to their residents. Increasing urban canopy coverage decreases heat, which improves health and quality of life."*

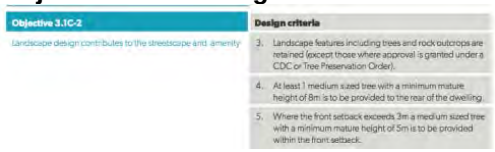
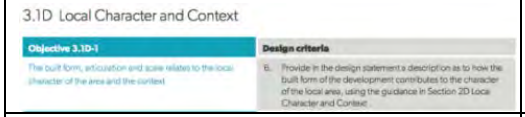
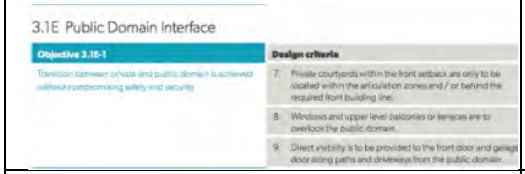
http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx

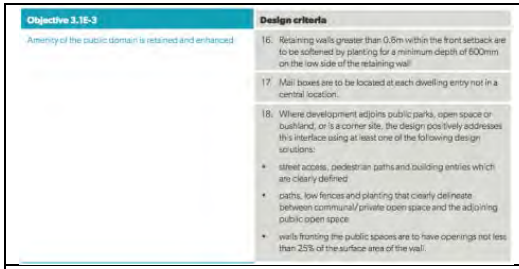
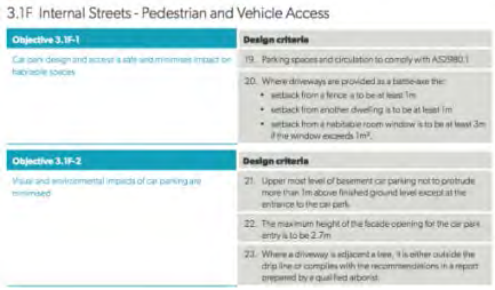
http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening

The loss of every council's authority over landscape fails to consider the variety and specific character of each LGA throughout NSW and fails to provide a mechanism to achieve the variety that a city and NSW needs.

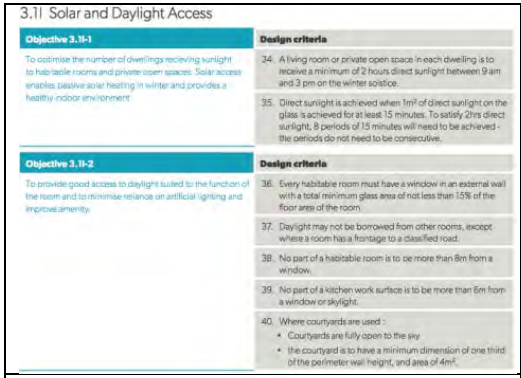
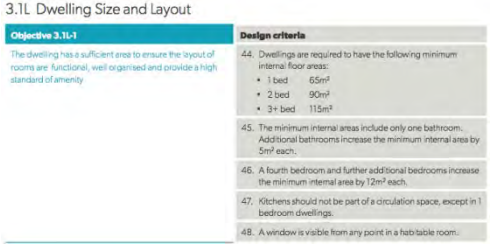
Landscape is the single most important element that defines Ku-ring-gai's urban character. The MDDG Objectives and Design Criteria for landscape are manifestly inadequate for Ku-ring-gai. There is no requirement for any landscape to be deep soil. The required areas are inadequate and will not result in the trees being viable due to the high probability they will be removed, or replaced with smaller planting, or areas of paving extended post approval. Ku-ring-gai's urban character is predicated on the quality of its landscape, and has in place, detailed development objectives and controls for all setbacks, site coverage, total landscape area, deep soil and tree removal that ensure all development, of every scale is within a dominant landscape setting characterised by canopy trees and deep soil planting. The loss of landscape controls, therefore, has a particularly devastating

	impact on Ku-ring-gai's strategic planning of urban character. Protection of canopy trees that may have value in either providing links between areas of biodiversity significance, or contributing to the background view between allotments or internal site character is very important. This has a function as a public asset, which is not recognised in the Codes SEPP or MDDG. Local experience of development currently lodged under *SEPP Seniors and People with a Disability* and *SEPP Affordable Rental Housing* has seen the gradual loss and/or degradation of established trees and vegetation within the Council area where these developments occur. Unlike these two SEPPs, the Codes SEPP has **no** development standard requiring development consider and respond appropriately to existing and desired urban character for landscape nor can it be verified. The types of development that have had the greatest impact in Ku-ring-gai are those advocated in the MDDG that prioritise at-grade car parking deep within the site. These have a devastating impact on the protection of existing and diminishing landscape. These outcomes are in direct conflict with the NSW Government's *A Plan for Growing Sydney* and its *Urban Green Cover Policies*, commonwealth policies for Greening Cities and Housing adapted to climate change. It is also worth noting, these are policies that are inconsistent with the United Nations, General Assembly *Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*. Cumulative impacts resulting from the Landscaped Area development standard have the potential for loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect. The focus on streetscape landscape controls is important in achieving urban character, however, the policy fails to adequately value the rear yard landscape assets throughout NSW and in Ku-ring-gai specifically, and their importance climatically, their role protecting against further fragmentation of biodiversity significance and loss of green corridors, and their aesthetic contribution to urban character. Further to this, the local community demands its protection and the courts have recognised Ku-ring-gai's landscape character in its judgements.
3.1C-1 **Objectives and Design Criteria**  Objective 3.1C-1: Landscape design is viable and sustainable and supports healthy plant and tree growth Design criteria: 1. Ongoing maintenance plan is provided as part of the landscaped plan. 2. Minimum soil standards for plant sizes are provided in accordance with Table 1 in Section 2C.	The requirement for an ongoing maintenance plan is not feasible for two dwellings with little common area nor is it enforceable into the future. Landscape contractors provide at most a 6-12 month establishment plan. After that the maintenance of a development is a either private or communal responsibility. PCA's are not trained, qualified, or have required expertise to assess landscape maintenance plans.
	The requirement for minimum soil standards is directed to planting on structures. This is unlikely to be relevant for two dwellings (dual occupancy). There should also be criteria for preservation of existing trees in accordance with AS4970-2009, minimum width of garden beds to side and rear boundaries for screen planting, minimum width of garden beds to driveway. PCA's are not trained, qualified, or have required expertise to assess soil standards in relation to proposed vegetation requirements.

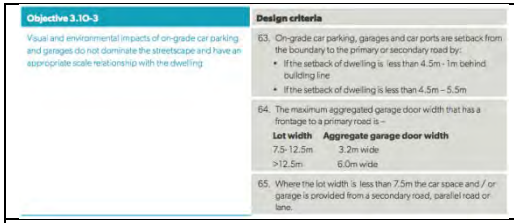
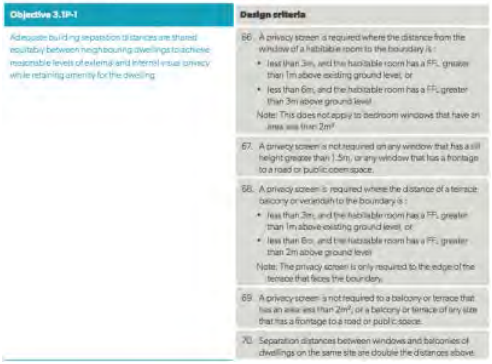
3.1C-2 **Objectives and Design Criteria**  Objective 3.1C-2 Landscape design contributes to the streetscape and amenity Design criteria 3. Landscape features including trees and rock outcrops are retained (except those where approval is granted under a CDC or Tree Preservation Order). 4. At least 1 medium sized tree with a minimum mature height of 8m is to be provided to the rear of the dwelling. 5. Where the front setback exceeds 3m a medium sized tree with a minimum mature height of 5m is to be provided within the front setback.	**Objective 3.1C-2** refers to contribution to streetscape and amenity; however this is unachievable with one 5 metre high tree in the front setback. There is no further requirement for any other shrubs, groundcover or lawn and instead 75% of the front setback is permitted to be paved. A 5m tree may be appropriate for front setbacks of 3.5m however this is not in keeping with larger lots with existing front setbacks. There is no requirement for street tree planting. The reference to 'tree preservation order' should be substituted with Clause 5.9 consistent with the Principal LEP. The CDC pathway negates Council's tree protections except where Biodiversity Act applies. However, PCAs are not trained, qualified or has the expertise to assess trees and landscape issues. Role of private certifiers and Complying Development has serious impacts to protecting biodiversity, and landscape character. Councils must retain assessment role of medium density type developments.
3.1D **Local Character and Context**  3.1D Local Character and Context Objective 3.1D-1 The built form, articulation and scale relates to the local character of the area and the context Design criteria 6. Provide in the design statement a description as to how the built form of the development contributes to the character of the local area, using the guidance in Section 2D Local Character and Context.	Requires PCAs to check a design statement is submitted but they are not trained, qualified, nor have the expertise to assess urban design and architectural merit of a design.
3.1 E-1 **Public Domain Interface**  3.1E Public Domain Interface Objective 3.1E-1 Transition between private and public domain is achieved without compromising safety and security Design criteria 7. Private courtyards within the front setback are only to be located within the articulation zones and / or behind the required front building line. 8. Windows and upper level balconies or terraces are to overlook the public domain. 9. Direct visibility is to be provided to the front door and garage door along paths and driveways from the public domain.	**7.** Impact of allowing private courtyards within the front setback will be only where minimum front setbacks are proposed. **8.** The requirement for windows and upper level balconies or terraces overlooking the public domain is supported. **9**. The requirement for direct visibility to be provided to the front door and garage door along paths and driveways from the public domain is support, however the impact of driveways into a lot must be minimised.
3.1 E-2 **Public Domain Interface**	**10.** The requirement for front fences to use visually permeable materials is supported. **11.** The maximum height of front fences should be limited to 1.2m above the existing ground level. **12.** The requirement for no more than 50% of allowable fence area should be solid (masonry, timber, metal or stone) contradicts criteria 10, which outlines that front fences are to use visually permeable materials. **13.** The high solid acoustic fencing should only be permitted on sites that have an actual street frontage to a classified road. The current wording does not make this clear – e.g. lots that are located on a side street off a classified road may try to have a front fence height of 2.1m to "shield the dwelling from the noise from the classified road". **14.** The requirement that unfinished timber paling and metal panel fences are not located within the front setback is supported. **15**. Generally supported. Elements of façade should be well coordinated with landscape treatment.
3.1 E-3 **Public Domain Interface**	**16.** Supported

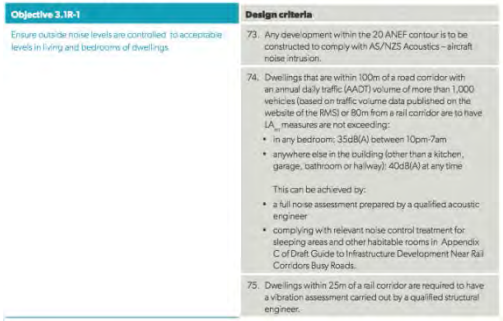
 Objective 3.1E-3 Amenity of the public domain is retained and enhanced Design criteria 16. Retaining walls greater than 0.6m within the front setback are to be softened by planting for a minimum depth of 600mm on the low side of the retaining wall 17. Mail boxes are to be located at each dwelling entry not in a central location. 18. Where development adjoins public parks, open space or bushland, or is a corner site, the design positively addresses this interface using at least one of the following design solutions: • street access, pedestrian paths and building entries which are clearly defined • paths, low fences and planting that clearly delineate between communal/ private open space and the adjoining public open space • walls fronting the public spaces are to have openings not less than 25% of the surface area of the wall.	**17.** Supported for smaller developments. Assumes all dwellings address the street, which may not be the case for large multi dwelling housing development. **18.** Supported.
3.1F **Internal Streets- Pedestrian and Vehicle Access**  3.1F Internal Streets - Pedestrian and Vehicle Access Objective 3.1F-1 Car park design and access is safe and minimises impact on habitable spaces Design criteria 19. Parking spaces and circulation to comply with AS2980.1 20. Where driveways are provided as a battle-axe the: • setback from a fence is to be at least 1m • setback from another dwelling is to be at least 1m • setback from a habitable room window is to be at least 3m if the window exceeds 1m². Objective 3.1F-2 Visual and environmental impacts of car parking are minimised Design criteria 21. Upper most level of basement car parking not to protrude more than 1m above finished ground level except at the entrance to the car park. 22. The maximum height of the facade opening for the car park entry is to be 2.7m 23. Where a driveway is adjacent a tree, it is either outside the drip line or complies with the recommendations in a report prepared by a qualified arborist.	**19.** The requirement that parking spaces and circulation comply with AS2980.1 is supported. **20.** Complying Development cannot have battle-axe type as all of this type of complying development MUST address the street. Conflicts with DC 24. **21.** Not applicable to type or scale of development. Basements not economically viable with less than 4 dwellings. This type only proposes 2 dwellings. **22.** Supported but not applicable. **23.** Supported but PCA has no training, expertise nor experience to assess arborist reports. Driveways adjacent to trees should require compliance with the Australian Standard for the protection of trees on development sites (AS4970-2009). **3.1F** Requires amendment. Internal 'Streets' are not streets, they are private driveways. They significantly impact landscape character by prioritising vehicles of over pedestrian and landscape amenity and devastate the internal site character by imposing expansive areas of hard stand. An internal street must have specific controls about reservation, design, functional and well located through-site connections to the public street network, no dead-ends. Councils must retain assessment role for medium density type developments. Councils provide independent, specialist expertise in all the relevant disciplines unlike a private certifier.
3.1G Orientation and Siting	**Objective 3.1G-3** – refers to minimizing earthworks, but it is followed by design criteria that allows excavation/filling up to 1m depth where 'not more than 1m from the boundary'. The control should be consistent with the current Codes SEPP which requires a minimum 600mm setback. **24.** The requirement for each dwelling to have frontage to a primary, secondary or parallel road is supported. **25.** Not supported. Delete. Rear garden subdivisions result in poor landscape outcomes on small lots. **26**. Generally supported but no reference to noise sources. **27**. The criteria should be amended to remove the requirement *"more than 3m from the boundary"* **28.** Supported.

 3.1G Orientation and Siting **Objective 3.1G-1** — Building types and layouts respond to the streetscape and site while optimising solar access within the development and maximise street surveillance and connectivity **Design criteria** 24. Each dwelling has a frontage to a primary, secondary or parallel road. 25. (Development Applications Only) A dwelling on a battle-axe block does not need a frontage to a road, but has an access to the primary road of at least 3m. 26. Every wall that faces the street has a window to a habitable room at each level. **Objective 3.1G-2** — Overshadowing of neighbouring properties is minimised during mid winter **Design criteria** 27. The window to a living room of an adjoining dwelling that is more than 3m from the boundary is to receive more than 2hrs of solar access between 9am and 3pm on the winter solstice (June 21). 28. Where the above criteria is not satisfied, the proposed development ensures solar access to neighbouring properties is not reduced by more than 20%. 29. Where living room windows of an adjoining dwelling cannot be verified the proposed development is accommodated within a building envelope defined by a 35° plane at 3.6m above the boundary. **Objective 3.1G-3** — The development responds to the natural landform of the site, reducing the visual impact and minimising earthworks **Design criteria** 30. On sloping sites the buildings are to respond to the topography with changes in floor level to minimise cut and fill. Unless a dwelling is over a basement, the ground floor is not to be more than 1.3m above ground level, and no more than 1m below ground level. 31. Excavation must not exceed a maximum depth measured from ground level (existing) if: • located nor more than 1m from any boundary - 1m • located more than 1m from any boundary - 3m 32. Fill outside the building footprint must not exceed a maximum height measured from ground level (existing) if: • located nor more than 1m from any boundary - 0.6m • located more than 1m from any boundary - 1m Note: For complying development the Codes SEPP contains development standards for earthworks, retaining walls and structural support.	**29**. Generally supported, but should be tested. Private Certifiers have no training, expertise nor experience to assess voracity of solar impacts. **30.** Generally consistent with KDCP 6C.6 but would permit adjacent ground to abut walls which is not supported. **31.** Poor outcome. Conflicts with DC 30. Housing type will not see basement car parking so control not applicable. Unclear what the excavation would be for in context of DC 30. **32.** Generally supported. Needs to be tested. Excavation would be permitted with nil setback from boundary compared to 2m under KDCP. Councils must retain assessment role for medium density development. Councils provide independent, specialist expertise in all the relevant disciplines unlike a private certifier.
3.1H **Building Separation**  3.1H Building Separation **Objective 3.1H-1** — Provide adequate space between buildings to allow for landscape, provide visual separation and daylight access between buildings **Design criteria** 33. The minimum separation between two or more buildings on the same lot is 3m. Note: • Building separation may need to be increased to provide adequate privacy (Section 3.1F) or solar access (Section 3.1I) • The minimum separation between the development and dwellings on adjoining land will be determined by the side and rear setbacks	**33.** This control is not relevant as side-by-side type will only have two attached dwellings that address a street. Completely inadequate as a control under 2H Visual Privacy. Dual occupancy rear yard subdivision not supported. There is no consideration of acoustic privacy in this control. This criteria requires amendment. The same building separations that apply to SEPP 65 should apply to multi-dwelling housing. Delete reference to buildings within the one site. Under R2 Land Use Table the parent lot would need to be subdivided to Torrens title under the SI LEP definitions of ‘building’, dwelling’ and ‘dwelling house’.
3.1I **Solar and Daylight Access**	**34.** Not supported. Test is less than applies to high density development. The criteria should be reworded to “A living room *and* private open space in each dwelling”… Controls 34 and 35, contains solar access requirements for living rooms and private open space, however the methodology for measuring direct sunlight applies to windows/living areas only. A methodology for measuring solar access to private open space should be included. **35.** Supported and only consistent with Design Criteria 34(above) if wording changed as suggested. **36.** Supported. **37.** Delete. …”except where a room has a frontage to a classified road.” Noise barrier planning principles must be implemented to ensure all habitable rooms have a window in an external wall. Wording implies habitable rooms can provide no window, which is unacceptable. Proposed amenity significantly less than expected for high density development. Conflicts with DC 36. **38**. Supported.

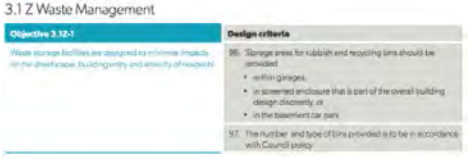
 3.1I Solar and Daylight Access **Objective 3.1I-1** To optimise the number of dwellings recieving sunlight to habitable rooms and private open spaces. Solar access enables passive solar heating in winter and provides a healthy indoor environment **Design criteria** 34. A living room or private open space in each dwelling is to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm on the winter solstice. 35. Direct sunlight is achieved when 1m² of direct sunlight on the glass is achieved for at least 15 minutes. To satisfy 2hrs direct sunlight, 8 periods of 15 minutes will need to be achieved - the periods do not need to be consecutive. **Objective 3.1I-2** To provide good access to daylight suited to the function of the room and to minimise reliance on artificial lighting and improve amenity. **Design criteria** 36. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 15% of the floor area of the room. 37. Daylight may not be borrowed from other rooms, except where a room has a frontage to a classified road. 38. No part of a habitable room is to be more than 8m from a window. 39. No part of a kitchen work surface is to be more than 8m from a window or skylight. 40. Where courtyards are used : • Courtyards are fully open to the sky • the courtyard is to have a minimum dimension of one third of the perimeter wall height, and area of 4m².	**39**. Supported and should be amended to add**:** …"Use is restricted to kitchens, bathrooms or service areas and acoustic and visual privacy must be achieved." **40.** Control 40 includes a requirement that courtyards be 'fully open to the sky'. This would prevent the installation of a pergola or other means of shading device. This control should be changed to refer to courtyards that are used to demonstrate compliance with the direct sunlight requirement only**.** All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
3.1J **Natural Ventilation**  3.1J Natural Ventilation **Objective 3.1J-1** All habitable rooms are naturally ventilated **Design criteria** 41. Natural ventilation is available to each habitable room. 42. Each dwelling is to be cross ventilated.	**41.** Supported. **42.** Supported and should be amended to add**:** "Maximum building depth does not exceed 16m measured glass line to glass line unless ventilated." All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
31.K Ceiling Height  3.1K Ceiling Height **Objective 3.1K-1** Ceiling height achieves sufficient natural ventilation and daylight access and provides spatial quality **Design criteria** 43. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: • 2.7m to ground floor habitable rooms • 2.7m to upper level living rooms • 2.4m to upper level habitable rooms (excluding living rooms)	**43.** Amend 2nd dot point to "2.7m to upper level habitable rooms" instead of living rooms Delete 3rd dot point relating to 2.4m for upper level habitable rooms (excluding living rooms). All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
3.1L-1 **Dwelling Size and Layout**  3.1L Dwelling Size and Layout **Objective 3.1L-1** The dwelling has a sufficient area to ensure the layout of rooms are functional, well organised and provide a high standard of amenity **Design criteria** 44. Dwellings are required to have the following minimum internal floor areas: • 1 bed 65m² • 2 bed 90m² • 3+ bed 115m² 45. The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. 46. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each. 47. Kitchens should not be part of a circulation space, except in 1 bedroom dwellings. 48. A window is visible from any point in a habitable room.	**44.** The minimum internal floor areas are supported **45.** The addition bathrooms at 5sqm is supported. **46.** Supported. **47.** The requirement for kitchens to not be part of circulation space is supported. **48.** Supported. The above Design Criteria 44-48 are consistent with KDCP 6C.6 Dwelling sizes.
3.1L-2  **Objective 3.1L-2** Dwelling layouts are designed to accommodate a variety of household activities and needs and is appropriate for the number of occupants **Design criteria** 49. One bedroom has a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). 50. Bedrooms have a minimum dimension of 3m (excluding wardrobe space). 51. Combined living and dining rooms are to have a minimum area of: • 1 and 2 bed 24m² • 3+ bed 28m² 52. Living room or lounge rooms are to have a minimum width of 4m (excluding fixtures).	**49.** Supported. **50.** Supported. **51.** Generally supported although 28m2 and 32m2 respectively would achieve better amenity and flexibility. It is noted that these areas are slightly smaller than combined living and dining areas under KDCP6A.6 – but can still be functional dependent on the layout and circulation.

	52. Supported. However, could result in more square shaped rooms in conjunction with minimum areas Design Criteria 51. Should be amended to add**:** "Room proportions should be rectangular preferably 2:3 to enable functional and efficient furniture layouts and accommodate circulation." All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
3.1M **Private Open Spaces** 3.1M Private Open Spaces **Objective 3.1M-1** Dwellings provide appropriately sized private open space and balconies to enhance residential amenity **Design criteria** 53. All dwellings are required to have a primary private open space of at least 16m². 54. The minimum dimension of the included area is 3m, and excludes any storage space. **Objective 3.1M-2** Primary private open space and balconies are appropriately located to enhance liveability for residents **Design criteria** 55. The primary private open space is to be located adjacent to the living room, dining room or kitchen to extend the living space. 56. 50% of the primary private open space should be covered to provide shade and protection from rain.	**53.** The minim 16sqm private open space is inadequate unless differentiated between Torrens and Strata titles, as these result in very different private open space outcomes. The minimum should be increased commensurate with dwelling size and identify only applicable for Strata title development. Torrens title requires 50% of each dwelling lot to be private open space, as the proposed 16sqm private open space will be catastrophically inadequate in the Ku-ring-gai context if applied to Torrens titled development. **54.** Generally Supported. The dimensions are less than required in KDCP 6A.2, but will achieve reasonable minimum amenity **55.** Supported. **56.** Should refer to 50% of the minimum primary private open space area requirement, otherwise it would require substantial covered areas in the event that private open space areas greater than the minimum area are proposed.
3.1N **Storage** 3.1N Storage **Objective 3.1N-1** Adequate, well designed storage is provided in each dwelling **Design criteria** 57. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • 1 bed 6m³ • 2 bed 8m³ • 3+ bed 10m³ 58. At least 50% of the required storage is to be located inside the dwelling. 59. Storage not located in dwellings is secure and clearly allocated to specific dwellings if in a common area.	**57**. The minimum storage requirements is supported. **58.** Supported. **59**. Supported.
3.1O-1 **Car and Bicycle Parking** 3.1O Car and Bicycle Parking **Objective 3.1O-1** Car parking is provided appropriate for the scale of the development **Design criteria** 60. Where parking is provided above ground, at least one car space is to be provided per dwelling. 61. [Development applications only] Car parking is to be provided at the rate required for a dual occupancy within a Development Control Plan that applies to the land, if there is no rate in a DCP - 1 space is to be provided.	**60.** Supported. Conditional on garage/car parking fronting the primary street to be maximum 1 car width. **61**. As per comments above, car parking on small width lots must be limited to single car width to protect streetscape character.
3.1O-2 **Objective 3.1O-2** Parking and facilities are provided for other modes of transport **Design criteria** 62. Covered space is to be provided for the secure storage of at least 1 bicycle per dwelling.	**62.** Supported. Generally, the side-by-side typology is low density and the requirement for secure storage of 1 bicycle is able to be accommodated within most R2 lot widths without unacceptable impacts on the streetscape (unlike some other types proposed and commented elsewhere.)
3.1O-3	**63**. Error – Repeated dot points *"If the setback of dwelling is less than 4.5m"* This needs to be clarified **64.** Amend**:** increase >12.5m frontage for 6m garage to >18m frontage. **65.** Double garaging results in poor outcomes to streetscapes. No dwelling should result in garaging being more than 50% of the

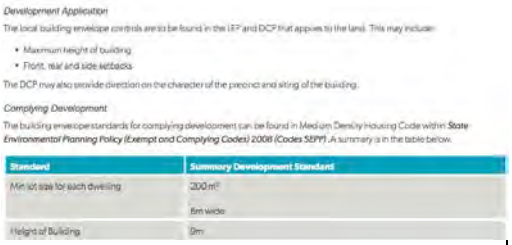
 **Objective 3.10-3** Visual and environmental impacts of on-grade car parking and garages do not dominate the streetscape and have an appropriate scale relationship with the dwelling **Design criteria** 63. On-grade car parking, garages and car ports are setback from the boundary to the primary or secondary road by: • If the setback of dwelling is less than 4.5m - 1m behind building line • If the setback of dwelling is less than 4.5m – 5.5m 64. The maximum aggregated garage door width that has a frontage to a primary road is – **Lot width** **Aggregate garage door width** 7.5-12.5m 3.2m wide >12.5m 6.0m wide 65. Where the lot width is less than 7.5m the car space and / or garage is provided from a secondary road, parallel road or lane.	façade.
3.1P **Visual Privacy** 3.1P Visual Privacy  **Objective 3.1P-1** Adequate building separation distances are shared equitably between neighbouring dwellings to achieve reasonable levels of external and internal visual privacy while retaining amenity for the dwelling **Design criteria** 66. A privacy screen is required where the distance from the window of a habitable room to the boundary is : • less than 3m, and the habitable room has a FFL greater than 1m above existing ground level, or • less than 6m, and the habitable room has a FFL greater than 3m above ground level Note: This does not apply to bedroom windows that have an area less than 2m² 67. A privacy screen is not required on any window that has a sill height greater than 1.5m, or any window that has a frontage to a road or public open space. 68. A privacy screen is required where the distance of a terrace, balcony or verandah to the boundary is : • less than 3m, and the habitable room has a FFL greater than 1m above existing ground level, or • less than 6m, and the habitable room has a FFL greater than 2m above ground level Note: The privacy screen is only required to the edge of the terrace that faces the boundary. 69. A privacy screen is not required to a balcony or terrace that has an area less than 2m², or a balcony or terrace of any size that has a frontage to a road or public space. 70. Separation distances between windows and balconies of dwellings on the same site are double the distances above.	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 6A.4, which achieves amenity similar to SEPP 65 and should prevail. Privacy should be primarily achieved through sound design resolution. Five controls around the use of privacy screens indicates visual (and acoustic) privacy is not achieved via the proposed building separations at 2H, which should be amended and increased consistent with SEPP 65 ADG separations. **66**. Delete. These conditions indicate inadequate setbacks from the boundary and should not be a condition that arises in this type of development. The setbacks should be increased, instead of requiring privacy screens to be added to habitable room windows. **67**. Supported. **68**. Delete. These conditions indicate inadequate setbacks from the boundary and should not be a condition that arises in this type of development. The setbacks should be increased, instead of requiring privacy screens to be added to balcony, verandah, and terraces. **69**. Supported. **70.** Ambiguous. Primary controls at 2H must be amended to address building separation to achieve adequate visual and acoustic privacy. **71**. Supported. Add**:** “Privacy screens must be operable and allow directional adjustment. “ The proposed controls requiring the addition of privacy screens to habitable windows and balconies demonstrates that the proposed setbacks and building separation is inadequate.
3.1Q **Acoustic Privacy**	**72.** Add to Objective: …”siting of buildings, building separation and building layout.”

3.1R **Noise and Pollution** 3.1R Noise and Pollution  **Objective 3.1R-1** Ensure outside noise levels are controlled to acceptable levels in living and bedrooms of dwellings **Design criteria** 73. Any development within the 20 ANEF contour is to be constructed to comply with AS/NZS Acoustics – aircraft noise intrusion. 74. Dwellings that are within 100m of a road corridor with an annual daily traffic (AADT) volume of more than 1,000 vehicles (based on traffic volume data published on the website of the RMS) or 80m from a rail corridor are to have LA_{eq} measures are not exceeding: • in any bedroom: 35dB(A) between 10pm-7am • anywhere else in the building (other than a kitchen, garage, bathroom or hallway): 40dB(A) at any time This can be achieved by: • a full noise assessment prepared by a qualified acoustic engineer • complying with relevant noise control treatment for sleeping areas and other habitable rooms in Appendix C of Draft Guide to Infrastructure Development Near Rail Corridors Busy Roads. 75. Dwellings within 25m of a rail corridor are required to have a vibration assessment carried out by a qualified structural engineer.	**73.** Supported. **74.** Supported. **75.** Supported.
3.1S **Universial Design** 3.1S Universal Design  **Objective 3.1S-1** Universal design features are included in dwelling design to promote flexible housing for all community members **Design criteria** 76. All dwellings are to include the Liveable Housing Design Guideline's Silver level universal design features.	**76**. Supported. The Design Criteria should also be amended to add a requirement for adaptable housing to Platinum Level for one dwelling on sites larger than 600m2.
3.1U **Architectural Form and Roof Design** 3.1U Architectural Form and Roof Design  **Objective 3.1U-1** The architectural form is defined by a balanced composition of elements. It responds to internal layouts and desirable elements in the streetscape. It is a considered 3-dimensional form **Design criteria** 77. Provide in the design statement a description as to how the architectural form reduces the visual bulk and responds and provides a cohesive design response. Note: Refer to Part 2 for guidance. **Objective 3.1U-2** The roof treatments are integrated into the building design and positively respond to the street **Design criteria** 78. The roof design is integrated harmoniously with the overall building form. 79. Skylights and ventilation systems are to be integrated into the roof design.	**77.** Supported but a PCA is not the appropriate person to be assessing design quality of architectural form. **78**. Supported, however PCA is not the appropriate person to be assessing design quality of architectural form. **79**. Supported., however PCA is not the appropriate person to be assessing design quality of architectural form. Councils and design review panels must retain assessment role for medium density development. Councils provide independent, specialist expertise in all the relevant disciplines. Private certifiers are not trained, qualified or experienced in assessing design quality of architectural form.
3.1V **Visual Appearance and Articulation** 3.1V Visual Appearance and Articulation  **Objective 3.1V-1** To promote well designed buildings of high architectural quality that contribute to the local character **Design criteria** 80. Provide in the design statement a description as to how the aesthetics and articulation contribute to the character of the local area. 81. An articulation zone of 1.5m is provided forward of the building line. The articulation zones includes one or more of the following: • Veranda / Porch • Balcony • Pergola • Entry feature or portico • Awnings or other features over windows • Eaves and sun shading • Window box treatment • Recessed or projecting architectural elements • Bay windows	**80.** Supported but a PCA is not the appropriate person to be assessing design quality of architecture. **81**. Supported, however PCA is not the appropriate person to be assessing design quality of architecture. Councils and design review panel must retain assessment role for medium density development. Councils provide independent, specialist expertise in all the relevant disciplines. Private Certifiers are not trained, qualified or experienced in assessing design quality of architecture.
3.1W-1 **Pools and Ancillary Development**	**82** Supported. Ambiguity about 'rear yard' for corner lots. **83** Supported.

3.1W Pools and Ancillary Development **Objective 3.1W-1**: The location of swimming pools and spas minimise the impacts of adjoining properties. **Design criteria** 82. Swimming pools and spas are located in the rear yard. 83. The coping around a swimming pool or spa is not be more than 1.4m above ground level (existing). 84. The decking or paved area around a swimming pool or spa (excluding a coping less than 300mm wide) is not be more than 0.6m above ground level (existing). 85. Water from a swimming pool or spa must be discharged in accordance with an approval under the Local Government Act 1993 if the lot is not connected to a sewer main. 86. The pump is housed in an enclosure that is soundproofed. Note: A child-resistant barrier must be constructed or installed in accordance with the requirements of the Swimming Pools Act 1992	**84** Supported. **85** Supported. **86** Supported.
3.1W-2 **Pools and Ancillary Development** **Objective 3.1W-2**: Detached studios, and outbuildings should not dominate the rear garden. They are useful to activate rear lanes providing visual surveillance. **Design criteria** 87. A detached studio or outbuilding must not have a building height of more than: • 3.6m or • if the studio is located within 0.9m of a lane - 6.5m 88. The side and rear setbacks for an outbuilding or detached studio are: • if the building is located within 0.9m of a lane - 0m to side and rear boundaries, otherwise, • 0m to side boundaries, and 3m to rear boundaries 89. The floor area of a detached studio or outbuilding must not be more than 36m² and is included in the overall gross floor area of for the site. 90. Any window in a detached studio where the floor level is more than 1.5m above ground level must not be greater than 2m² in any wall face. Note: Privacy and building separation and other design criteria still apply.	**87** Supported. **88** The control permits a 0m side setback from a detached studio or outbuilding should be increased to match the side setback requirements in the Building Envelopes controls as a 0m side setback at the high floor space ratios of 0.6-0.75:1 may lead to poor outcomes, particularly with respect to the provision of landscaping, tree impacts in backyards and visual impacts on adjacent properties. **89** Should be conditional on lot size. Possible for a 6m x 6m room that could extend across full extent of a min width lot but must provide a 3m setback to the rear boundary that serves no purpose and adds no amenity to the lot. One side setback should apply to only one side boundary and room should not occupy more than 30% of the lot width. **90** Not supported. If internal to a site, privacy could be controlled, if highlights provide outlook above roof lines of neighbouring site, there are no privacy impacts. Opening size should provide pleasing proportions in the façade composition.
3.1X Energy Efficency 3.1X Energy Efficiency **Objective 3.1X-1**: Development responsibly balances environmental design. **Design criteria** 91. Provide an outdoor area for clothes drying that can accommodate at least 15 lineal metres of clothes line for each dwelling. 92. Any clothes drying area should be screened from public and communal areas. Note: A CDC or DA for a dwelling is required to have a BASIX Certificate that applies a minimum energy consumption target.	**91** Supported but should be exclusive of calculated private open space. **92** Supported.
3.1Y Water Management and Conservation 3.1Y Water Management and Conservation **Objective 3.1Y-1**: Urban stormwater is treated on site before being discharged to receiving waters. **Design criteria** 93. All stormwater drainage collecting as a result of the erection of the development must be conveyed by a gravity fed or charged system to: • a public drainage system • an inter-allotment drainage system • an on-site disposal system 94. All stormwater drainage systems within a lot and the connection to a public or an inter-allotment drainage system must: • if approval is required under section 68 of the Local Government Act 1993, be approved under that Act • if an approval is not required under section 68 of the Local Government Act 1993, comply with any requirements for the disposal of stormwater drainage contained in a development control plan that is applicable to the land. **Objective 3.1Y-2**: Flood management systems are integrated into site design. **Design criteria** 95. Detention tanks are to be located under paved areas, driveways or in basements Note: A CDC or DA for a dwelling is required to have a BASIX Certificate that applies a minimum water consumption target.	This section has been taken directly taken from the proposed SEPP wording and is not a guide. In addition it is contradictory and too broad. The Guide should provide more guidance on achieving suitable outcomes rather than restating the exact wording of the SEPP. Some DCPs do not permit runoff from a medium density development to be managed by means of a charged system or on site disposal, so this requirement cannot achieve compliance with the second dot point following which requires compliance with Council's DCP. On site disposal is particularly unsuited to this type of multi-dwelling development due to the large impervious areas permitted. The Guide has to clearly state that an inter-allotment drainage system must legally benefit the site and contain a suitable pipe. There is no definition. Some certifiers do not understand the importance of the terms of an easement. Section 68 of the Local Government Act 1993 does not apply to Councils within Sydney Water's area of operations, so this criterion requires compliance with Council's DCP (should read "management and disposal of stormwater"). However this is not sufficiently

	clear. This applies to all Councils in the greater Sydney area and should be the first dot point, not the second.
3.1Z **Waste Management** 	**96** The control should specify garbage enclosures are not permitted within specified setback areas. **97** Supported.
3.2 **Terrace Houses**	Larger multi dwelling housing will result in common basements as described in the draft design guide. This arrangement cannot be conventionally subdivided (Torrens). It is difficult to see how a Torrens system could work for larger multi dwelling developments unless each dwelling had its own independent basement which would result in multiple basements addressing the street and excessive excavation and is not consistent with the local character and is not orderly economic development of land. It is recommended that Torrens title subdivision be prohibited for larger multi dwelling housing developments. See comments above regarding conflicts in CDC and DA pathways Figure 3-5 compared to statements in *Explanation of Intended Effects Table 1* (p7) regarding retention of local planning strategies and development controls. **Figure 3-6** demonstrates a very poor housing type that negatively impacts on the streets, by prioritising vehicles over pedestrian and removes public domain amenity by removing on-street car parking. This type should not be permitted. Row housing only works well with a network of public streets and rear laneways connected to the road network. **Figure 3-7** demonstrates the only acceptable block and site conditions for terrace housing proposing at-grade parking. **Figure 3-8** demonstrates an appropriate generic response to basement car parking for terrace housing in an R3 medium density land use zone. (Although they would not meet Ku-ring-gai's landscape controls for the side setback and driveway location). All options assume large developments of at least four amalgamated sites. This is the opposite to the stated intent for small size development *Explanation of Intended Effects* (p12) for development of *'similar scale to a dwelling house'.* The unintended impact to the entire of NSW will be substantial as the development will only be undertaken by medium to larger scale developers not small scale as intended unless it can be coordinated and managed by local planning instruments. The inclusion of R2 zoned land for this type is highly is problematic because the zone area and context varies so greatly around a local LGA let alone throughout the State. The likely uptake for terrace housing if permitted in R2 zones will be on the cheapest land, the furthest away from transport, employment, services and amenities. This is counter to fundamental strategic planning principles and conflicts with the stated intent for the uptake to be "*closer to centres and with the amenity that medium density housing can provide"* (p6) when it is strategically well located and controlled. This scale of development must not be certified under CDC by private certifiers.

3.2A
Building Envelopes



Development Application

The local building envelope controls are to be found in the LEP and DCP that applies to the land. This may include:

- Maximum height of building
- Front, rear and side setbacks

The DCP may also provide direction on the character of the precinct and siting of the building.

Complying Development

The building envelope standards for complying development can be found in Medium Density Housing Code within *State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP)*. A summary is in the table below.

Standard	Summary Development Standard
Min lot size for each dwelling	200m² 6m wide
Height of Building	9m

The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KLEP Land Use Table; KLEP cl 2.6 (2); cl 4.1 (3)(3A); KLEP cl 6.6 **HoB:** KLEP cl 4.3 (2)
Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs.

Comments on Site requirements:
Wording inconsistent with MDDG for requirements of minimum lot size. Explanation Of Intended Effects wording permits Terrace Housing on any parent lot with a site area of >200m2 .

MDDG wording and pathway at p98 states LEP land zoning and minimum lot size apply.

This has significant and broad-reaching negative implications through NSW.

Within Ku-ring-gai the R3 zones are suitable only for rear lane or basement terraces types. There is no limit to the number of dwellings in a row other than extent and connection of available R3 sites.

Figure 3-6 Poor streetscape character achieved for type *Terraces with garages fronting the street*.

The SEPP Development Standards would prevail over the site analysis, as the PCA is not qualified to question the Design Verification Statement that will support an application for at-grade separate garaging.

Loss of Setback and Landscape controls will lead to poor outcomes. As proposed, result will be randomised uptake with loss of landscape, loss of deep soil and inconsistent streetscape character reliant on PCA to assess.

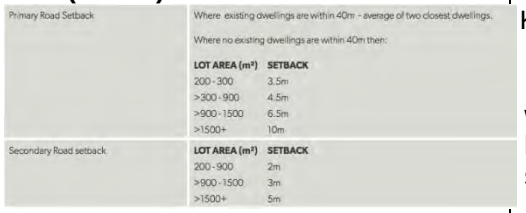
Terrace type is more compatible with R3 zone character. However, unlikely type to be taken up in R3 zone due to lower FSR than KMC's multi-dwelling housing currently permits.

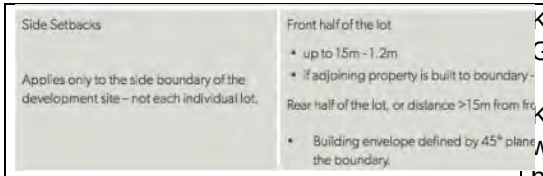
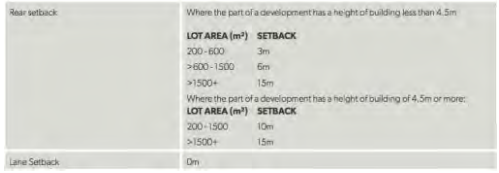
It will be attractive if seeking to avoid KMC's landscape requirements and/or avoid basement construction.

HoB: Allows for sufficient articulation of roof forms on flat sites. May be problematic on steep sites. 8.5m height is less than KLEP 2015 9.5-11.5m for R3 zone. See comments on Ceiling Heights 3.2K

The proposed CDC pathway is inconsistent between MDDG and Explanation Of Intended Effects. The zoning and minimum lot size development standards under Council's LEPs should be retained. MDDG pathway at p98 must prevail to avoid large-scale uncontrolled uptake on R3 zoned land in NSW.

KLEP 2015 cl 4.1 (3) minimum lot sizes are greater than Codes SEPP and KLEP cl 6.6 (2) min lot width (24m <1800m2 or 30m >1800m2) conflict with Codes SEPP.

	The proposed minimum widths assume rear lane access, which generally does not exist in Ku-ring-gai, or other established outer ring suburbs. The proposed at-grade separate garages addressing the street (not a rear lane or basement) will result in adverse impacts to the streetscape. The use of the terms '*primary', 'secondary'* and '*parallel'* to describe streets is risky as they will enable a second row of terraces in the rear of a deep site. This will have a devastating impact in Ku-ring-gai as it does throughout NSW. All references to street need to ensure it is a reference to a public street, and the term '*frontage*' is clearly defined to mean: "the full extent of the subdivided lot width and full extent of building that provides the entry to each dwelling", to prevent a loophole to enable a Terrace form of 'Mews' development to be permitted via CDC using a private driveway for access. Council's should be allowed to rezoning strategic areas within the LGA to R3 and amend the LEP to accommodate specific medium density housing types to correspond with desired outcome
3.2A (cont'd)  Primary Road Setback Where existing dwellings are within 40m - average of two closest dwellings. Where no existing dwellings are within 40m then: LOT AREA (m²) SETBACK 200 - 300 3.5m >300 - 900 4.5m >900 - 1500 6.5m >1500+ 10m Secondary Road setback LOT AREA (m²) SETBACK 200 - 900 2m >900 - 1500 3m >1500+ 5m	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KLEP cl2.6(2); cl 4.1(3) (3A); KLEP cl.6.6; KDCPA.3 Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Minimum lot size for development generally 1200m2 under KLEP. The Torrens title would be prevented by minimum lot size. The Primary Road Setback of 6.5m inconsistent with KDCP 6A.3 (10m) and Secondary Road Setback of 3m min will be proposed as compliant development to avoid KMCs 6-8m. Impacts on streetscape character and the controls are reliant on PCA to uphold existing urban character. There appears to be no mechanism to require urban character be taken into account other than via the checklist unlike *SEPP ARH* and *SEPP Seniors and People with a Disability* Councils must retain existing setback controls for both DA and CDC pathways. It is the only way the urban character of established areas, such as Ku-ring-gai, can be retained and managed. The one-size-fits-all approach cannot work with the vast geographical, demographical, economic, subdivision variations across NSW. The proposed Street setbacks will materially impact Ku-ring-gai's urban landscape character. This will be further exacerbated by permissibility of 3m excavation >1m from the boundary that would impact on any ability for meaningful trees.
3.2 A (cont'd)	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following

	KLEP and KDCP Clauses: KDCP6A.3; Flow-on impacts to: KDCP Part 24 Water Management Part 18 Biodiversity Part 19R1 Greenweb Maps; Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Side setbacks will have a significant impact to Ku-ring-gai's landscape character in R3 zones. The proposed 1.2m is manifestly inadequate in Ku-ring-gai, and other established suburbs. There is a possibility 0m will be attempted to the side boundaries using the argument that a neighbouring R3 site could do the same if Terrace Housing. Relies on PCA to prevent. Codes SEPP is inconsistent with KDCP 6A.3 for 3m minimum (which is also dependant on orientation of living/habitable rooms). Height plane diagrams can lead to very poor built form particularly for minimum lot widths. Ku-ring-gai's existing setback controls achieve the desired landscape character and promote landscape in all side setback zones. This will be lost under Codes SEPP. Councils must retain existing setback controls for both DA and CDC pathways. It is the only way the urban character of established areas, such as Ku-ring-gai, can be retained and managed. The one-size-fits-all approach cannot work with the vast geographical, demographical, economic, subdivision variations across NSW. The proposed Street setbacks will materially impact Ku-ring-gai's urban landscape character. The policy fails to understand the fundamental structure and value of Sydney's suburban landscape character, and Ku-ring-gai's in particular, that has a block pattern of public street-deep soil landscape front yard-built form-deep soil landscape rear yard-boundary-deep soil rear yard landscape-built form-deep soil landscape front yard-street. See Peter Meyers' analysis of Sydney suburbs reinforces Ku-ring-gai's approach. http://architectureau.com/articles/the-third-city/ Impacts also relate to site coverage and landscape and likely flow-on impacts to Ku-ring-gai's DCP initiatives for sustainable development and preventing further fragmentation of landscape.
3.2A (cont'd) 	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 6A.3; Flow-on impacts to: KDCP Part 24 Water Management; Part 18 Biodiversity; Part 19R1 Greenweb Maps; Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs.

	These controls are consistent with KDCP for sites >600m2 but achieve very poor outcomes <600m2. No side or rear setback controls take into account the internal layout, use and aspect of rooms and will lead to poor outcomes. The only advantage will be to interface sites or sites with rear-to-south as it will concentrate development to the front of the site, and improve the amount of daylight reaching rear setback zone. Deep and/or irregular shaped development sites will lodge via DA to enable townhouse development where a basement is the desired outcome. Councils must retain existing setback controls for both DA and CDC pathways. It is the only way the urban character of established areas, such as Ku-ring-gai, can be retained and managed. The one-size-fits-all approach cannot work with the vast geographical, demographical, economic, subdivision variations across NSW. The proposed Street setbacks will materially impact Ku-ring-gai's urban landscape character. The proposed rear setback is inadequate in retaining Ku-ring-gai's landscape character and will lead to poor amenity. Impacts also relate to site coverage and likely flow-on impacts to Ku-ring-gai's DCP initiatives for sustainable development and preventing further fragmentation of landscape.
3.2B Floor Space Ratio 3.2B Floor Space Ratio *Development Application:* Refer to LEP or DCP that applies to the land. *Complying Development:* Refer to *Codes SEPP* and summary table below: Standard: Maximum floor space ratio for each lot Summary Development Standard: LOT AREA (m^2) / FSR 200 - 300 / 0.80:1 >300 - 400 / 0.75:1 >400 - 500 / 0.75:1 >500 + / 0.70:1	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: FSR**:** KLEP cl 4.4 Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Impacts will be to site coverage and landscape. KDCP site coverage for multi dwelling housing permits a maximum of 40% site coverage. Proposed FSRs are similar to current Codes SEPP for General Housing Code cl 3.10 and demonstrates the poor appreciation of the translation from code to built form. Proposed FSRs for the larger lots are inconsistent with the proposed minimum dwelling sizes at 3.2L and results in excessive site coverage. The proposed FSRs have not been tested. They must be tested and set to reflect responsible dwelling sizes for this type of housing and responds to and is coordinated with all State and Commonwealth sustainability, energy efficiency, and landscape policies.

3.2C Landscaped Area

3.2C Landscaped Area

Development Application: Refer to LEP or DCP that applies to the land for minimum areas.

Complying Development: Refer to **Codes SEPP** and summary table below for minimum areas.

Standard	Summary Development Standard	
Minimum landscaped Area for each lot	LOT AREA (m²)	LANDSCAPED AREA AS PERCENTAGE OF LOT
	200 - 300	20%
	>300 - 400	25%
	>400 - 500	30%
	>500+	35%
	Minimum dimension of any landscaped area included in calculation - 1.5m	
Proportion of area forward of building line that contains landscaped area	25% minimum	

The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 6A.4 Building Separation; KDCP 6A.5 Site Coverage; KDCP 6A.6 Deep Soil Landscape; KDCP Part 25 Water Management; Part 18 Biodiversity; Part 19R1 Greenweb Maps, Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management

Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs.

Multi-dwelling housing requires 40% of the landscape area to be deep soil. This component alone exceeds the total landscape area for the largest sites under proposed Codes Standards.

This one Development Standard will have an unacceptable impact on Ku-ring-gai's landscape character if taken up across the LGA.

Codes SEPP min dimension of 1.5m overrides KDCP definition of 2m (but appears to exclude *all* hard paving). It is unclear how stepping stones would be defined as a path and/or private open space terracing.

KMC's requirement for deep soil is not reflected in the Codes SEPP definition which is simplistic and fails to differentiate between landscape above structure and deep soil.

KDCP is more onerous and with more exclusions than under the Codes SEPP. This will be attractive to applicants seeking to avoid KDCP higher requirements.

Landscape control must reside in Council's control.

The MDDG Part 2 is largely performance-based and enables alternative solutions to design criteria. A PCA cannot determine an application on merit so will either ignore Part 2 or approve a non-compliant development.

FSR and landscape as proposed, is diametrically opposed to the Federal Government's 'Green Cities' policy (announced 01/2016 by Minister Greg Hunt)… *"cities with high levels of trees, foliage and green spaces — provide enormous benefits to their residents. Increasing urban canopy coverage decreases heat, which improves health and quality of life."*
http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx

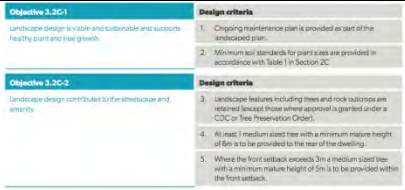
And the Greater Sydney Commission's *Towards our Greater Sydney 2056* at p6 core objectives for *A Sustainable Sydney:*

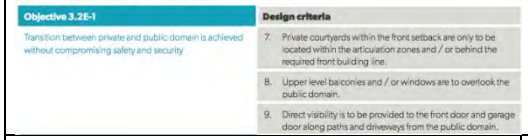
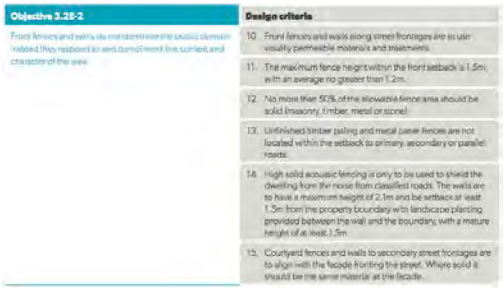
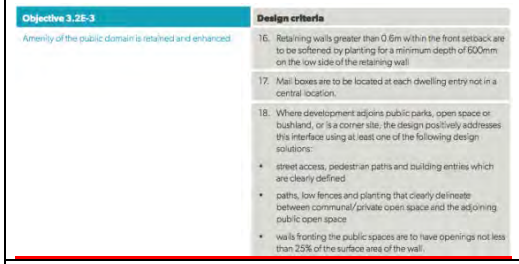
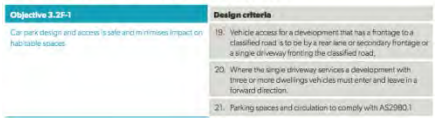
- *A city in its landscape*
- *An efficient city*
- *A resilient city*

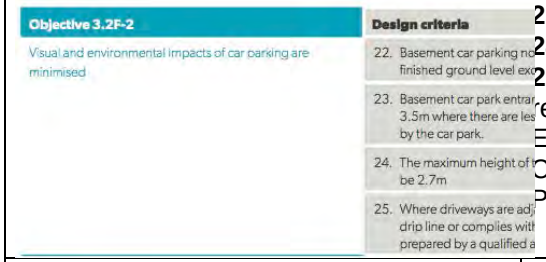
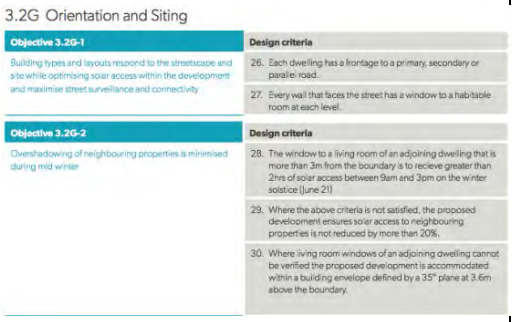
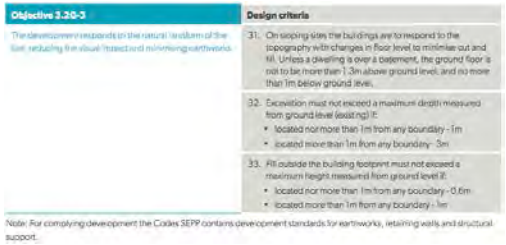
And at p12

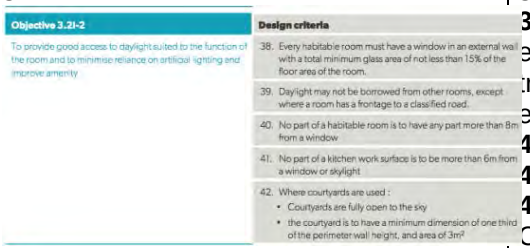
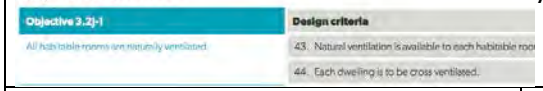
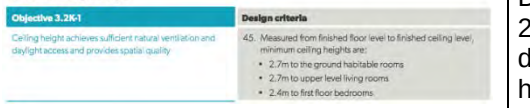
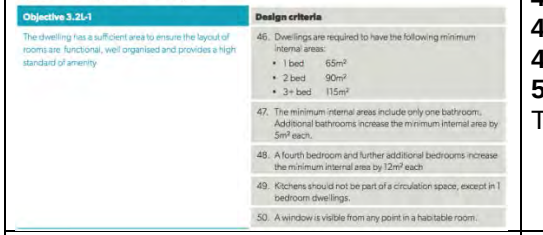
…It is important to recognise that natural environmental areas are productive and have an impact on communities, the economy and regional tourism. Viewing Greater Sydney as a city in its landscape allows us to think about how the diversity of social, cultural

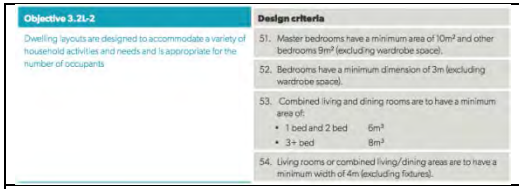
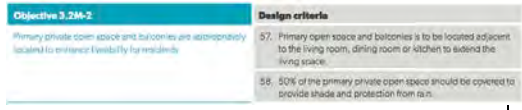
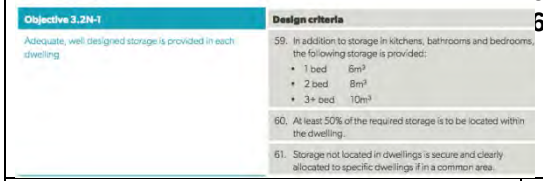
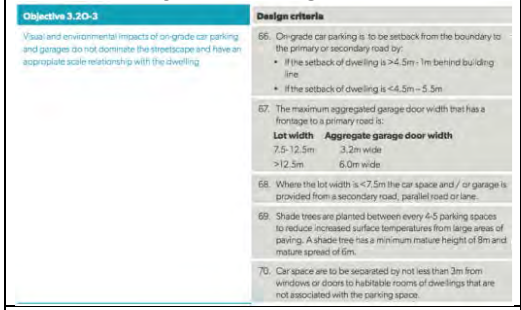
	and environmental conditions operate within this natural landscape *…while also looking at how we can green our streets, neighbourhoods and suburbs with new tree canopies. This metropolitan priority aims to:* *improve the health of waterways* *protect, extend and enhance biodiversity, regional and local open space systems, as well as scenic and cultural heritage together with productive landscapes* *increase access to open space, conserve the natural environment and enable healthy lifestyles and local food.* http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening http://gsc-public.s3-ap-southeast-2.amazonaws.com/s3fs-public/towardsour2056_21161117.pdf?5045ajdpvf0jcInAS2KVJ63jV3k2W3O1 The loss of every council's authority over landscape fails to consider the variety and specific character of each LGA throughout NSW and fails to provide a mechanism to achieve the variety that a city and NSW needs. Landscape is the single most important element that defines Ku-ring-gai's urban character. The MDDG Objectives and Design Criteria for landscape are manifestly inadequate for Ku-ring-gai. There is no requirement for any landscape to be deep soil. The required areas are inadequate and will not result in the trees being viable due to the high probability they will be removed, or replaced with smaller planting, or areas of paving extended post approval. Ku-ring-gai's urban character is predicated on the quality of its landscape, and has in place, detailed development objectives and controls for all setbacks, site coverage, total landscape area, deep soil and tree removal that ensure all development, of every scale is within a dominant landscape setting characterised by canopy trees and deep soil planting. The loss of landscape controls, therefore, has a particularly devastating impact on Ku-ring-gai's strategic planning of urban character. Protection of canopy trees that may have value in either providing links between areas of biodiversity significance, or contributing to the background view between allotments or internal site character is very important. This has a function as a public asset, which is not recognised in the Codes SEPP or MDDG. Local experience of development currently lodged under *SEPP Seniors and People with a Disability* and *SEPP Affordable Rental Housing* has seen the gradual loss and/or degradation of established trees and vegetation within the Council area where these developments occur. Unlike these two SEPPs, the Codes SEPP has **no** development standard requiring development consider and respond appropriately to existing and desired urban character for landscape nor can it be verified. The types of development that have had the greatest impact in Ku-ring-gai are those advocated in the MDDG that prioritise at-grade car parking deep within the site. These have a devastating impact on the protection of existing and diminishing landscape. These outcomes are in direct conflict with the NSW Government's *A Plan for Growing Sydney* and its *Urban Green Cover Policies*, commonwealth policies for Greening Cities and Housing adapted to climate change. It is also worth noting, these are policies that are inconsistent with the United Nations, General Assembly *Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*. Cumulative impacts resulting from the Landscaped Area development standard have the potential for loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect.

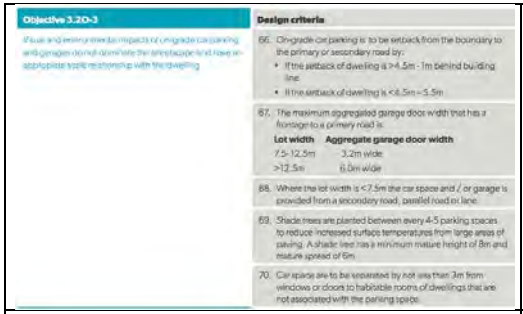
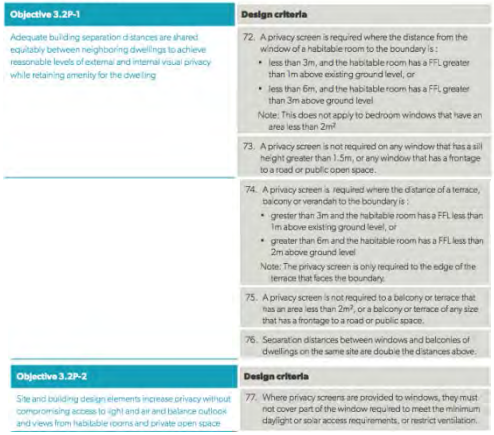
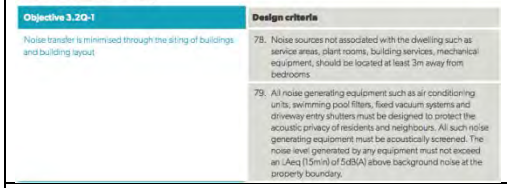
	The focus on streetscape landscape controls is important in achieving urban character, however, the policy fails to adequately value the rear yard landscape assets throughout NSW and in Ku-ring-gai specifically, and their importance climatically, their role protecting against further fragmentation of biodiversity significance and loss of green corridors, and their aesthetic contribution to urban character. Further to this, the local community demands its protection and the courts have recognised Ku-ring-gai's landscape character in its judgements.
Objectives and Design Criteria (DC)	
	**1** The requirement for an ongoing maintenance plan is not feasible for two dwellings with little common area nor is it enforceable into the future. Landscape contractors provide at most a 6-12 month establishment plan. After that the maintenance of a development is a either private or communal responsibility. PCA's are not trained, qualified, or have required expertise to assess landscape maintenance plans.
	2 The requirement for minimum soil standards is directed to planting on structures. This is unlikely to be relevant for two dwellings (dual occupancy). There should also be criteria for preservation of existing trees in accordance with AS4970-2009, minimum width of garden beds to side and rear boundaries for screen planting, minimum width of garden beds to driveway. PCA's are not trained, qualified, or have required expertise to assess soil standards in relation to proposed vegetation requirements.
	3 CDC pathway negates Council's tree protections except where biodiversity Act applies. However, role of PCAs relies on honesty of applicants in assessing tree worth as they are not trained, qualified or has the expertise to assess trees and landscape issues. Role of PCAs and Complying Development has serious impacts to protecting biodiversity, and landscape character. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA. The reference to 'tree preservation order' should be substituted with Clause 5.9 consistent with the Principal LEP.
	4 Proposed min setbacks will not support anticipated landscape for canopy trees and will not achieve Ku-ring-gai's landscape character.
	5 Objective 3.1C-2 refers to contribution to streetscape and amenity; this is unachievable with one 5 metre high tree in the front setback. There is no further requirement for any other shrubs, groundcover or lawn and instead 75% of the front setback is permitted to be paved. A 5m tree may be appropriate for front setbacks of 3.5m however this is not in keeping with larger lots with existing front setbacks. There is no requirement for street tree planting.
Sitting the Development	
3.2D Local Character and Context 3.2D Local Character and Context Objective 3.2D-1 / Design criteria The built form, articulation and scale relates to the local character of the area and the context 6. Provide in the design statement a description as to how the built form of the development contributes to the character of the local area, using the guidance in Section 2D *Local Character and Context*.	**6** PCAs will check a design statement is submitted but are not trained, qualified, nor have the expertise to assess urban design and architectural merit of a design. Urban character is not a principal development standard, and will be largely ignored. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA.
3.2E Public Domain Interface	**7** Impact will be where minimum front setbacks are less than KDCP DCP. **8** Supported. **9** The impact of driveways into a lot must be minimised. Ku-ring-gai's street character will be impacted by multiple driveway

3.2E Public Domain Interface  Objective 3.2E-1: Transition between private and public domain is achieved without compromising safety and security Design criteria: 7. Private courtyards within the front setback are only to be located within the articulation zones and / or behind the required front building line. 8. Upper level balconies and / or windows are to overlook the public domain. 9. Direct visibility is to be provided to the front door and garage door along paths and driveways from the public domain.	crossovers and facades dominated by garages. Terraces with garages facing the street should be deleted. They result in unacceptable impacts to streetscapes on public domain amenity through the loss of on-street car parking and street trees.
3.2E-2  Objective 3.2E-2 Design criteria: 10. Front fences and walls along street frontages are to use visually permeable materials and treatments. 11. The maximum fence height within the front setback is 1.5m, with an average no greater than 1.2m. 12. No more than 50% of the allowable fence area should be solid (masonry, timber, metal or stone). 13. Unfinished timber paling and metal picket fences are not located within the setback to primary, secondary or parallel roads. 14. High solid acoustic fencing is only to be used to shield the dwelling from the noise from classified roads. The walls are to have a maximum height of 2.1m and be setback at least 1.5m from the property boundary with landscape planting provided between the wall and the boundary, with a mature height of at least 1.5m. 15. Courtyard fences and walls to secondary street frontages are to align with the façade fronting the street. Where solid it should be the same material as the façade.	**10** Supported. **11**Front fences should be limited to 1.2m in height. **12** Supported. **13** Supported. **14** The control allows for the construction of 2.1m high fencing on frontages to classified roads. Tall fencing is unattractive, imposing and reduces safety through the loss of casual surveillance. The provision of high fencing is not required as reasonable internal noise levels can be achieved through construction techniques informed by a site specific acoustic assessment. **15** Generally supported. Elements of façade should be well coordinated with landscape treatment. Change all references to '*primary', 'secondary' and 'parallel' streets/roads/lanes* to *public* streets/road/lanes. Include definition of 'frontage' to mean the full width of a lot and full width of a building and dwelling from which the main entry to the building and dwelling directly faces a public street/road/lane and must be seen from the public street/road/lane. A private driveway is not a street and does not provide frontage. A path/gate/door to a dwelling or dwellings behind another does not provide a frontage.
3.2E-3  Objective 3.2E-3: Amenity of the public domain is retained and enhanced. Design criteria: 16. Retaining walls greater than 0.6m within the front setback are to be softened by planting for a minimum depth of 600mm on the low side of the retaining wall. 17. Mail boxes are to be located at each dwelling entry not in a central location. 18. Where development adjoins public parks, open space or bushland, or is a corner site, the design positively addresses this interface using at least one of the following design solutions: • street access, pedestrian paths and building entries which are clearly defined • paths, low fences and planting that clearly delineate between communal/private open space and the adjoining public open space • walls fronting the public spaces are to have openings not less than 25% of the surface area of the wall.	**16** Supported **17** Supported for smaller developments. Assumes all dwellings address the street, which may not be the case if the loop hole for the definition of 'streets' is not amended. **18** Supported.
3.2F **Internal Streets – Pedestrian and Vehicle Access** 3.2F Internal Streets - Pedestrian and Vehicle Access  Objective 3.2F-1: Car park design and access is safe and minimises impact on habitable spaces Design criteria: 19. Vehicle access for a development that has a frontage to a classified road is to be by a rear lane or secondary frontage or a single driveway fronting the classified road. 20. Where the single driveway services a development with three or more dwellings vehicles must enter and leave in a forward direction. 21. Parking spaces and circulation to comply with AS2890.1	Need controls to prevent creation of *Internal Streets* unless fully formed public streets and dedicated to Council. Private driveways are NOT streets. The inclusion of '*internal streets'* that are private driveways has the effect of an enabling clause for types of development not intended to be via PCA pathway. If the definitions are not changed, all development that proposes an internal street/road/lane must be determined by a DA to avoid very large developments being certified via PCA and excised from local strategic planning and in conflict with the intent of the policy. **19** Not supported. Must be assessed via DA pathway due to complexities of coordinating different government departments that are often involved. **20** The control should require that all vehicles enter and leave in a forward direction regardless of whether there is a single driveway or two or more driveways. Complying Development cannot be battle-axe type. The single driveway access must only service a development where it is for basement car parking. This clause enables a second, third, fourth etc. row of terraces behind each other. **21** Supported. **3.2F. I**nternal 'Streets' are not streets, they are private driveways. They destroy landscape character, prioritise vehicles of over pedestrian and resident amenity which is in conflict with and devastate the internal site character by imposing expansive areas of hard-stand. An *internal street* must have specific controls about being public, appropriate reservation width, landscape, design, coordination with public domain and public access and be strategically well located as through-site connections to the public street

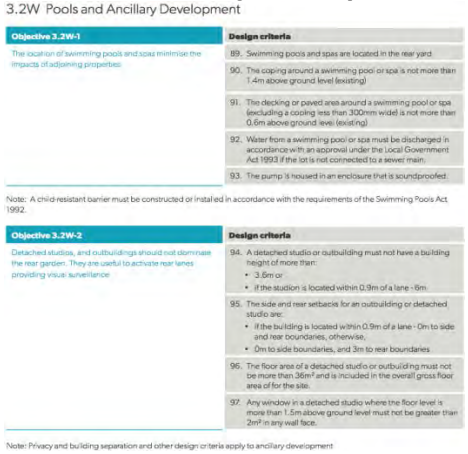
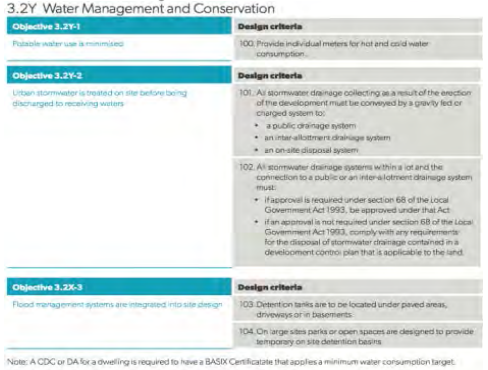
	network, no dead-ends. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA.
3.2F-2  Objective 3.2F-2 Visual and environmental impacts of car parking are minimised Design criteria 22. Basement car parking no finished ground level ex 23. Basement car park entrar 3.5m where there are les by the car park. 24. The maximum height of t be 2.7m 25. Where driveways are adj drip line or complies wit prepared by a qualified a	**22** Supported. **23** Supported. **24** Supported in principles but must be subject to confirmation by Council Engineers for garbage truck requirements. **25** Supported but PCA has no training, expertise nor experience to assess arborist reports. Driveways adjacent to trees should require compliance with the Australian Standard for the protection of trees on development sites (AS4970-2009). Excavation would be permitted within 1m from boundary compared to 2m under KDCP. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA.
3.2G – 2 & 3 **Orientation and Siting**  3.2G Orientation and Siting Objective 3.2G-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development and maximise street surveillance and connectivity Design criteria 26. Each dwelling has a frontage to a primary, secondary or parallel road. 27. Every wall that faces the street has a window to a habitable room at each level. Objective 3.2G-2 Overshadowing of neighbouring properties is minimised during mid winter Design criteria 28. The window to a living room of an adjoining dwelling that is more than 3m from the boundary is to recieve greater than 2hrs of solar access between 9am and 3pm on the winter solstice (June 21) 29. Where the above criteria is not satisfied, the proposed development ensures solar access to neighbouring properties is not reduced by more than 20%. 30. Where living room windows of an adjoining dwelling cannot be verified the proposed development is accommodated within a building envelope defined by a 35° plane at 3.6m above the boundary.	**Objective 3.2G-3** – refers to minimizing earthworks, but it is followed by design criteria that allows excavation/filling up to 1m depth where 'not more than 1m from the boundary'. The control should be consistent with the current Codes SEPP requirement of a minimum 600mm setback. **26** Supported only if all street references are to <u>public</u> streets. Change all references to '*primary', 'secondary' and 'parallel' streets/roads/lanes* to *<u>public</u>* streets/road/lanes. Include definition of 'frontage' to mean the full width of a lot and full width of a building and dwelling from which the main entry to the building and dwelling directly faces a public street/road/lane and must be seen from the public street/road/lane. A private driveway is not a street and does not provide frontage. A path/gate/door to a dwelling or dwellings behind another does not provide a frontage. A garage or car port must not be more than 25% of a frontage of a lot or dwelling. **27** A window is insufficient. Garages must not dominate the frontage. **28** The primary aspect of a living should not be less than 6m from any boundary. **29** The control does not explain how compliance with this requirement is to be assessed, are the requirements in control 37 to be applied? Rewording is required. Does it mean if the adjoining dwelling does not currently receive 2hrs of solar access? **30** Needs to be tested.
3.2G- 3  Objective 3.2G-3 The development responds to the natural landform of the site, including the visual impact and minimising earthworks Design criteria 31. On sloping sites the buildings are to respond to the topography with changes in floor level to minimise cut and fill. Unless a dwelling is over a basement, the ground floor is not to be more than 1.3m above ground level, and no more than 1m below ground level. 32. Excavation must not exceed a maximum depth measured from ground level (existing) if: • located not more than 1m from any boundary - 1m • located more than 1m from any boundary - 3m 33. Fill outside the building footprint must not exceed a maximum height measured from ground level if: • located not more than 1m from any boundary - 0.6m • located more than 1m from any boundary - 1m Note: For complying development the Codes SEPP contains development standards for earthworks, retaining walls and structural support.	**31** Supported. Consistent with KMC's objectives. **32** Not supported. Excavation permitted within minimum 1 metre from the site boundary will impact on neighbour amenity. Excavation criteria should be consistent with current Code SEPP. **33** Not supported. Filling permitted within minimum 1 metre from the site boundary will impact on neighbour amenity. Filling criteria should be consistent with current Code SEPP. **34** Inadequate and not supported. There is no numerical or measurable separation to deal adequately with visual and acoustic privacy with this control or in Part 2.H. Building separation must use SEPP 65 separations dependant on internal layout, room use, and aspect of living areas. If not, privacy screens will be used as the first order solution and compliant with design criteria 3.2P. This advocates poor design outcomes and is inconsistent with the Design Quality Principles. **35** 45m is too long. Amend to 36m (KDCP 6C.8) A sketch should be provided to demonstrate the intended outcome of this control. All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
Amenity	
3.2I Solar and Daylight Access	**36** Controls 36 and 37 contain solar access requirements for living rooms and private open space, however the methodology for measuring direct sunlight applies to windows/living areas only. A methodology for measuring solar access to private open space should be included. **37** Supported.

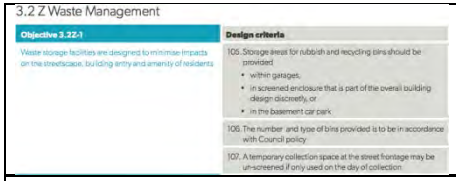
3.2I Solar and Daylight Access  **Objective 3.2I-1** To optimise the number of dwellings recieving sunlight to habitable rooms and private open spaces. Solar access enables passive solar heating in winter and provides a healthy indoor environment **Design criteria** 36. A living room or private c receive a minimum of 2 h and 3 pm at the winter sc 37. Direct sunlight is achieve glass is achieved for at le sunlight, 8 periods of 15 the periods do not need	
3.2I- 2  **Objective 3.2I-2** To provide good access to daylight suited to the function of the room and to minimise reliance on artificial lighting and improve amenity **Design criteria** 38. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 15% of the floor area of the room. 39. Daylight may not be borrowed from other rooms, except where a room has a frontage to a classified road. 40. No part of a habitable room is to have any part more than 8m from a window 41. No part of a kitchen work surface is to be more than 6m from a window or skylight 42. Where courtyards are used : • Courtyards are fully open to the sky • the courtyard is to have a minimum dimension of one third of the perimeter wall height, and area of 3m²	**38** Supported. **39** Delete. …"*except where a room has a frontage to a classified road*." Noise barrier planning principles must be implemented to ensure all habitable rooms have a window in an external wall. A window can provide daylight but will need to be acoustically treated. Wording implies habitable rooms can provide no window, which is unacceptable. Proposed amenity significantly less than expected for high density development. Conflicts with DC 38. **40** Supported. **41** Supported. **42**Inconsistent use of terms *'courtyard', 'skylight'* p39 at design guidance 11 and 15, '*courtyard housing'* p191, and this Design Criteria. Can enable a habitable room to have primary aspect into courtyard if dwelling is defined as a 'courtyard housing' as advocated at p191 All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
3.2J **Natural Ventilation** 3.2J Natural Ventilation  **Objective 3.2J-1** All habitable rooms are naturally ventilated **Design criteria** 43. Natural ventilation is available to each habitable roo 44. Each dwelling is to be cross ventilated.	**43** Supported. **44** Supported. Add**:** "Maximum building depth must not exceed 16m measured glass line to glass line to achieve cross-ventilation." All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
3.2K Ceiling Height 3.2K Ceiling Height  **Objective 3.2K-1** Ceiling height achieves sufficient natural ventilation and daylight access and provides spatial quality **Design criteria** 45. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: • 2.7m to the ground habitable rooms • 2.7m to upper level living rooms • 2.4m to first floor bedrooms	**45** Amend 2nd dot point "2.7m to upper level habitable rooms" Delete 3rd dot point – which will result in all upper levels being only 2.4m and identified as 'bedrooms'. 2.4m is the BCA minimum but achieves very poor qualitative amenity, feels oppressive and is not permitted in higher density development.2.4m ceiling height with a ceiling fan is unsafe regardless of where the fan is located. It does not enable sufficient height to dress and undress.2.4m ceiling height does not enable flexibility in medium density housing where rooms can be used as bedrooms or additional living rooms. This is inconsistent with objectives to promote flexibility for a family's changing needs and circumstances and DC 3.2L-2. All Design Criteria must ensure amenity is never less than SEPP 65 for high density housing.
3.2L Dwellings Size and Layout 3.2L Dwelling Size and Layout  **Objective 3.2L-1** The dwelling has a sufficient area to ensure the layout of rooms are functional, well organised and provides a high standard of amenity **Design criteria** 46. Dwellings are required to have the following minimum internal areas: • 1 bed 65m² • 2 bed 90m² • 3+ bed 115m² 47. The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. 48. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each 49. Kitchens should not be part of a circulation space, except in 1 bedroom dwellings. 50. A window is visible from any point in a habitable room.	**46** Supported. **47** Supported. **48** Supported. **49** Supported. **50** Supported. The Design Criteria 44-48 are consistent with KDCP 6C.6 Dwelling sizes and SEPP 65 ADG.
3.2L-2	**51** Supported. **52** Supported.

	**53** Error – '*Combined living and dining rooms are to have a minimum area of: 1 bed and 2 bed = 6m3 and 3+bed = 8m3'.* This should be represented as area m2 and not volume m3. Requires amendment. Figures are for storage (DC 3.2N-1) not room size. **54** Supported and should be amended to add: "Room proportions must be rectangular to enable functional and efficient furniture layouts and accommodate circulation." However, it is noted that this could result in more square shaped rooms in conjunction with minimum areas DC 51.
3.2M -1 **Private Open Spaces** 3.2M Private Open Spaces 	**55** Inadequate. 20m2 would be better and assumes strata title where there is otherwise communal landscape elsewhere. Torrens title may result in poorer outcomes. **56** Outside terraced areas should be defined with the minimum dimension. And must provide setbacks to achieve landscape. The control enables a 3m setback to a boundary or internal fence of another dwelling to be fully paved. **57** Supported
3.2M – 2 	**58** The control should refer to 50% of the minimum primary private open space area requirement, otherwise it would require substantial covered areas in the event that private open space areas greater than the minimum area are proposed. The proposed Design Criteria 55 achieves significantly less than KDCP 6C.2 requirement of 25m2 and the Design Criteria 56 minimum dimension is less than KDCP 6A.2 of 4m The controls need to differentiate between hard paved terraces for a table and chairs and landscape areas for plants and strata and Torrens Title requirements.
3.2N Storage 3.2N Storage 	**59** Supported. **60** Supported. **61** Supported.
3.2O-1 **Car and Bicycle Parking** 	**62**Supported conditional on garage/car parking fronting the primary street to be maximum 1 car width. **63** The control specifies a low parking rate of 1 space per dwelling where no DCP applies. **64** The requirement that visitor parking is to be provided where a basement car park serves more than 10 dwellings is a low trigger point, particularly in light of the comments made regarding Section 2O and availability of on-street parking around railway stations and town centres. The requirement should be that for car parks serving 5 or more dwellings, visitor car parking should be provided at the rate of 1 space per 5 dwellings (rounded up). Double garaging results in poor outcomes to streetscapes. No dwelling should result in garaging being more than 50% of the façade. The controls should ensure that garaging does not negatively impact on streetscape character or existing and future public amenity of public streets.
3.2O-2	**66** should be amended as follows: **"***Garages must not comprise more than 25% of the frontage of a lot or dwelling."* On-grade car parking must be confined to rear lanes or provide dwellings with no car parking if close to public transport that is well served and frequent. The Design Criteria must only apply to rear lane access. Inappropriate for existing public streets/roads not-applicable to the Terrace type.

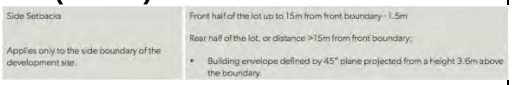
 Objective 3.2O-3 Design criteria 66. On-grade car parking is to be setback from the boundary to the primary or secondary road by: • If the setback of dwelling is >4.5m - 1m behind building line • If the setback of dwelling is <4.5m – 5.5m 67. The maximum aggregated garage door width that has a frontage to a primary road is: Lot width / Aggregate garage door width 7.5-12.5m / 3.2m wide >12.5m / 6.0m wide 68. Where the lot width is <7.5m the car space and / or garage is provided from a secondary road, parallel road or lane. 69. Shade trees are planted between every 4-5 parking spaces to reduce increased surface temperatures from large areas of paving. A shade tree has a minimum mature height of 8m and mature spread of 6m 70. Car spaces are to be separated by not less than 3m from windows or doors to habitable rooms of dwellings that are not associated with the parking space.	**67** The control limits the maximum aggregate garage door width to 6m for a lot width of >12.5m. It is unclear whether this control applies to the width of the site or the proposed allotments. The subdivision of a terrace house development to create individual lots does not appear to be a requirement. The controls need to be clear as to whether they apply to the site as a whole or the proposed lots only. **68** Reword. *"All at-grade car parking must be accessed from a public rear lane."* **69** Supported in principle. Unclear how this can be achieved and is dependent on lot width and the outcome dependent on occupants' future compliance. Experience suggests outcomes are poor. **70** Intent supported but is unworkable on small lots. Will result in poor daylight access and potential for poor streetscape address. **71** Delete as the Design Criteria implies types not intended to be complying development are included.
3.2P **Visual Privacy** 3.2P Visual Privacy  Objective 3.2P-1 Design criteria Adequate building separation distances are shared equitably between neighboring dwellings to achieve reasonable levels of external and internal visual privacy while retaining amenity for the dwelling 72. A privacy screen is required where the distance from the window of a habitable room to the boundary is : • less than 3m, and the habitable room has a FFL greater than 1m above existing ground level, or • less than 6m, and the habitable room has a FFL greater than 3m above ground level Note: This does not apply to bedroom windows that have an area less than 2m² 73. A privacy screen is not required on any window that has a sill height greater than 1.5m, or any window that has a frontage to a road or public open space. 74. A privacy screen is required where the distance of a terrace, balcony or verandah to the boundary is : • greater than 3m and the habitable room has a FFL less than 1m above existing ground level, or • greater than 6m and the habitable room has a FFL less than 2m above ground level Note: The privacy screen is only required to the edge of the terrace that faces the boundary. 75. A privacy screen is not required to a balcony or terrace that has an area less than 2m², or a balcony or terrace of any size that has a frontage to a road or public space. 76. Separation distances between windows and balconies of dwellings on the same site are double the distances above. Objective 3.2P-2 Design criteria Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space 77. Where privacy screens are provided to windows, they must not cover part of the window required to meet the minimum daylight or solar access requirements, or restrict ventilation.	The Design Criteria set out for privacy and setbacks needs to be amended. The requirement for privacy screens indicates inadequate building separation controls and poor design resolution. **72** Privacy should be primarily achieved through sound design resolution. Five controls around the use of privacy screens indicates visual (and acoustic) privacy is not achieved via the proposed building separations at 2H. The building separation and setback controls should be amended and increased consistent with SEPP 65 ADG separations). **73** Delete. These conditions indicate inadequate setbacks from the boundary and should not be a condition that arises in this type of development. Amendment is required to increase building setbacks and separation to ensure privacy screens are not required. **74** Generally goes to inadequate setbacks and building separation controls. **75** Generally goes to inadequate setbacks and building separation controls. **76** The same amenity issues existing between dwellings within a site and on neighbouring sites. The separation controls must not result in poor amenity within a development and less than is achieved for high-density housing. **77** Privacy screens over windows achieve very poor amenity and indicate poor design resolution in internal planning layouts, combined with inadequate building separation. Add to Objective: …"siting of buildings, building separation and building layout." Proposed controls demonstrate building separation is inadequate. The controls should be amended to use SEPP 65 ADG visual privacy controls for building separation. Primary controls at 2H must be amended to address building separation to achieve adequate visual and acoustic privacy.
3.2Q **Acoustic Privacy** 3.2Q Acoustic Privacy  Objective 3.2Q-1 Design criteria Noise transfer is minimised through the siting of buildings and building layout 78. Noise sources not associated with the dwelling such as service areas, plant rooms, building services, mechanical equipment, should be located at least 3m away from bedrooms 79. All noise generating equipment such as air conditioning units, swimming pool filters, fixed vacuum systems and driveway entry shutters must be designed to protect the acoustic privacy of residents and neighbours. All such noise generating equipment must be acoustically screened. The noise level generated by any equipment must not exceed an LAeq (15min) of 5dB(A) above background noise at the property boundary.	3.2Q has no requirements for sound noise barrier planning principles to best resolve acoustic privacy. Performance requirements at Part 2 Design Guidance 2Q is separated to from the DC with not reference in the DC to that design guidance. None of the Design Criteria relate to the objective of siting and layout. **78** Supported. **79** Supported. Use SEPP 65 ADG acoustic privacy controls for building separation and dwelling layout.
3.2R **Noise and Pollution**	**3.2R** has no requirements for sound noise barrier planning principles to best resolve acoustic privacy and separate to statutory requirements. **80** Supported. **81** Supported. **82** Supported.

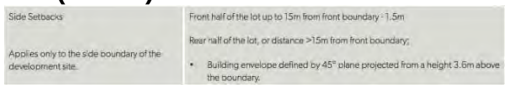
3.2R Noise and Pollution **Objective 3.2R-1** Ensure outside noise levels are controlled to acceptable levels in living and bedrooms of dwellings **Design criteria** 80. Any development within the 20 ANEF contour is to be constructed to comply with AS/NZS Acoustics – aircraft noise intrusion. 81. Dwellings that are within 100m of a road corridor with an annual daily traffic (AADT) volume of more than 1,000 vehicles (based on traffic volume data published on the website of the RMS) or 80m from a rail corridor are to have LA_{eq} measures are not exceeding: • in any bedroom: 35dB(A) between 10pm-7am • anywhere else in the building (other than a kitchen, garage, bathroom or hallway): 40dB(A) at any time This can be achieved by: • a full noise assessment prepared by a qualified acoustic engineer • complying with relevant noise control treatment for sleeping areas and other habitable rooms in Appendix C of Draft Guide to infrastructure development near rail corridors busy roads. 82. Dwellings within 25m of a rail corridor are required to have a vibration assessment carried out by a qualified structural engineer	
3.2S **Universal Design** 3.2S Universal Design **Objective 3.2S-1** Universal design features are included in dwelling design to promote flexible housing for all community members **Design criteria** 83. All dwellings are to include the Liveable Housing Design Guideline's silver level universal design features.	**83** Supported and should be amended to add requirement for adaptable housing to Platinum Level for two dwellings per 15. The increased number of Platinum Level housing to address long-term flexibility and financial equity for adaption of medium density housing.
3.2U **Architectural Form and Roof Design** 3.2U Architectural Form and Roof Design **Objective 3.2U-1** The architectural form is defined by a balanced composition of elements. It responds to internal layouts and desirable elements in the streetscape. It is a considered 3- dimensional form **Design criteria** 84. Provide in the design statement a description as to how the architectural form reduces the visual bulk and responds and provides a cohesive design response. Note: Refer to Part 2 for guidance. **Objective 3.2U-2** The roof treatments are integrated into the building design and positively respond to the street **Design criteria** 85. The roof design is integrated with the overall building form. 86. Skylights and ventilation systems are to be integrated into the roof design	**84** Supported but a PCA is not the appropriate person and cannot assess design quality of architectural form. **85** Supported, however PCA is not the appropriate person and cannot assess design quality of architectural form. **86** Supported, however PCA is not the appropriate person and cannot assess design quality of architectural form. Councils and design review panels must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines. PCAs are not trained, qualified or experienced in assessing design quality of architectural form.
3.2V **Visual Appearance and Articulation** 3.2V Visual Appearance and Articulation **Objective 3.2V-1** To promote well designed buildings of high architectural quality that contribute to the local character **Design criteria** 87. Provide in the design statement a description as to how the aesthetics and articulation contribute to the character of the local area. Refer to Section 2 for guidance. 88. An articulation zone of 1.5m is provided forward of the building line. The articulation zones includes one or more of the following: • Veranda / Porch • Balcony • Pergola • Entry feature or portico • Awnings or other features over windows • Eaves and sun shading • Window box treatment • Recessed or projecting architectural elements • Bay windows	**87** Supported but a PCA is not the appropriate person to be assessing design quality of architecture. **88** Supported, however PCA is not the appropriate person and cannot assess design quality of architectural form.

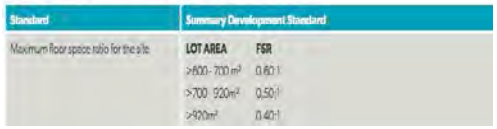
3.2W **Pools and Ancillary Development** 3.2W Pools and Ancillary Development  Note: Privacy and building separation and other design criteria apply to ancillary development	**89** Supported. **90** Supported. **91** Supported. **92** Required. **93** Supported. **94** Supported. **95** Supported for this housing type. **96** Should be conditional on lot size. Possible for a 6m x 6m room that could extend across full extent of a min width lot but must provide a 3m setback to the rear boundary that serves no purpose and adds no amenity to the lot. 0m side setback should apply to only one side boundary and room should not occupy more than 30% of the lot width. **97** Not supported. If windows are internal to a site, privacy can be controlled. If highlights provide outlook above roof lines of neighbouring site or over public domain, there are no privacy impacts. Opening size should provide pleasing proportions in the façade composition of all elevations.
Environment	
3.2X **Energy Efficiency** 3.2X Energy Efficiency  Note: A CDC or DA for a dwelling is required to have a BASIX Certificate that applies a minimum energy consumption target.	The proposed Design Criteria do not relate to the objective. They are superficial elements of 'passive environmental design' **98** Supported. **99** Supported.
3.2Y **Water Management and Conservation** 3.2Y Water Management and Conservation  Note: A CDC or DA for a dwelling is required to have a BASIX Certificate that applies a minimum water consumption target.	This section has been taken directly taken from the proposed SEPP wording and is not a guide. In addition it is contradictory and too broad. The Guide should provide more guidance on achieving suitable outcomes rather than restating the exact wording of the SEPP. Some DCPs do not permit runoff from a medium density development to be managed by means of a charged system or on site disposal, so this requirement cannot achieve compliance with the second dot point following which requires compliance with Council's DCP. On site disposal is particularly unsuited to this type of multi-dwelling development due to the large impervious areas permitted. The Guide has to clearly state that an inter-allotment drainage system must legally benefit the site and contain a suitable pipe. There is no definition. Some certifiers do not understand the importance of the terms of an easement. Section 68 of the Local Government Act 1993 does not apply to Councils within Sydney Water's area of operations, so this criterion requires compliance with Council's DCP (should read "management and disposal of stormwater"). However this is not sufficiently clear. This applies to all Councils in the greater Sydney area and should be the first dot point, not the second. **101** CDC pathway enables large development to be designed with no coordination with council requirements, nor demonstrated ability to link into the existing systems. **104** Delete: Implies very large development not intended as complying development.
3.2Z **Waste Management**	**105** Supported but should be exclusive of calculated private open space. **106** Supported. **107** Not supported. Problem with type and scale of development that is possible under the enabling definitions of '*primary/secondary/*parallel' in context of *streets/roads/lanes'*.

	A development of 40 dwellings for instance must have screen garbage areas integrated with the overall design or the streetscape character will be severely impacted. Development that will result in more than 6 dwellings (including the total if lodged under consecutive CDCs) must be properly designed, screened and be in a basement with basement car parking. Development If definitions remain, all waste storage and garbage disposal must comply with council requirements.
3.3 **Multi-Dwelling Housing and Master Planned Communities**	The inclusion of this housing type is not permitted under the Codes SEPP and must be deleted. Ku-ring-gai has a well-considered and sophisticated DCP for multi-dwelling housing which must be retained to achieve the intended urban and landscape character. See above comments at 3.1 for negative impacts of the proposed process. **Figure 3-10** demonstrates a failed housing typology that has infected much of western Sydney and operates in R2 zones under SEPP Seniors and People with a disability throughout Sydney and NSW. This housing type must not be permitted as it leads to very poor urban and landscape outcomes. This housing type is contrary to developing functional, sustainable cities, as it encourages large-scale, isolated higher density development that prevents coordination with pubic street networks and the services and amenity of local centres. It fails to establish future street and subdivision patterns that can be later further redeveloped for high density with the required functional street networks and public spaces. It results in impermeable large allotments with prioritised vehicle character. The figures used are unrealistic as it does not demonstrate the actual vehicle requirements under AS 2890. Principal Controls Comments - See Table 3.3 Multi-Dwelling Housing
3.3 A-Z	Multi-dwelling Housing and Master Planned Communities are developed in close consultation with councils, are assessed either by Council or other independent consent authority, and are not relevant to the MDDG or Codes SEPP. The section is fatally flawed. It contains poor typologies such as Figure 3-10 that are inconsistent with the Design Quality Principles and other National State and Local planning policies. The issues raised in the other sections apply to this section.
3.4 Manor Houses and Dual Occupancies	The pairing of Manor Houses and Dual Occupancy is poor. It is comparing types that are quite dissimilar unless the dual occupancy is attached, which is Side-by-Side housing at 3.1. The Manor House type could be well implemented in Ku-ring-gai's R2 zones on single allotments. However, the dual occupancy rear yard subdivision type is a poor subdivision type that leads to the further fragmentation of biodiversity corridors and general loss of landscape that characterises Ku-ring-gai. Dual occupancy rear subdivision must be tightly controlled and permitted only on specific sites identified for their suitability for inclusion in Schedule 1 of KLEP 2015. There would likely need to be amendments to the wording of KLEP so that further specifies permissibility of specific housing models under the house type classifications of medium or low density. See comments section 3.1 above regarding problems with the proposed DA and CDC pathways. **Figure 3-15** demonstrates the worst of streetscape character outcomes that can be achieved under the proposed development standards. The huge impact of the reality of accommodating vehicles is demonstrated, there is no viable deep soil landscape, the

	permitted dwelling size and housing type results in site coverage that negates private landscape, canopy trees are not possible within the site boundaries and largely unlikely to flourish in the patches of soil surrounded by hard stand. The roof is dark coloured contributing to raising land surface temperature. It should also be noted that this example is a corner site, bounded on 3 sides by a road network of streets and laneway, which is not found in the vast majority of NSW suburbs unless on large master planned subdivisions. The example represents the worst urban design outcome and fails many Commonwealth and State policies, such as Greening Cities Commonwealth Policy, National Climate Change Adaption Research Facility – *Pathways to climate adapted and healthy low income housing* **Figure 3-16** has no north point. It is schematic not based on a good exemplar of real development. Analysing the failures: • The bottom example illustrates the worst fundament design principles and fails the design quality principles. Yet if a Design Verification Statement is submitted, it would be certified by a PCA as compliant. • One or other of the levels advocate living areas with a southerly aspect • If the ground floor shows living areas with a northerly aspect, three-quarters of the entire northern side of the lot comprises hard stand and garaging. • The planning layouts fail to demonstrate fundamental planning principals for acoustic privacy by locating living areas of the first floor above the sleeping areas of the floor below (or vice versa). Principal Controls Comments - See Table 3.4 Manor Houses and Dual Occupancy
3.4A Building Envelope  *Development Application* The local building envelope controls are to be found in the LEP and DCP that applies to the land. This may include: • Maximum height of building • Front, rear and side setbacks The DCP may also provide direction on the character of the precinct and siting of the building. *Complying Development* The building envelope standards for complying development can be found in Medium Density Housing Code within ***State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP)***. A summary is in the table below. **Standard** / **Summary Development Standard** Min site area / 600m² 15m wide Height of Building / 8.5m	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KLEP Land Use Table; KLEP cl 2.6 (2); cl 4.1 (3)(3A); KLEP cl 6.6; **HoB:** KLEP cl 4.3 (2) Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. **Comments on Site requirements:** **Lot size:** Wording inconsistent with MDDG for minimum lot size requirements. The Explanation Of Intended Effect wording permits Manor Houses on any parent lot with a site area of >600m2 . MDDG wording and pathway at p 136 states KLEP land zoning and minimum lot size apply. This has significant and broad-reaching negative implications through NSW. **Definitions:** Inconsistent definition of ***'multi dwelling housing'*** *between EOIE* and *MDDG.* MDDG definition uses current SILEP definition with inherent circular reference to residential apartments. Therefore permissibility is unclear. Change MDDG definition to align with EOIE to exclude dwellings above or below. Manor House is a Class 2 building under the NCC (as is strata Terrace or Townhouse where shared basement parking). **CDC pathway:** Manor House type is inherently more complex to design and assess and should not be included under CDC. **HoB:** Allows for sufficient articulation of roof forms on flat sites. May be problematic on steep sites. 8.5m height is less than KLEP 2015 9.5-11.5m for R3 zone. See comments on Ceiling Heights 3.4K

	Amend MDDG definition of '*multi-dwelling housing'* to align with Codes SEPP definition. Propose rezoning strategic areas within the LGA to R3 and amend KLEP to accommodate specific medium density housing types to correspond with desired outcome. Minimum lot sizes for suitably located sites should be amended to best locate Manor House types. Manor House should only be assessed via DA pathway. Building type and issues are too complex for CDC.
1.4 (cont'd)  Primary Road Setback(Where an existing dwelling is within 40m - average of two closest dwellings. Where no dwellings are within 40m then: LOT AREA SETBACK 600 - 900 4.5m >900 - 1500 6.5m >1500+ 10m Secondary Road setback LOT AREA SETBACK 600 - 1500 3m >1500+ 5m	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KLEP cl 2.6 (2); cl 4.1 (3)(3A); KLEP cl 6.6 KDCP6A.3 Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Minimum lot size for multi-dwelling housing development generally 1200m2 under KLEP and the Primary Road Setback of 6.5m inconsistent with KDCP 6A.3 (10m).The secondary Road Setback of 3m min will be proposed as compliant development to avoid KMCs 6-8m. The proposed minimum lot size and setbacks will result in impacts on streetscape character and reliant on PCA to uphold existing urban character. There appears to be no mechanism to require urban character is taken into account other than via the checklist unlike *SEPP ARH* and *SEPP Seniors and People with a Disability.* Councils must retain existing setback controls for both DA and CDC pathways. The one-size-fits-all approach cannot work with the vast geographical, demographical, economic, subdivision variations across NSW. All Codes SEPP setbacks will materially impact Ku-ring-gai's and other established out ring suburb urban landscape character. This will be further exacerbated by permissibility of 3m excavation >1m from the boundary that would impact on viability of medium and larger trees.
3.4 (cont'd)  Side Setbacks Applies only to the side boundary of the development site. Front half of the lot up to 15m from front boundary - 1.5m Rear half of the lot, or distance >15m from front boundary: • Building envelope defined by 45° plane projected from a height 3.6m above the boundary.	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP6A.3; Flow-on impacts to: KDCP Part 24 Water Management Part 18 Biodiversity ; Part 19R1 Greenweb Maps; Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management. Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. Side setbacks will have a significant impact to Ku-ring-gai's landscape character in R3 zones. 1.2m is manifestly inadequate in Ku-

	ring-gai. Codes SEPP is inconsistent with KDCP 6A.3 for 3m minimum (is also dependant on orientation of living/habitable rooms. Height plane diagrams can lead to very poor built form particularly for minimum lot widths. Ku-ring-gai's existing setback controls achieve the desired landscape character and promote landscape in all side setback zones. This will be lost under Codes SEPP. No side setback controls take into account the internal layout, use and aspect of rooms and will lead to poor outcomes. Additionally in Class 2 buildings there are fire separation issues that are not addressed. Councils must advocate retaining existing setback controls for both DA and CDC pathways. Codes SEPP side setback controls must take into account BCA compliance for fire rating if proposed as complying development. Demonstrates levels of complexity that an unskilled designer and certifier will fail to address. Setbacks are inadequate in retaining Ku-ring-gai's landscape character. The policy fails to understand the fundamental structure and value of Sydney's suburban landscape character, and Ku-ring-gai's in particular, that has a block pattern of public street-deep soil landscape front yard-built form-deep soil landscape rear yard-boundary-deep soil rear yard landscape-built form-deep soil landscape front yard-street. Setbacks are inconsistent with National and State Policies for protecting landscape networks, adapting development to climate change, and Specific State Policies such as *Green Cover* and *Towards Our Greater Sydney 2056.* Impacts also relate to site coverage and landscape and likely flow-on impacts to Ku-ring-gai's DCP initiatives for sustainable development and preventing further fragmentation of landscape that supports biodiversity corridors.
3.4 (cont'd) 	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 6A.3 Flow-on impacts to: KDCP Part 24 Water Management; Part 18 Biodiversity ; Part 19R1 Greenweb Maps; Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs. No side or rear setback controls take into account the internal layout, use and aspect of rooms and will lead to poor outcomes. Councils must retain existing setback controls for both DA and CDC pathways.
3.4B **Floor Space Ratio**	The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: FSR KLEP cl.4.4

<table>
<tr>
<td>3.4B Floor Space Ratio
Development Application: Refer to LEP or DCP that applies to the land.
Complying Development: Refer to Codes SEPP and summary table below:
 
<table>
<tr><th>Standard</th><th>Summary Development Standard</th></tr>
<tr><td>Maximum floor space ratio for the site</td><td>LOT AREA FSR
>600 - 700 m² 0.6:1
>700 - 920m² 0.5:1
>920m² 0.4:1</td></tr>
</table>
</td>
<td>Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs.

Codes SEPP FSR is less than KLEP 0.8:1 that generally applies to R3 zones. However, the type is quite different if we analyse like dwelling sizes (remembering above ground car parking is not included in the calculation under the Codes SEPP definition): The type is promoting smaller dwelling sizes, which is supported in principle as addressing current and increasingly important impacts arising from the continuous increase in Australian house size.

<table>
<tr><th>Lot size</th><th>FSR</th><th>No of dwellings & size</th></tr>
<tr><td>600-700m2</td><td>0.6:1</td><td>3 @ 120-140m2
4 @ 150m^2
6 @ 60-70m^2</td></tr>
<tr><td>700-920m2</td><td>0.5:1</td><td>3 @ 115-153m^2
4 @ 87.5-115m^2
6 @ 58-76m^2</td></tr>
<tr><td>>920m2</td><td>0.4:1</td><td>3 @ min 122m^2
4 @ min 92m^2
6 @ min 61m^2</td></tr>
</table>
Impacts, however, will be to site coverage and landscape. KDCP site coverage for multi dwelling housing permits a maximum of 40% site coverage. At-grade car parking as proposed will lead to significant loss of landscape.

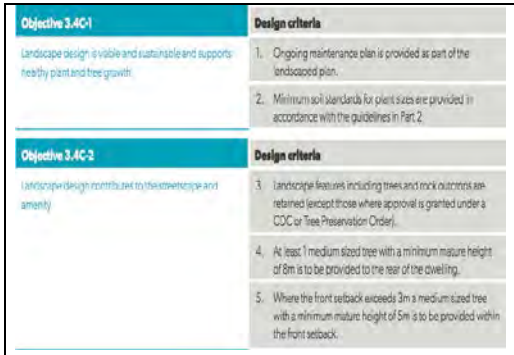
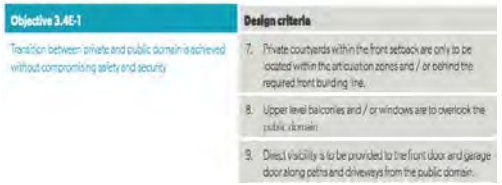
Proposed FSRs for the larger lots in LGAs such as Ku-ring-gai still enable oversized dwellings and results in excessive site coverage. The proposed FSRs have not been tested. They must be tested and set to reflect responsible dwelling sizes for this type of housing and responds to and is coordinated with all State and Commonwealth sustainability, energy efficiency, and landscape policies.</td>
</tr>
<tr>
<td>3.4C Landscaped Area
3.4C Landscaped Area
Development Application: Refer to LEP or DCP that applies to the land for minimum areas.
Complying Development: Refer to Codes SEPP and summary table below for minimum areas.
 
<table>
<tr><th>Standard</th><th>Summary Development Standard</th></tr>
<tr><td>Minimum Landscaped Area for the site</td><td>LOT AREA LANDSCAPED AREA AS PERCENTAGE OF LOT
>600 - 750 30%
> 750 - 900 35%
>900 - 1500 40%
>1500 45%
Minimum dimension of any landscaped area included in calculation - 1.5m</td></tr>
<tr><td>Proportion of area forward of building line that contains landscaped area</td><td>25% minimum</td></tr>
</table>
</td>
<td>The development standards of the MDH Codes SEPP through Complying Development stand in direct conflict with the following KLEP and KDCP Clauses: KDCP 6A.4 Building Separation; KDCP 6A.5 Site Coverage; KDCP 6A.6 Deep Soil Landscape, KDCP Part 24 Water Management; Part 18 Biodiversity; Part 19R1 Greenweb Maps; Part 22 Landscape Design; Section C Part 24 Sustainability; Part 24 Water Management

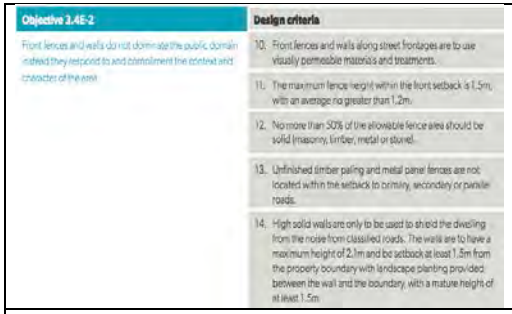
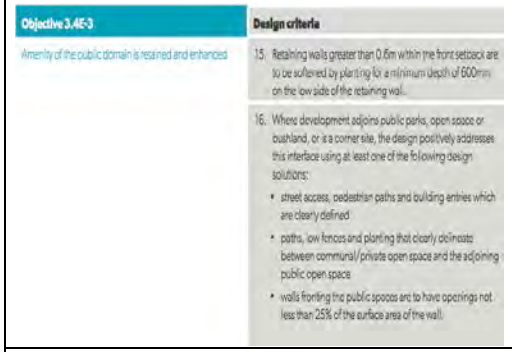
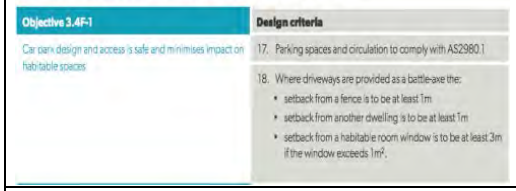
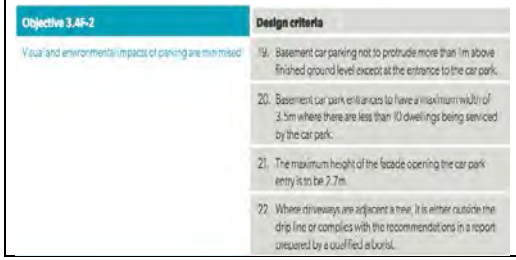
Ku-ring-gai's KLEP and KDCPs deliver outcomes consistent with Ku-ring-gai's urban and landscape character, and are consistent with broader strategic policies including state and national direction (protecting and enhancing natural and built heritage, landscape, biodiversity/riparian corridors, long term public health outcomes for healthy, pedestrian focused cities/town and suburbs.

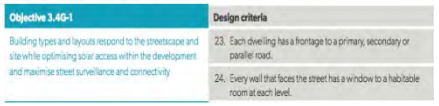
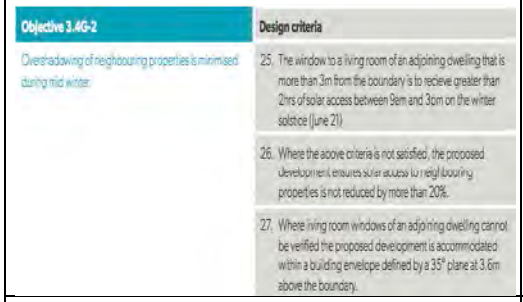
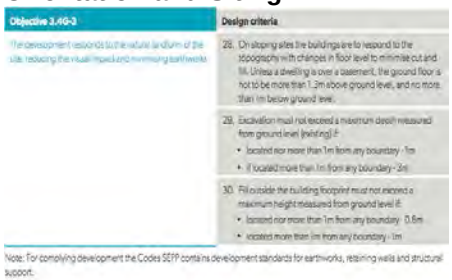
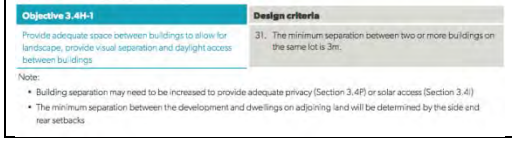
Multi-dwelling housing requires 40% of the landscape area to be deep soil. This component alone exceeds the total landscape area for the largest sites under proposed Codes Standards. This one Development Standard will have an unacceptable impact on Ku-ring-gai's landscape character if taken up across the LGA. KMC's requirement for deep soil is not reflected in the Codes SEPP definition, which is simplistic and fails to differentiate between landscape above structure and deep soil.</td>
</tr>
</table>

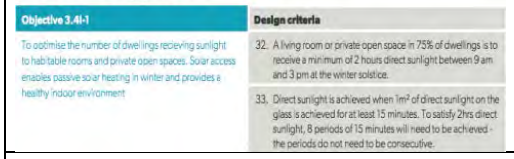
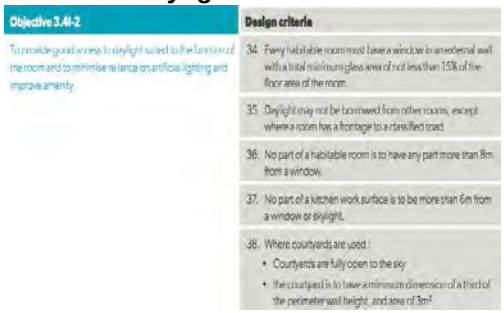
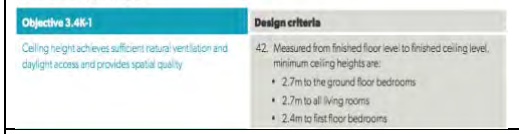
	Codes SEPP min dimension of 1.5m overrides KDCP definition of 2m (but appears to exclude *all* hard paving). It is unclear how stepping stones would be defined as a path and/or private open space terracing. KDCP is more onerous and with more exclusions than under the Codes SEPP. This will be attractive to applicants seeking to avoid KDCP higher requirements. Landscape control must reside in Council's control. The MDDG Part 2 is largely performance-based and enables alternative solutions to design criteria. A PCA cannot determine an application on merit so will either ignore Part 2 or approve a non-compliant development. FSR and landscape as proposed, is diametrically opposed to the Federal Government's 'Green Cities' policy (announced 01/2016 by Minister Greg Hunt)… *"cities with high levels of trees, foliage and green spaces — provide enormous benefits to their residents. Increasing urban canopy coverage decreases heat, which improves health and quality of life."* And the Greater Sydney Commission's *Towards our Greater Sydney 2056* at p6 core objectives for *A Sustainable Sydney:* *A city in its landscape* *An efficient city* *A resilient city* d at **p12** *…It is important to recognise that natural environmental areas are productive and have an impact on communities, the economy and regional tourism. Viewing Greater Sydney as a city in its landscape allows us to think about how the diversity of social, cultural and environmental conditions operate within this natural landscape* *…while also looking at how we can green our streets, neighbourhoods and suburbs with new tree canopies. This metropolitan priority aims to:* *improve the health of waterways* *protect, extend and enhance biodiversity, regional and local open space systems, as well as scenic and cultural heritage together with productive landscapes* *Increase access to open space, conserve the natural environment and enable healthy lifestyles and local food.* http://www.greghunt.com.au/Home/LatestNews/tabid/133/ID/3623/Long-term-planning-and-cities-for-the-next-century--Sydney-Business-Chamber.aspx http://www.uts.edu.au/research-and-teaching/our-research/institute-sustainable-futures/news/new-alliance-promote-greening http://gsc-public.s3-ap-southeast-2.amazonaws.com/s3fs-public/towardsour2056_21161117.pdf?5045ajdpvf0jcInAS2KVJ63jV3k2W3O1 The loss of every council's authority over landscape fails to consider the variety and specific character of each LGA throughout NSW and fails to provide a mechanism to achieve the variety that a city and NSW needs. Landscape is the single most important element that defines Ku-ring-gai's urban character. The MDDG Objectives and Design Criteria for landscape are manifestly inadequate for Ku-ring-gai. There is no requirement for any landscape to be deep soil. The required areas are inadequate and will not result in the trees being viable due to the high probability they will be removed, or replaced with smaller planting, or areas of paving extended post approval. Ku-ring-gai's urban character is predicated on the quality of its landscape, and has in place, detailed development objectives and controls for all setbacks, site coverage, total

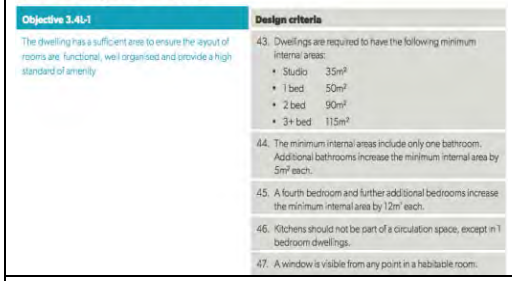
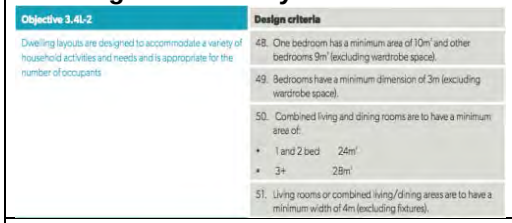
	landscape area, deep soil and tree removal that ensure all development, of every scale is within a dominant landscape setting characterised by canopy trees and deep soil planting. The loss of landscape controls, therefore, has a particularly devastating impact on Ku-ring-gai's strategic planning of urban character. Protection of canopy trees that may have value in either providing links between areas of biodiversity significance, or contributing to the background view between allotments or internal site character is very important. This has a function as a public asset, which is not recognised in the Codes SEPP or MDDG. Local experience of development currently lodged under *SEPP Seniors and People with a Disability* and *SEPP Affordable Rental Housing* has seen the gradual loss and/or degradation of established trees and vegetation within the Council area where these developments occur. Unlike these two SEPPs, the Codes SEPP has **no** development standard requiring development consider and respond appropriately to existing and desired urban character for landscape nor can it be verified. The types of development that have had the greatest impact in Ku-ring-gai are those advocated in the MDDG that prioritise at-grade car parking deep within the site. These have a devastating impact on the protection of existing and diminishing landscape. These outcomes are in direct conflict with the NSW Government's *A Plan for Growing Sydney* and its *Urban Green Cover Policies*, commonwealth policies for Greening Cities and Housing adapted to climate change. It is also worth noting, these are policies that are inconsistent with the United Nations, General Assembly *Draft outcome document of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) - New Urban Agenda*. Cumulative impacts resulting from the Landscaped Area development standard have the potential for loss of vegetation across NSW that will contribute to land surface temperature increases and the urban heat sink effect. The focus on streetscape landscape controls is important in achieving urban character, however, the policy fails to adequately value the rear yard landscape assets throughout NSW and in Ku-ring-gai specifically, and their importance climatically, their role protecting against further fragmentation of biodiversity significance and loss of green corridors, and their aesthetic contribution to urban character. Further to this, the local community demands its protection and the courts have recognised Ku-ring-gai's landscape character in its judgements.
3.4C (cont'd)	**1** The requirement for an ongoing maintenance plan is not feasible for two dwellings with little common area nor is it enforceable into the future. Landscape contractors provide at most a 6-12 month establishment plan. After that the maintenance of a development is a either private or communal responsibility. PCA's are not trained, qualified, or have the required expertise to assess landscape maintenance plans.
	2 The requirement for minimum soil standards is directed to planting on structures. This is unlikely to be relevant for two dwellings (dual occupancy). There should also be criteria for preservation of existing trees in accordance with AS4970-2009, minimum width of garden beds to side and rear boundaries for screen planting, minimum width of garden beds to driveway. PCA's are not trained, qualified, or have the required expertise to assess soil standards in relation to proposed vegetation requirements.
	3 CDC pathway negates Council's tree protections except where Biodiversity standards apply under the Act. However, role of PCAs relies on honesty of applicants in assessing tree worth as they are not trained, qualified or has the expertise to assess trees and landscape issues. Role of PCAs and Complying Development has serious impacts to protecting biodiversity, and landscape character. Councils must

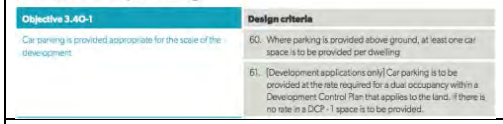
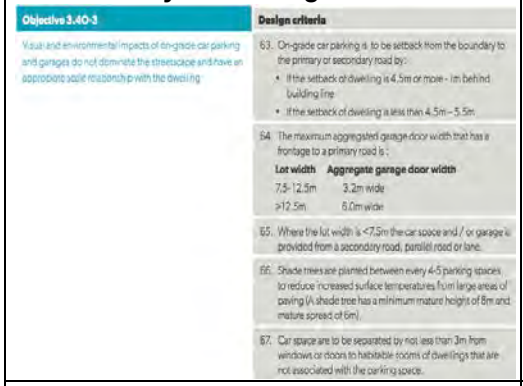
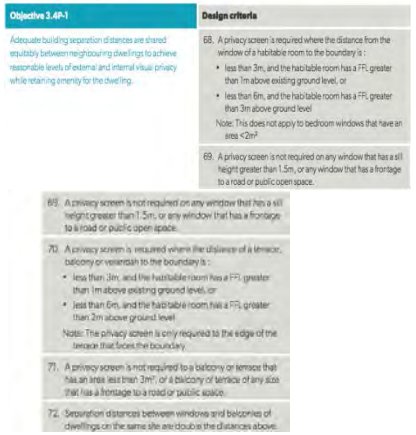
	retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA. The reference to 'tree preservation order' should be substituted with Clause 5.9 consistent with the Principal LEP.
	4 Proposed min setbacks can support anticipated landscape for canopy trees. It is unclear how the setback would be applied if a garage to a rear lane is proposed. This could enable a lesser building separation test and likely loss of deep soil needed to achieve objective 3.4C-1. Role of PCAs and Complying Development has serious impacts to protecting biodiversity, and landscape character due to the added complexities of a Manor House. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA.
	5 Objective 3.1C-2 refers to contribution to streetscape and amenity; this is unachievable with one 5 metre high tree in the front setback. There is no further requirement for any other shrubs, groundcover or lawn and instead 75% of the front setback is permitted to be paved. A 5m tree may be appropriate for front setbacks of 3.5m however this is not in keeping with larger lots with existing front setbacks. There is no requirement for street tree planting.
Siting the Development	
3.4D **Local Character and Context** 3.4D Local Character and Context 	**6** PCAs will check a design statement is submitted but are not trained, qualified, nor have the expertise to assess urban design and architectural merit of a design. Urban character is not a principal development standard, and will be largely ignored. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA.
3.4E-1 **Public Domain Interface** 3.4E Public Domain Interface 	**7** Impact will be where minimum front setbacks are less than KDCP DCP. **8** It is unclear whether the control requires that balconies on the upper level are only permitted is they overlook the public domain only. Figure 3-16 shows upper level open space facing neighbouring dwellings. Control 56 allows balconies that would face the backyard of the subject site and also overlook the backyards of adjacent dwellings. A screen to the side of a first floor balcony would not prevent views of adjacent backyards. An upper limit on the area of first floor private open space and/or a requirement that they be orientated to the street only should be imposed. **9** The visual impact of driveways into a lot must be minimised. A Manor House is only suitable where there is rear lane access or a corner site. Driveway and garage size must not negatively impact either the primary public road or secondary public road amenity or streetscape character. Manor Houses with garages facing a secondary public street must be limited to a width of 7.2m (to accommodate 2 adaptable spaces). Large garages and hard stand in the front setback destroy streetscapes and unacceptably impact on public domain amenity through the loss of on-street car parking and street trees if accommodating multiple spaces with a combined width driveway crossover. Change all references to '*primary', 'secondary' and 'parallel' streets/roads/lanes* to *public* streets/road/lanes. Include definition of 'frontage' to mean the full extent of a lot and full extent of a building, and all dwellings within a building, on a lot or development site. Frontage is only achieved to a public street or road.
3.4E-2 **Public Domain Interface**	**10** Supported. **11** Front fences should be limited to 0.2m in height. **12** Supported. **13** Supported. **14** The control allows for the construction of 2.1m high fencing on frontages to classified roads. Tall fencing is unattractive, imposing and reduces safety through the loss of casual surveillance. The provision of high fencing is not required as reasonable internal noise levels can be achieved through construction techniques informed by a site specific acoustic assessment.

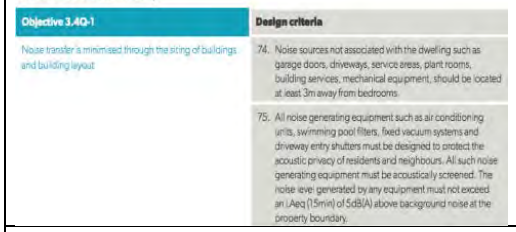
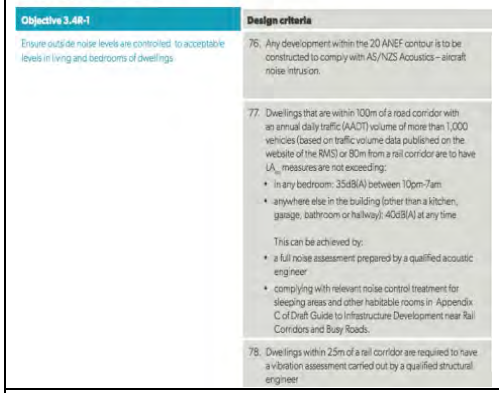
	
3.4E-3 **Public Domain Interface** 	**15** Generally supported. Elements of façade should be well coordinated with landscape treatment. **16** Supported. This Design Criteria should be applied to all medium density housing types. Compliance relies on PCA making merit assessment of public domain interface relationship and quality of the Site Analysis. They are not trained, qualified, or skilled to carry this out. Experience in Ku-ring-gai shows consistently that poor design outcomes and inappropriate development arises from inadequate site analysis and poor design response. This is the case for design also prepared by many registered architects. Without the requirements for development to be designed by a registered architect, and assessed and verified independently by a qualified urban designer or suitably experienced architect or landscape architect, it is unlikely this objective will be achieved. Public interest, protection and enhancement of the public domain can only be achieved via council as the consent authority.
3.4F-1 **Internal Streets- Vehicle and Pedestrian Access** 3.4F Internal Streets - Vehicle and Pedestrian Access 	Controls need to prevent the creation of *Internal Streets* unless fully formed <u>public</u> streets and dedicated to Council. Private driveways are NOT streets. The inclusion of '*internal streets'* that are private driveways has the effect of an enabling clause for types of development not intended to be via PCA pathway. If the definitions are not changed, all development that proposes an internal street/ road/lane must be determined by a DA to prevent poor urban outcomes for Manor House development. **17** Supported **18** This is inconsistent with EOIE p36 for development requirements at *(g) the lot must not be a battle-axe.*
3.4F-2 	**19**. Development only permitted with a total of 4 dwellings (EOIE, p 36 (e)) will not provide a basement. Manor Houses therefore must only be permitted on a corner site or a site with public rear lane access. **20** Applicable. Conflicts with EOIE p36 for development requirements at (e) *there must be no more than 4 dwellings on the lot at the completion of the development*. This should also be strengthened to prevent consecutive staged CDCs. **21** Supported but assumes a basement. **22** Relies on honesty of the arborist and PCA to adequately protect trees. This is a significant issue for many developments assessed by Ku-ring-gai even with an independent, accountable and verifiable DA pathway with council as the consent authority. **3.4F.** Internal 'Streets' are not streets, they are private driveways. They destroy landscape character, prioritise vehicles of over pedestrian and resident amenity which is in conflict with and devastate the internal site character by imposing expansive areas of

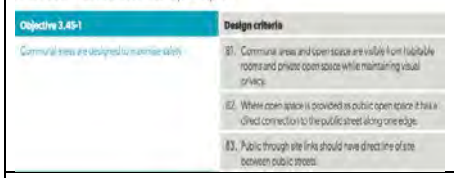
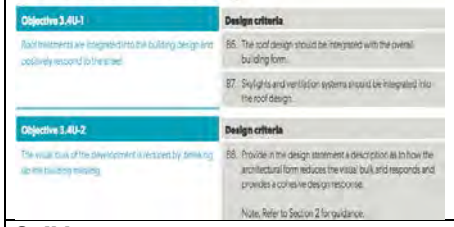
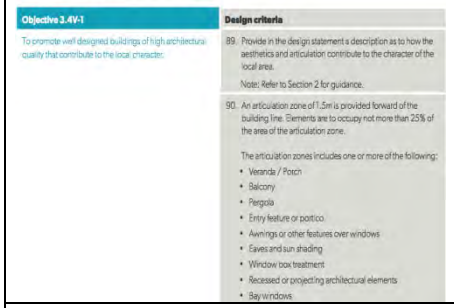
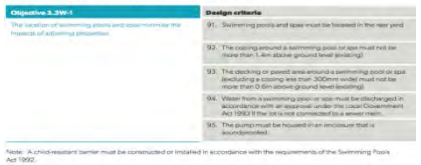
	hard-stand. An *internal street* must have specific controls about being public, appropriate reservation width, landscape, design, coordination with public domain and public access and be strategically well located as through-site connections to the public street network, no dead-ends. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA.
3.4G-1 **Orientation and Siting** 3.4G Orientation and Siting  Objective 3.4G-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development and maximise street surveillance and connectivity Design criteria 23. Each dwelling has a frontage to a primary, secondary or parallel road. 24. Every wall that faces the street has a window to a habitable room at each level.	**23** Supported ONLY if all street references are to **public** streets. **24** Design Criteria needs to be reworded to suit the Manor House type. A window is insufficient. The main building entry will be located here also. 100% of the side of the building providing building entry or separate dwelling entries must have its 'frontage' to a public street. See previous comments for sites that are suitable. Councils must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines unlike a PCA. Change all references to '*primary', 'secondary' and 'parallel' streets/roads/lanes* to *public* streets/road/lanes. Include definition of **'**frontage' to mean the full extent of a lot and full extent of a building, and all dwellings within a building, on a lot or development site. Frontage is only achieved to a public street or road.
3.4G-2  Objective 3.4G-2 Overshadowing of neighbouring properties is minimised during mid winter. Design criteria 25. The window to a living room of an adjoining dwelling that is more than 3m from the boundary is to recieve greater than 2hrs of solar access between 9am and 3pm on the winter solstice (June 21) 26. Where the above criteria is not satisfied, the proposed development ensures solar access to neighbouring properties is not reduced by more than 20%. 27. Where living room windows of an adjoining dwelling cannot be verified the proposed development is accommodated within a building envelope defined by a 35° plane at 3.6m above the boundary.	**25** The primary aspect of a living area should not be less than 6m from any boundary. Setbacks must enable compliance with BCA fire separation compliance without a fire-engineered solution. The control aims to protect solar access to living room windows which have a setback of more than 3m from a boundary. It would be rare for a DCP to require a side setback of 3m for a dwelling house and side setbacks of houses approved as complying development are usually 900mm. If this control is designed to preserve solar access to living rooms of adjacent dwellings in dwelling houses it is unlikely to be successful. **26** Reword. Does it mean if the adjoining dwelling does not currently receive 2hrs of solar access? **27** Supported. PCA has no training, expertise nor experience to assess validity of solar impacts.
3.4G-3 **Orientation and Siting**  Objective 3.4G-3 The development responds to the natural landform of the site, reducing the visual impact and minimising earthworks Design criteria 28. On sloping sites the buildings are to respond to the topography with changes in floor level to minimise cut and fill. Unless a dwelling is over a basement, the ground floor is not to be more than 1.2m above ground level, and no more than 1m below ground level. 29. Excavation must not exceed a maximum depth measured from ground level (existing) if: • located nor more than 1m from any boundary - 1m • if located more than 1m from any boundary - 3m 30. Fill outside the building footprint must not exceed a maximum height measured from ground level if: • located nor more than 1m from any boundary - 0.6m • located more than 1m from any boundary - 1m Note: For complying development the Codes SEPP contains development standards for earthworks, retaining walls and structural support.	**Objective 3.4G-3** – refers to minimizing earthworks, but it is followed by design criteria that allows excavation/filling up to 1m depth where 'not more than 1m from the boundary'. The control should be consistent with the current Codes SEPP requirement for a minimum 600mm setback. **28** Supported. Consistent with KMC's objectives. **29** Not supported. Excavation permitted within minimum 1 metre from the site boundary will impact on neighbour amenity. Excavation criteria should be consistent with current Code SEPP. Excavation criteria should be consistent with current Code SEPP. **30** Not supported. Filling permitted within minimum 1 metres from the site boundary will impact on neighbour amenity Filling criteria should be consistent with current Code SEPP.
3.4H **Building Separation** 3.4H Building Separation  Objective 3.4H-1 Provide adequate space between buildings to allow for landscape, provide visual separation and daylight access between buildings Design criteria 31. The minimum separation between two or more buildings on the same lot is 3m. Note: • Building separation may need to be increased to provide adequate privacy (Section 3.4P) or solar access (Section 3.4I) • The minimum separation between the development and dwellings on adjoining land will be determined by the side and rear setbacks	**31** Inadequate and not supported. There is no numerical or measurable separation to deal adequately with visual and acoustic privacy with this control or in Part 2.H. Building separation must use SEPP 65 separations dependant on internal layout, room use, and aspect of living areas. If not, privacy screens will be used as the first order solution and compliant with design criteria 3.2P. This advocates poor design outcomes and is inconsistent with the Design Quality Principles. Al Design Criteria **must** ensure amenity is never less than SEPP 65 for high density housing.

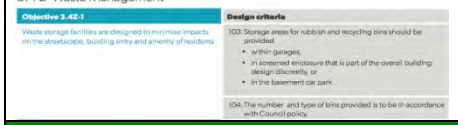
3.4I-1 **Solar and Daylight Access** 3.4I Solar and Daylight Access  Objective 3.4I-1 To optimise the number of dwellings recieving sunlight to habitable rooms and private open spaces. Solar access enables passive solar heating in winter and provides a healthy indoor environment Design criteria 32. A living room or private open space in 75% of dwellings is to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at the winter solstice. 33. Direct sunlight is achieved when 1m² of direct sunlight on the glass is achieved for at least 15 minutes. To satisfy 2hrs direct sunlight, 8 periods of 15 minutes will need to be achieved - the periods do not need to be consecutive.	**32** Supported. **33** Supported.
3.4I-2 **Solar and Daylight Access**  Objective 3.4I-2 To provide good access to daylight suited to the function of the room and to minimise reliance on artificial lighting and improve amenity Design criteria 34. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 15% of the floor area of the room. 35. Daylight may not be borrowed from other rooms, except where a room has a frontage to a classified road. 36. No part of a habitable room is to have any part more than 8m from a window. 37. No part of a kitchen work surface is to be more than 6m from a window or skylight. 38. Where courtyards are used : • Courtyards are fully open to the sky • the courtyard is to have a minimum dimension of a third of the perimeter wall height, and area of 9m²	**34** Supported. **35 Delete**. …"*except where a room has a frontage to a classified road*." Noise barrier planning principles must be implemented to ensure **all** habitable rooms have a window in an external wall. A window can provide daylight but will need to be acoustically treated. Wording implies habitable rooms can provide no window, which is unacceptable. Proposed amenity significantly less than expected for high density development. Conflicts with DC 38. **36** Supported. **37** Supported. **38** The control includes a requirement that courtyards be 'fully open to the sky'. This would prevent the installation of a pergola or other means of shading device. This control should be changed to refer to courtyards that are used to demonstrate compliance with the direct sunlight requirement only. Inconsistent use of terms *'courtyard', 'skylight'* p39 at design guidance 11 and 15, '*courtyard housing'* p191, and this Design Criteria. Can enable a habitable room to have primary aspect into courtyard if dwelling is defined as a 'courtyard housing' as advocated at p191 Clarify use of the term '*courtyard*' and '*light well'*. In Manor House development, DC 38 enables a '*courtyard*' to be a central space around which all dwellings may face to address fire separation and protection alongside boundaries caused by the inadequate minimum setbacks. The use of the term '*light well'* is what DC 38 refers. A '*light well'* is not a '*courtyard*'. All Design Criteria **must** ensure amenity is never less than SEPP 65 for high density housing.
3.4J **Natural Ventilation** 3.4J Natural Ventilation  Objective 3.4J-1 All habitable rooms are naturally ventilated Design criteria 39. Natural ventilation is available to each habitable room. 40. Each dwelling is to be cross ventilated. 41. The area of unobstructed window openings should be equal to at least 5% of the floor area served.	**39** Supported. **40** Supported and amended to add**:** "*Maximum building depth must not exceed 16m measured glass line to glass line to achieve cross-ventilation."* **41** Supported. All Design Criteria **must** ensure amenity is never less than SEPP 65 for high density housing.
3.4K **Ceiling Height** 3.4K Ceiling Height  Objective 3.4K-1 Ceiling height achieves sufficient natural ventilation and daylight access and provides spatial quality Design criteria 42. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: • 2.7m to the ground floor bedrooms • 2.7m to all living rooms • 2.4m to first floor bedrooms	**42** Poor control that achieves poor amenity. The Manor House type will have dwellings above and below. The control should be amended as follows "*Measured from finished floor level to finished ceiling level, minimum ceiling height is 2.7m for all levels of the development.* All Design Criteria **must** ensure amenity is never less than SEPP 65 for high density housing.
3.4L-1 **Dwelling Size and Layout**	**43** Supported However requires the skill of a registered architect to ensure efficient use of space that enables functional furniture layouts. A merit assessment is required by a suitably qualified professional to determine the spatial efficiency of internal dwelling layouts. A PCA cannot carry this out and therefore, it is highly likely dwellings will be poorly designed. **44** Supported. **45** Supported.

3.4L Dwelling Size and Layout  **Objective 3.4L-1** The dwelling has a sufficient area to ensure the layout of rooms are functional, well organised and provide a high standard of amenity **Design criteria** 43. Dwellings are required to have the following minimum internal areas: • Studio 35m² • 1 bed 50m² • 2 bed 90m² • 3+ bed 115m² 44. The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. 45. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each. 46. Kitchens should not be part of a circulation space, except in 1 bedroom dwellings. 47. A window is visible from any point in a habitable room.	**46** Supported and amended to add *"and studios"* **47** Supported. **49** Supported. **50** Supported and amended to add "*Room proportions must be rectangular to enable functional and efficient furniture layouts and accommodate circulation."* Manor Houses must be designed by a registered architect and assessed by DA pathway. They are unsuitable as complying development.
3.4L-2 **Dwelling Size and Layout**  **Objective 3.4L-2** Dwelling layouts are designed to accommodate a variety of household activities and needs and is appropriate for the number of occupants **Design criteria** 48. One bedroom has a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). 49. Bedrooms have a minimum dimension of 3m (excluding wardrobe space). 50. Combined living and dining rooms are to have a minimum area of: • 1 and 2 bed 24m² • 3+ 28m² 51. Living rooms or combined living/dining areas are to have a minimum width of 4m (excluding fixtures).	**51** Supported. Manor House type is intended for smaller dwellings so can withstand smaller sized development only where design is high quality and internal layouts are efficient. Manor Houses must be designed by a registered architect and assessed by DA pathway. They are unsuitable as complying development.
3.4M **Private Open Spaces** 3.4M Private Open Spaces **Objective 3.4M-1** Dwellings provide appropriately sized private open space and balconies to enhance residential amenity **Design criteria** 52. All dwellings are required to have a primary private open space of at least: • 1 bed - 8m² • 2-3+ bed - 12m² • Ground floor dwellings - 16m² 53. The minimum dimension of the included area is 2m, and excludes any storage space **Objective 3.4M-2** Primary private open space and balconies are appropriately located to enhance liveability for residents **Design criteria** 54. Primary open space and balconies is to be located adjacent to the living room, dining room or kitchen to extend the living space. 55. 50% of the primary private open space should be covered to provide shade and protection from rain. 56. Balconies and terraces above ground floor must orientate towards the street or rear and not to a side boundary	**52** Supported. **53** Supported. **54** Supported. **55** Supported. **56** Supported.
3.4N **Storage** 3.4N Storage **Objective 3.4N-1** Adequate, well designed storage is provided in each dwelling **Design criteria** 57. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • 1 bed 6m³ • 2 bed 8m³ • 3+ bed 10m³ 58. At least 50% of the required storage is to be located within the dwelling. 59. Storage not located in dwellings is secure and clearly allocated to specific dwellings if in a common area.	**57** Supported. **58** Supported. **59** Supported.
3.4O-1	**60** Not Supported. Only where access is from a rear public lane way. The car parking requirement in control 60 is inadequate.

Car and Bicycle Parking 3.4O Car and Bicycle Parking  Objective 3.4O-1: Car parking is provided appropriate for the scale of the development Design criteria: 60. Where parking is provided above ground, at least one car space is to be provided per dwelling 61. [Development applications only] Car parking is to be provided at the rate required for a dual occupancy within a Development Control Plan that applies to the land. If there is no rate in a DCP - 1 space is to be provided.	Two and three bedroom dwellings are likely to require at least two car spaces per dwelling. All other car parking must be 1-space unless in a basement. **61** Supported. KMC requires all multi-dwelling housing to provide a basement.
3.4O-2 **Car and Bicycle Parking**  Objective 3.4O-2: Parking and facilities are provided for other modes of transport Design criteria: 62. Covered space is to be provided for the secure storage of at least 1 bicycle per dwelling.	62 Supported.
3.4O-3 **Car and Bicycle Parking**  Objective 3.4O-3: Visual and environmental impacts of on-grade car parking and garages do not dominate the streetscape and have an appropriate scale relationship with the dwelling Design criteria: 63. On-grade car parking is to be setback from the boundary to the primary or secondary road by: • If the setback of dwelling is 4.5m or more - 1m behind building line • If the setback of dwelling is less than 4.5m – 5.5m 64. The maximum aggregated garage door width that has a frontage to a primary road is : Lot width / Aggregate garage door width 7.5-12.5m / 3.2m wide >12.5m / 6.0m wide 65. Where the lot width is <7.5m the car space and / or garage is provided from a secondary road, parallel road or lane. 66. Shade trees are planted between every 4-5 parking spaces to reduce increased surface temperatures from large areas of paving (A shade tree has a minimum mature height of 8m and mature spread of 6m). 67. Car spaces are to be separated by not less than 3m from windows or doors to habitable rooms of dwellings that are not associated with the parking space.	63 On-grade car parking must be confined to rear lanes, or corner sites, or provide dwellings with no car parking if close to public transport that is well served and frequent. Amend Design Criteria control as it relates to building setback not dwelling setback. 64 Design Criteria is inconsistent with Manor House type, other DCs for car parking. Amend to add "*All at-grade car parking must be accessed from a public rear lane."* **65** Delete as the Design Criteria is inconsistent with Manor House type. **66** Required to be reworded. The Design Criteria is not consistent with the Manor House type but does apply to all other types. Outcome dependent on occupants' future compliance. Experience suggests outcomes are poor. **67** Required to be reworded. DC not consistent with the Manor House type.
3.4P **Visual Privacy** 3.4P Visual Privacy  Objective 3.4P-1: Adequate building separation distances are shared equitably between neighbouring dwellings to achieve reasonable levels of external and internal visual privacy while retaining amenity for the dwelling. Design criteria: 68. A privacy screen is required where the distance from the window of a habitable room to the boundary is : • less than 3m, and the habitable room has a FFL greater than 1m above existing ground level, or • less than 6m, and the habitable room has a FFL greater than 3m above ground level Note: This does not apply to bedroom windows that have an area <2m² 69. A privacy screen is not required on any window that has a sill height greater than 1.5m, or any window that has a frontage to a road or public open space. 70. A privacy screen is required where the distance of a terrace, balcony or verandah to the boundary is : • less than 3m, and the habitable room has a FFL greater than 1m above existing ground level, or • less than 6m, and the habitable room has a FFL greater than 2m above ground level Note: The privacy screen is only required to the edge of the terrace that faces the boundary 71. A privacy screen is not required to a balcony or terrace that has an area less than 2m², or a balcony or terrace of any size that has a frontage to a road or public space. 72. Separation distances between windows and balconies of dwellings on the same site are double the distances above.	Amendment is required for all privacy design criteria. They indicate inadequate building separation controls and will result in poor design resolution. **68** Privacy should be primarily achieved through sound design resolution. Five controls around the use of privacy screens indicates visual (and acoustic) privacy is not achieved via the proposed building separations at 2H. The setbacks and building separation should be amended and increased consistent with SEPP 65 ADG separations. **69 Delete.** These conditions indicate inadequate setbacks from the boundary and should not be a condition that arises in this type of development. The setbacks and building separation requires amendment is all habitable rooms require privacy screens. **70** Generally reflects inadequate setbacks and building separation controls. **71** Generally reflects inadequate setbacks and building separation controls. **72** The same amenity issues existing between dwellings within a site and on neighbouring sites. The separation controls must not result in poor amenity within a development and less than is achieved for high-density housing. **73** Privacy screens over windows achieve very poor amenity and indicate poor design resolution in internal planning layouts, combined with inadequate building separation. The objective should be amended to include "siting of buildings, building separation and building layout." Proposed controls demonstrate building separation is inadequate. The controls should be amended to use SEPP 65 ADG visual privacy controls for building separation. Primary controls at 2H must be amended to address building separation and setbacks to achieve adequate visual and acoustic privacy without the need to add privacy screens to habitable windows and balconies.

	
3.4Q **Acoustic Privacy** 3.4Q Acoustic Privacy 	**3.4Q** has no requirements for sound noise barrier planning principles to best resolve acoustic privacy. Performance requirements at Part 2 Design Guidance 2Q is separated to from the DC with not reference in the DC to that design guidance. None of the Design Criteria relate to the objective of siting and layout and cannot be assessed by a PCA. **74** Supported. **75** Supported. Use SEPP 65 ADG acoustic privacy controls for building separation and dwelling layout.
3.4R **Noise and Pollution** 3.4R Noise and Pollution 	**3.4R** has no requirements for sound noise barrier planning principles to best resolve acoustic privacy and separate to statutory requirements. **76.** Supported. **77.** Supported **78.** Supported.
Configuration	
3.4S-1 **Universal Design** 3.4S Universal Design 	**79.** All dwellings should achieve Silver Level Liveable Housing Design Guidelines. **80.** Supported and should be amended to add an increase in number of Platinum Level housing to address long-term flexibility and financial equity for adaption of medium density housing.
3.4S-2 **Universal Design**	**81.** Supported. However, the Design Criteria needs to differentiate between common space and communal open space. If a communal open space is proposed in the front street setback, it will be inconsistent with Ku-ring-gai's development controls. Amend heading to: ***3.4T*** *Communal areas and Open Space*

3.4S Communal areas and Open Space 	
3.4S-3 **Universal Design** 	**82.** Supported. This should be applied to all medium density housing types. **83** Supported. This should be applied to all medium density housing types. **84.** Supported. **85.** Supported.
3.4U **Architectural Form and Roof Design** 3.4U Architectural Form and Roof Design 	**86.** Supported but a PCA is not the appropriate person and cannot assess design quality of architectural form. **87.** Supported, however PCA is not the appropriate person and cannot assess design quality of architectural form. **88.** Supported, however PCA is not the appropriate person and cannot assess design quality of architectural form. Manor Houses must be designed by registered architects**.** Councils and design review panels must retain assessment role. Councils provide independent, specialist expertise in all the relevant disciplines. PCAs are not trained, qualified or experienced in assessing design quality of architectural form.
3.4V **Visual Appearance and Roof Design** 3.4V Visual Appearance and Articulation 	**89.** Supported but a PCA is not the appropriate person and cannot assess design quality of architectural form. **90.** Supported, however PCA is not the appropriate person and cannot assess design quality of architectural form.
3.4W **Pools and Ancillary Development** 3.3W Pools and Ancillary Development 	**91**. Supported. **92.** Supported. **93.** Supported. **94.** Required. **95.** Supported.
Environment	

3.4X **Energy Efficiency**  3.4X Energy Efficiency Objective 3.4X-1 — Development incorporates passive environmental design Design criteria 96. Provide an outdoor area for clothes drying that can accommodate at least 16 lineal metres of clothes line 97. Any clothes drying area should be screened from public and communal areas. Note: A CDC or DA for a dwelling is required to have a BASIX Certificate that applies a minimum energy consumption target.	The Design Criteria do not relate to the objective. They are superficial elements of 'passive environmental design' **96.** Supported. **97.** Supported.
3.4Y-1 **Water Management and Conservation**  3.4Y Water Management and Conservation Objective 3.4Y-1 — Potable water use is minimised Design criteria 98. Provide individual meters for hot and cold water consumption.	Section 3.4Y has been taken directly taken from the proposed SEPP wording and is not a guide. In addition it is contradictory and too broad. The Guide should provide more guidance on achieving suitable outcomes rather than restating the exact wording of the SEPP. Some DCPs do not permit runoff from a medium density development to be managed by means of a charged system or on site disposal, so this requirement cannot achieve compliance with the second dot point following which requires compliance with Council's DCP. On site disposal is particularly unsuited to this type of multi-dwelling development due to the large impervious areas permitted. The Guide has to clearly state that an inter-allotment drainage system must legally benefit the site and contain a suitable pipe. There is no definition. Some certifiers do not understand the importance of the terms of an easement. Section 68 of the Local Government Act 1993 does not apply to Councils within Sydney Water's area of operations, so this criterion requires compliance with Council's DCP (should read "management and disposal of stormwater"). However this is not sufficiently clear. This applies to all Councils in the greater Sydney area and should be the first dot point, not the second. **99.** CDC pathway enables development to be designed without proper coordination with council requirements, nor demonstrated ability to link into the existing systems.
3.4Z **Waste Management**  3.4 Z Waste Management Objective 3.4Z-1 — Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents Design criteria 103. Storage areas for rubbish and recycling bins should be provided • within garages, • in screened enclosure that is part of the overall building design discreetly, or • in the basement car park 104. The number and type of bins provided is to be in accordance with Council policy.	**103.** Supported but must be exclusive of calculated private open space. **104.** Supported. All waste storage and garbage disposal must comply with council requirements for storage and collection.
Part 4 Delivery	
4.1 Strategic Planning	The statements are supported but are inconsistent with the outcomes proposed and enabled under the Codes SEPP and if council adoption of the MDDG occurs for the Development Approval pathway. The CDC pathway and scope of Development Standards within the Codes SEPP overrides strategic planning by promoting ad-hoc development outside Council's strategic framework and potentially impacting 92.3% of total area zoned for residential housing purposes in Ku-ring-gai's case. All the examples lead to significant loss of deep soil landscape, all fail to value the site character and physical and qualitative benefits of the rear yard landscape, and result in further fragmentation of green corridors, are unrepresentative of actual built outcomes, none adequately accommodate vehicles (apart from the image shown bottom left and only for the component of terrace housing that addresses the public road and has rear lane car access). **Figure 4-1** is schematic and unrealistic. All of the images demonstrate flawed examples of development types.
4.1 (cont'd) Planning Proposals	This pathway provides an avenue to modify locally developed strategic plans and can further erode the coordination of larger developments with broader strategic objectives.
4.1 (cont'd) Salt and Pepper	*The existing subdivision pattern and lot sizes, including width and depth, will in part determine the block size*. (**p156**) This statement alone demonstrates the failure of the document and proposed policy. The fundamental structure of all towns and cities is predicated on the street layout **not** subdivision pattern. The street layout defines the block size. The block size determines the subdivision pattern. The block depth sets the lot depth. Lot width is the only variable in the block pattern.

	While corner sites provide opportunities to create rear lanes, wide/deep sites allow opportunities for new internal streets, and shallow sites are best for traditional terrace housing forms. (**p156**) Internal streets must be prohibited unless they form strategic through-site connections between public streets, and facilitate orderly redevelopment where strategic planning may change in the future. As a type, they isolate dwellings, lead to significant loss of deep soil landscaping to hard stand car parking and access, prevent through site linkages, has long term negative impacts on landscape and street networks, can force the use of cars for simple pedestrian movements within a suburb, and prioritise the impact of vehicles on our suburbs beyond the street to deep within a site. This type should only be permitted where all car parking is in a basement.
4.2 **Pre-Application Meetings**	Pre-DA meetings are supported as providing the most constructive and smoothest progress of a DA to approval. They are most effective when the DA then satisfies the local planning strategies and addresses the key identified strategic and site specific issues.
4.2 (cont'd) Complying Development	There is no process for complying development to undertake a pre-DA meeting. This further erodes the positive influence of strategic planning policies. It results in an ad hoc redevelopment process that could be on very large amalgamated sites that could have significant broader impacts on local communities. In our experience, proposed development that does not undertake a pre-DA meeting, results in poorer design outcomes, and lengthier assessment process resulting from multiple rounds of design amendments. The lack of consultation with Councils, lack of governance of PCAs, lack of independent checks-and-balances, and inherent financial conflict of interest of PCAs in the approvals process, by definition will result in the fragmentation of local strategic planning objectives. The fact that R2 and R3 zoned land in Ku-ring-gai represents 92.3% of land zoned for housing development demonstrates the extent of the possible erosion of well-developed and coordinated urban policies.
APPENDICES	
Appendix 1 **Pre-Application design proposal checklist**	The checklist is not a requisite of the CDC pathway. **Site Analysis** – clarify reference - Should be Appendix 4 and '*Medium Density Design Guide*". **Floor plans** – only require car parking layout for basements. This must include ALL on-site car parking to demonstrate landscape is capable of being achieved in the early design stage.
Appendix 2 **Application documentation checklist**	The water management design is listed under *Landscape plan*. This is unacceptable for either complying development or a development application. **Section 2Y-3 Design guidance** requires a separate design. A design by a suitably qualified and experienced engineer must be submitted with any application. It must be listed separately in the Appendix and include the following: • Be designed in accordance with Council's DCP. • Investigation and/ or design of any inter-allotment drainage system proposed for legal discharge of runoff from the development. • On site detention where required by Council's DCP to attenuate flows leaving the site and entering the public drainage system. • Retention and re-use of roof water to minimise both the use of potable water and the effects of development on downstream receiving waters by reducing the total volume of runoff leaving the site. • Water treatment measures where required by Council's DCP to achieve Council's water quality objectives. At **Page 193** the development shown does not provide any communal area for larger central communal open space which can be co-located with water sensitive urban design features. This should be amended to move the reference to documentation requirements of Schedule 1 of the *EP&A Regulation 2000* to be the first item in the 'Documentation' column.

	Site Plan, Landscape Plan, Floor Plans, Elevations, Sections must include requirement for dimensions. Certification by PCA is automatically voided if documents are not fully dimensioned because they cannot demonstrate compliance with Development Standards (building separations, setbacks, landscape, lot size, dwelling and room size, and all other measurable Design Criteria).
Appendix 3 **Design Verification Statement Template**	**Streetscape and Local Character** The panoramic photo requirement to show only 20m either side of the subject site fails to demonstrate *Part 3 Principal Controls* at 3.1A, 3.2A, 3.3A and 3.4A for *Primary Road Setback* for 40m has been satisfied. **Design Quality Principles** Provides inadequate description of the requirements of the verification needed to demonstrate each Design Quality Principle. Should be amended to add requirement for the statement to explain and demonstrate **how** the design achieves the Objectives and Design Criteria. Wording should be consistent with *the EP&A Regulation 2000* *Cl 50 (1AB) The statement by the qualified designer must:* *(a) verify that he or she designed, or directed the design, of the development, and* *(b) provide an explanation that verifies how the development:* *(i) addresses how the design quality principles are achieved, and* *(ii) demonstrates, in terms of the* [insert Medium Density Design Guide]*, how the objectives in Parts 2 and 3 of that guide have been achieved.*
Appendix 4 **Site Analysis Checklist**	Generally supported although more detail is required.
Appendix 5 **Recommended Principal Controls for Different Types**	Whilst it is noted that Clause 1.18 of the Codes SEPP will apply to the medium density development types, there is an ambiguous point in the "key considerations" for Manor Houses on page 195 of the MDDG which states that they are allowed on land zoned for low and medium density residential development. The notes on page 16 of the Explanation of Intended Effects qualify that a Manor House will be allowed as Complying Development on any land where multi-dwelling housing is permitted. Would there realistically be many instances where Councils allow multi-dwelling housing within the R2 zoning and, if not, should the reference to low density zonings in the "key considerations" be omitted? In addition, Manor Houses are noted on p195 as being of a scale similar to an oversized double storey single dwelling. Ku-ring-gai is unique in its abundance of heritage dwellings and conservation areas and medium density housing as Complying Development will seriously erode heritage conservation. A recent deemed refusal appeal for multi dwelling development located adjacent to a Heritage Item resulted in amendments to the design purely on heritage grounds. The building initially sat too far forward of the Heritage item and did not allow views to and from the item within the streetscape, setbacks to upper levels had to be increased and landscaping species and locations of trees were changed to provide for more appropriate screening species placed at more strategic locations on site. Complying Development would not provide this opportunity to achieve better outcomes. To go one step further, should medium density complying development be introduced, there is a strong case for limiting it only to those lots which are not bordered by any low density residential zones.
Two Dwellings Detached	**Design qualities** Rear lot subdivision is not supported. It generally achieves poor outcomes due to vehicle impacts within the small site area, and irrevocable loss of rear yard deep soil vegetation corridors. Battle-axe typology is generally poor and land is wasted accommodating driveways. They are only appropriate on very large, long sites where specific site conditions are conducive and appropriate landscape buffers can be provided. **Context and subdivision** Battle-axe type should not be supported. **Key considerations for development controls**

	Concentration of considerations regards streetscape, which is appropriate where both dwellings address the street. Battle-axe type fails consideration for the rear yard landscape, the rhythm of built-form to landscape as urban character, the value of our greenweb corridors and their environmental function across the suburbs. Type proposed with shared driveway for front and rear dwellings will not work due to AS2890 requirements for vehicle reversing swept paths requiring min 5.8m driveway width plus length of car 5.5m. It is a poor typology and should not be advocated. Figure p175. Should be deleted as it is a small lot rear yard subdivision is a poor typology. The schematic depiction is not representative of the impact of accommodating cars for AS2890 swept paths. Driveways need to accommodate reversing bays and loss of landscape far greater than indicated. The type fails to protect rear yard deep soil canopy planting. This landscape is the source of the green web that connects biodiversity corridors and which is a primary feature of the environmental health and landscape character in Ku-ring-gai and throughout Sydney's suburbs. Loss of this landscape resource contributes to Land Surface Temperature heat gains and results in measurable flow-on impacts to public health, sustainable energy use, water management, air quality, and urban character. **Example Plan:** There are a number of issues with the example plan as detailed below • there is no north point demonstrating appropriate orientation of the living areas, • the dwellings do not demonstrate cross-through ventilation at the ground floor without windows in opposing walls, • the wall extending from the corner lot dwelling to the side boundary of the neighbouring lot disconnects the landscape zones, • 'Rear' lot does not comply with the side setback development standard being built to boundary • does not satisfy Universal Design Silver level requirements. • Trees are schematic and demonstrate inadequacy of landscape control where none of the examples complies with the minimum landscape requirement at 2C for trees. (Note the setback provisions and landscape standards are inadequate for achieving Ku-ring-gai's landscape character.) The 5 points are incorrect as follows: *Tree planting in front setback* - This is the front of the corner lot only. *Garage Setback from building line* - Agree *Private open space* - Shown as paved area. POS covers all landscape in area title of dwelling *3m separation* [sic] *between buildings* - 'Rear' lot does not comply with the side setback development standard *Tree planting in rear setback* - This is side setback of this lot. Rear is the landscape zone opposite the front address of the dwelling. The examples demonstrate the inadequacy of the controls. **Table: Typical Principal Development Controls** Requires amendment as follows: • LEP and DCP controls must be retained for: o Strategic planning to control the location of medium density according to the specific LGA conditions of transport infrastructure, services, public open space resources, street and subdivision suitability o Permissibility o Min parent lot size for subdivision o FSR o Front and rear setbacks o Landscaped area o Desired Urban Character

	• Use specific, tested model exemplars of the type • Use the tested exemplar for all supporting diagrams to demonstrate consistency with all the specific controls • Specific recommended controls must relate directly to the specific exemplar (not propose wild ranges) this enables adjustment either up and down for differing parameters such as lot size • Controls for building separation and all side and rear setbacks ***must*** relate to habitable and non-habitable room functions and must not result in standards of amenity below that expected for high density development under SEPP 65 • Add requirements for the parent lot to meet specific conditions such as being a corner site, or with long axis addressing a street (for complying development) • CDC must limit the size of development to 2 dwellings; all other types must go through a DA process through Council. • Include control that sets a maximum dwelling size to address Australia's appetite for oversized housing. **Site Requirement for this type:** Parent lot must be a corner site or have its long axis addressing a public street. **Minimum Lot size:** Delete battle-axe. Not appropriate for small lot type.
Two Dwellings **Side-by-Side**	**Design qualities** **Context and subdivision** • *Minimum lot width high dependent on vehicle access.* This should be reconsidered in context of first dot point advocating best located on wide and shallow blocks and the min lot size controls so that vehicle cross-overs do not prevent or result in the loss of on-street car parking. **Key considerations for development controls** Should be amended to add "Public domain amenity of streets to be prioritised for pedestrians, retaining existing on-street parking, and street trees." This needs clarification *"Controls for setback, bulk, and scale, FSR, building height, landscape and private open space should be slightly more than a single dwelling house as there is a common boundary."* FSRs should be set to ensure site coverage is not excessive to achieve local desired landscape character and to ensure the maximum dwelling size is controlled in future development in our cities in response to climate change policies. The following comments are provided on the figures: • **Figures p177-178.** None of the images are consistent with each other. • **Figure p177 (left side).** No north point, schematic, landscape inadequate, tree planting not to scale, scaling of side setbacks wrong, absence of appropriate site coverage controls demonstrate impact of loss of deep soil. • **Figure p177 (right side).** Double garage does not comply with proposed standards, dominates front façade and streetscape. • **Figure p178 (top).** 3-d **i**nconsistent with "Example Plan" **Example Plan:** Better exemplar of type based on more realistic development. However, all side paths should be included as diagram is misleading to the extent of actual landscape achievable. Trees are schematic and demonstrate inadequacy of landscape controls for small lots unless parent lot is significantly large than permitted minim lot size. **Table: Typical Principal Development Controls** Requires amendment as follows: • LEP and DCP controls must be retained for: o Strategic planning to control the location of medium density according to the specific LGA conditions of transport infrastructure, services, public open space resources, street and subdivision suitability o Permissibility

	○ Min parent lot size for subdivision ○ FSR ○ Front and rear setbacks ○ Landscaped area ○ Desired Urban Character • Use specific, tested model exemplars of the type • Use the tested exemplar for all supporting diagrams to demonstrate consistency with all the specific controls • Specific recommended controls must relate directly to the specific exemplar (not propose wild ranges) this enables adjustment either up and down for differing parameters such as lot size • Controls for building separation and all side and rear setbacks ***must*** relate to habitable and non-habitable room functions and must not result in standards of amenity below that expected for high density development under SEPP 65 • Add requirements for the parent lot to meet specific conditions such as being a corner site, or with long axis addressing a street (for complying development) • CDC must limit the size of development to 2 dwellings, all other types must go through a DA process through Council • Include control that sets a maximum dwelling size to address Australia's appetite for oversized housing.
Terrace Houses **Car Parking to Primary Road**	**Design qualities** This type should not be permitted for the minimum lot size and permitted minimum lot widths. The type has detrimental impact on public amenity, along footpaths with excessive cross-overs, results in garaging dominating the streetscape, removes existing on-street car parking resulting in a loss of public amenity in favour of private amenity. Can only work where type is on very wide allotments resulting in subdivided lot with of min 12m or where close to railway stations where controls may permit a vehicle cross-over every 2nd or 3rd dwelling. This means only 30% of the development would be permitted at grade car parking. **Context and subdivision** The 2nd and 3rd dot points should be deleted. The type is highly ***un***desirable generally and on narrow lots or as a medium density exemplar in particular **Key considerations for development controls** Should be amended to add "Public domain amenity of streets to be prioritised for pedestrians, retaining existing on-street parking, and street trees." This required clarification - *Controls for setback, bulk, scale, FSR, building height, landscape and private open space should be slightly more than a single dwelling house as there is a common boundary.* FSRs should be set to ensure site coverage is not excessive to achieve local desired landscape character and to ensure the maximum dwelling size is controlled in future development in our cities in response to climate change policies. This should be deleted- **Min** *lot width where garages face the primary road should be 15m (7.5m each).* **Figure A-2** is a good example of a skilfully architect-designed development that is not representative of the type advocated by the schematic image and proposed development Standards. It is not representative of the bulk of this type of development across Sydney. Even Ku-ring-gai rarely sees this high-end design and construction quality. It is inconsistent with the *"Key considerations for developing controls".* It shows a double garage in a development of 12m+ lot width that is not representative of the type proposed by the development standards. **Example Plan:** The 'Example Plan' lot size is larger (200m2) than and inconsistent with the proposed Principal Development Standards (150m2) and not representative of proposed development. **Table: Typical Principal Development Controls**

	See comments previous sections above for general amendments to all recommended development standards. **Minimum Lot size:** Proposed 150m2 does not comply with min lot size of Codes SEPP for type. The example is Torrens title. The min lot size should represent Torrens title outcomes to avoid inconsistencies that will permit a lesser standard. Min lot sizes must be controlled by local planning instruments to achieve desired urban character, and be coordinated with local strategic planning policies. **Landscaped Area:** Minimum 40% deep soil area of minimum width should be included as design criteria for medium density development types.
Terrace Houses **Rear Lane Access**	**Design qualities** This type is the only terrace house model of at-grade car parking that achieves a positive streetscape character. It can ***only*** work where there is a block structure of primary roads and lanes. **Context and subdivision** Control for location and permissibility must be retained in local planning instruments and coordinated infrastructure, public amenity, suited to each LGA targeted needs addressing specific socio-economic, demographic, physical conditions and development objectives. **Key considerations for development controls** Should be amended to remove - ..."*Allow on land zoned for low and medium density residential development."* **Example Plan:** The 'Example Plan' lot size is larger (200m2) than and inconsistent with the proposed Principal Development Standards (130m2) and not representative of proposed development. **Table: Typical Principal Development Controls** See comments previous sections above for general amendments to all recommended development standards. **Minimum Lot size:** Proposed 130m2 does not comply with min lot size of Codes SEPP for type. The example is Torrens title. The min lot size should represent Torrens title outcomes to avoid inconsistencies that will permit a lesser standard. Min lot sizes must be controlled by local planning instruments to achieve desired urban character, and be coordinated with local strategic planning policies. **Landscaped Area:** Minimum 40% deep soil area of minimum width should be included as design criteria for medium density development types.
Terrace Houses **Basement Car Parking**	**Design qualities** Generally supported where the basement is confined to being below the building footprint and hard stand private open space areas ant the basement ramp can be well integrated with the development. The type has the potential to achieve high levels of amenity. **Context and subdivision** Control for location and permissibility must be retained in local planning instruments and coordinated infrastructure, public amenity, suited to each LGA targeted needs addressing specific socio-economic, demographic, physical conditions and development objectives. **Key considerations for development controls** Should be amended to remove … *"Allow on land zoned for low and medium density residential development."* **Example Plan:** Should be amended - Do not use dwelling types that require winder stairs. They are not permitted in NSW Housing Guidelines and do not achieve requirements for equitable, adaptable and flexible housing. They are inherently less safe for young children, adults carrying items between levels (such as children); they can prevent safe or even any movement of large pieces of furniture between levels.

	They are permitted under the BCA and play a valuable role on severely constrained sites where retrofitting into an existing dwelling or where single dwelling development is proposed. Winder-stair medium density typologies ***must not*** be advocated in the MDDG and must be prohibited in large development. **Table: Typical Principal Development Controls** See comments previous sections above for general amendments to all recommended development standards. **Minimum Lot size:** Proposed 100m2 does not comply with min lot size of Codes SEPP for type. The min lot size should represent Torrens title outcomes to avoid inconsistencies that will permit a lesser standard. Min lot sizes must be controlled by local planning instruments to achieve desired urban character, and be coordinated with local strategic planning policies. **Landscaped Area:** Minimum 40% deep soil area of minimum width should be included as design criteria for medium density development types.
Multi-Dwelling Housing Row Housing	**Delete this section in its entirety**. This typology has already resulted in substandard urban outcomes and must not be permitted.
Multi-Dwelling Housing Mews	**Delete this section in its entirety.** This typology has already resulted in substandard urban outcomes and must not be permitted.
Multi-Dwelling Housing Basement Car Parking	**Design Qualities** Can result in high amenity where FSR and landscape controls are matched to achieve the desired local urban character. FSR should not be greater than 0.7:1 for this housing type. Ku-ring-gai has an extensive, well-coordinated suite of development controls for this housing type that achieve high levels of amenity and the desired landscape character. **Context and subdivision** Control for location and permissibility must be retained in local planning instruments and coordinated infrastructure, public amenity, suited to each LGA targeted needs addressing specific socio-economic, demographic, physical conditions and development objectives. Should be amended to include "*Blocks will needs to be greater than **13m 24m** wide – but dependent on landscape context and landscape provided along the side boundary"* **Key considerations for development controls** The upswing in FSR of this type compared to the failed 'mews' type further reinforces why 'mews' is an inefficient and maladaptive housing type. Generally, the Key Considerations are consistent with Ku-ring-gai's DCP controls for side setback landscaping. **Example Plan** The exemplar is of a generally positive development. However, it is completely different type to the schematic on p189 (but consistent with the image at Figure A-4). It is an expensive construction and design type and not representative of the housing for which the MDDG is targeting. **Table: Typical Principal Development Controls** See comments previous sections above for general amendments to all recommended development standards. **Minimum Lot size:** clarify whether for Torrens title subdivided lot size or parent lot size prior to strata. The type is best on larger deeper lots where landscape and pedestrian amenity can be maximised. **FSR:** Generally 0.6.5 to 0.7:1 allows for yield needed to cover higher costs of basement construction while achieving a good landscape outcome. A poor landscape outcome is achieved with FSR of 1:1. **Landscaped area: 35**% as per the definition unsuitable for the Ku-ring-gai context. Minimum 40% deep soil area of minimum width should be included as a design criteria for medium density development types.
Multi-Dwelling Housing	**Design Qualities**

Courtyard Housing	The generic courtyard type can achieve high levels of amenity with they address a public street. They achieve very poor amenity where internal driveways are proposed because of the impacts of vehicles throughout the entire site. They have long term negative effect on the landscape in suburban areas and are generally unsympathetic to the desired urban character of most medium density suburban areas. There are very limited places this type is applicable in NSW where the build-to-boundary controls apply. Delete type and replace with this example with one more conducive to the broader NSW suburban context, or graphically emphasise the strategic linking of two existing streets that would be a requisite of the type**.** **Figure A-5** is located on a public lane and is not representative of the diagram Figure to the left p191. It is the work of highly skilled architects and is not representative of the development anticipated in the MDDG to be *"delivered by a range of builders with simple and often less expensive construction methods."* p7 *Explanation of Intended Effects*. **Context and subdivision** Requires highly skilled practitioners to successfully implement given the complex relationships that need to be balanced. Local development controls must be retained to control location and performance benchmarks for principal development standards. **Key considerations for developing controls** Reinforce requirement that privacy must not be achieved by privacy screens over openings. Privacy must be achieved through sound design and building separations highly dependent on surrounding context. Last dot point unfinished. **Example Plan** Example does not accommodate cars and is inconsistent with proposed principal development controls. There is no street on any boundary. None of the dwellings address a public space. Cross-through ventilation at ground level is limited by the lack of openings along the front façade, and their location needing air to turn corners. The first floor void is located so there is no cross through air movement between levels. **Table: Typical Principal Development Controls** See comments previous sections above for general amendments to all recommended development standards. **Landscaped Area:** 10-15% is unsuitable in Local Government Areas such as Ku-ring-gai. Minimum deep soil area of minimum width should be included as design criteria for medium density development types. **Setbacks:** First floor setback of 3m inadequate and must be dependent on internal functions of rooms.
Multi-Dwelling Housing **Large Lot Master Plan and Communities**	**Design Qualities** Require qualified multidisciplinary teams and should not be included in the MDDG. They are large scale development, complex and will not be carried out by small to medium sized developers and builders**.** **Figure p193** Should be deleted. This schematic representation is over simplified, and demonstrates the worst of these types of developments. All internal driveways are dead ends and unless located on a classified road where access can be limited, this type is contrary to sound city place-making principles. All internal driveways must link to surrounding street networks or enable provision for future connections. This requires careful strategic planning in consultation with councils and Government Departments to coordinate the desired street network and though site connection locations, and infrastructure requirements. The communal spaces and amenity in this example are absent. The land area required accommodating vehicles in this typology is inefficient. It requires vast areas of hard stand replacing existing or potential deep soil landscaping. The schematic quality of the diagram is crude and not representative of the built form reality. **Context and subdivision** The type used in the diagram p193 is regularly rolled out at the fringes of metropolitan Sydney and is a model that fails all sound

	urban planning principles particularly for housing adapted for climate change, lowering land surface temperature, and open space amenity. Better outcomes for *large growth areas and high demand for large quantities of housing* are readily achieved with other higher density housing types such as apartments. Apartments can be lower scale but readily achieve far higher amenity than proposed under the MDDG, are more efficient users of land, freeing up vital areas for public and communal spaces. **Key considerations for development controls** **"**Public and communal domain structure including prioritised pedestrian networks" should be prioritised. **Figure p193** is a poor representation of the key considerations. **Table: Typical Principal Development Controls** See comments previous sections above for general amendments to all recommended development standards. Typical development controls here are meaningless as they will greatly vary depending on the broader strategic objectives. The accompanying 3-d graphic is meaningless and demonstrates very poor master planning.
Manor House	This is potentially good typology that could have broad application where strategically located. The type can suit lower or higher cost housing depending on the applicable local development controls, which should prevail to establish suitable principal development controls specific to the LGA and locations within the LGA. Larger sites with dual street frontage are required so that vehicle parking does not compromise streetscape character, landscape character within the and around the site, or occupant amenity. **Figure p195** - Diagram has no north point. It is schematic not based on a good exemplar of real development. Analysing the failures: The bottom example illustrates the worst fundament design principles and fails the design quality principles. Yet if a Design Verification Statement is submitted, it would be certified by a PCA as compliant. One or other of the levels advocate living areas with a southerly aspect if the ground floor shows living areas with a northerly aspect, three-quarters of the entire northern side of the lot comprise hard stand and garaging. The planning layouts fail to demonstrate fundamental planning principals for acoustic privacy by locating living areas of the first floor above the sleeping areas of the floor below (or vice versa). **Context and subdivision** Generally agree. In Ku-ring-gai the current minimum lot width of 24m for medium density in R3 zones should prevail. If used in low density R2 zones, the minimum lot width should be increased to 24m to accommodate the larger building footprint. **Table: Typical Principal Development Controls** See comments previous sections above for general amendments to all recommended development standards. **FSR:** should not exceed 0.4:1 but should be tested with local development controls for medium density housing. On a site of 1000m2 it would permit a maximum of: 4 dwellings @ 100m2 3 dwellings @ 130m2 2 dwellings @ 250m2 **Landscaped area:** would need to be tested to achieve Ku-ring-gai's KDCP 6A.5 and 6A.6 for site coverage and deep soil landscape.
Glossary	Notes: **1. HOUSING TO RESPOND TO CLIMATE CHANGE** *Pathways to climate adapted and healthy low income housing, NCCARF, 2013,* https://www.nccarf.edu.au/sites/default/files/attached_files_publications/Barnett_2013_Climate_adapted_low_income_housing.pdf *3.4.3. Use of cooling devices in the home* (p23)

	A recent Australian study by Farbotko and Waitt (2011) concluded that residential air conditioning is a potentially maladaptive technology for reducing the risk of heat stress in low income households. They argue that while it has the potential to provide relief during hot weather, it comes with a double burden in the form of increased electricity usage and the risk that it won't be available when it is needed the most due to power outages, which are also associated with extreme heat. *3.5.2 Vegetation shade and shelter around home* (p24) *When planted around buildings, trees provide shade, protection from winds and modify the ambient conditions around individual buildings making conditions more comfortable for people (Akbari 2002). Direct shade on buildings affects energy use and thermal comfort by reducing solar heat gain through windows, walls, and roofs.* *Trees and shrubs planted around buildings reduce radiant heat gain and unwanted glare and will add moisture to the air through evapotranspiration. It has been shown that air is more humid and up to 5ºC cooler in the shade of trees in summer than in areas where there are no trees (Taha et al. 1988, Parker 1989, Fisher 2007, Souch and Souch 1993).* *The amount trees influence energy use and comfort levels depends on the general climate, the building type, and the size, type and position of the trees (Heisler 1986). Various studies estimate that properly sited trees can save between 10% and 50% of annual energy use in conventional houses, compared with the same houses in the open (Yu and Hien 2006, Akbari and Konopacki 2005, Simpson and McPherson 1996).* *4.1 Neighbourhood and Role of Place* [Land surface temperatures] *can have a major influence on the internal temperature of a building.* (p27) *4.4.1 Heat exposure and the built environment* *…Each city has large areas where land surfaces temperatures are higher than other parts of the city and these areas correspond mainly with areas of low vegetation cover. There are also more localised 'cool spots' associated with features such as parks and river courses. These findings are consistent with other studies that show the importance of vegetation and other built environment factors in determining land surface temperatures (Weng 2009, Bottyan and Unger 2003, Eliasson 1996, Dousset and Gourmelon 2003).* (p30) **2 STAIR SAFETY** http://www.housing.nsw.gov.au/__data/assets/pdf_file/0010/328537/DesignStandards2014Revision1.pdf http://www.yourhome.gov.au/housing/livable-and-adaptable-house http://www.liveablehomes.net.au/documents/CAD_Images/Jpeg/Fig24_Internal_Stairways.jpg http://www.liveablehomes.net.au/documents/CAD_Images/Jpeg/Fig24a_Internal_Stairways-Section.jpg http://ddadesign.com.au/welcome/Accessible-Stairs-ramps-and-lifts.pdf http://ddadesign.com.au http://hia.com.au/~/media/HIA%20Website/Files/Media%20Centre/Submissions/2010/Reducing%20the%20Risk%20of%20Slips%20Trips%20and%20Falls%20in%20Buildings%20BCA.ashx https://www.monash.edu/__data/assets/pdf_file/0011/218459/haz59.pdf Equitable adaption. Acorn Stairlifts (01.06.2016) quoted $4,000 to $4,500 to install a stairlift into a straight-run flight compared to $11,000 to $13,000 to install one into winder stair flights. Circulation clearances for adaption: There is also a grey area with the Australian Standard for circulation clearances for stairs, hallways and landings because they do not make any allowance for installing a stairlift. This requires an additional min 350mm to accommodate the folded chair when stored on a landing or on the stair if it's not to encroach into the otherwise compliant hallway or landing clearances. http://www.acornstairlifts.com.au/stairlifts/curved-stair-lifts http://www.huffingtonpost.com/jim-t-miller/how-to-choose-a-home-stair-lift_b_3521648.html

Appendix 3

Council's Submission 24th Feb 2016 to the original Discussion Paper

Submission on Discussion Paper
– Expanding Complying Development to include two storey medium density housing types
Submitted to Department Planning and Environment - 24/02/16

Executive Summary

The Department of Planning and Environment has recently placed on exhibition a Discussion Paper which provides recommendations on medium density housing types that could be carried out as complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

The Department has identified a policy gap with regarding to medium density development, the "missing middle", and proposes to expand the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to cover the missing middle and provide a consistent State-wide framework for the provision of medium density development in NSW.

The medium density housing types proposed to be included as complying development include dual occupancy, manor homes, townhouses and terraces that will result in 2-10 dwellings being erected on a single parcel of land.

This document has been prepared by Ku-ring-gai Council as a submission to *Expanding Complying Development to include two storey medium density housing types* and the associated supporting documentation including Volume 1 – Discussion Paper November 2015 and Volume 2 – Background Paper 2015.

Ku-ring-gai Council has reviewed the Discussion Paper and Background Paper and has significant concerns regarding the proposed delivery for medium density development via the expansion of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and the proposed development standards applying to these housing types.

Key areas of concern are as follows:

- Councils zoning should not be able to be overridden by a "blanket" Complying Development approach under the Codes SEPP. Complying Development should be restricted to development that is permissible within the zoning.
- The proposal will erode the strategic planning work undertaken by Councils which has overseen and guided development growth with both short term and long term benefit to the area character and amenity of residents.
- The medium density housing types should not be permitted within the R2 Low Density Residential zone – which is not suitable for the increased development densities.
- Medium density housing should be provided through the District Planning process instead of expanding the Codes SEPP in order to allow Councils to identify and investigate appropriate areas for this type of development.
- The proposed use of Complying Development for medium density development is beyond the current scope of what complying development currently permits – which is straight

forward, permissible development with low environmental impacts. The scale of the proposed medium density development does not fit within the scope of complying development.

- The proposal will remove the opportunity for upfront consultation with the community to identify appropriate locations for medium density development though local planning strategies.
- The proposal is better suited to greenfield areas where there is no established built character, rather than in infill areas (like Ku-ring-gai) with well-established existing character.
- The medium density housing developments are better suited to the development assessment pathway, which allows merit assessment and consideration of impacts on local character, neighbour amenity and environmental considerations.
- The proposal fails to consider the impact of population growth associated with complying development and the pressure this places on existing infrastructure, facilities and services and the ability of Council to forward plan for the delivery of new infrastructure and facilities.
- The proposal will have significant impact on the scale and densities of the locality, streetscape, vegetation, ecological values, residential character, amenity and the heritage qualities of Ku-ring-gai.

Council requests that these issues be addressed in the review process.

It is Council's view that a strategically informed and targeted local approach to identifying where medium density development would be compatible with other land use and local character management objectives is preferential to the proposed "one size fits all" State policy.

The location of medium density development should be addressed through local planning strategies where local communities have the opportunity to participate in the process.

The scope of implementation of the proposal is incredibly broad. If followed through without proper consideration for the appropriate type of assessment regime and a suitable suite of controls, the proposal risks being very destructive to large swathes of Sydney's urban area in a short period of time.

However, should the government proceed with SEPP amendments, the following submission identifies significant concerns with the proposed and controls and offers without prejudice recommendations for amendments to improve planning outcomes from any future amended SEPP.

Council also strongly urges that any prosed changes to the SEPP be subject to further community consultation once they have been drafted and prior to being made.

Comments and Recommendations

The following comments and recommendations are contained in 2 Parts. Part 1 provides comments on the policy and strategic planning merit of the proposal while Part 2 identifies concerns with the proposed standards and controls and offers without prejudice recommendations for amendments to improve planning outcomes if the SEPP amendments were to proceed.

1. Policy and Strategic Planning merits

1.1. Zoning and Permissibility

The information contained in the Background Paper and Discussion Paper is ambiguous regarding the issue of permissibility and zoning.

Currently, to be complying development, the proposal must be permissible with consent in the land use zone under the relevant Councils Local Environmental Plan, as required by Clause 1.18(1)(b) of the Codes SEPP. The Background Paper outlines "*The current exclusions from complying development in clause 1.17A, 1.18, and 1.19 of the Policy (refer to attachment 3) are recommended to continue to apply"* (Page 21). In this regard, one could assume that Clause 1.18(1)(b) is intended to apply to the proposal.

However, the discussion paper then requests feedback on the appropriate zones in which the medium density complying development should be permitted – and it is generally understood that the proposed zoning would be R1, R2 and R3 zones, noting that the Discussion Paper outlines that all proposed medium density development types are not proposed to be permitted as complying development in R4, R5, Rural Zones and Environmental Living zones.

It is unclear whether it is proposed to allow the medium density development types to permitted as complying development only in zones where they are a permissible under the LEP **OR** whether it is proposed to allow medium density development types to be permitted as complying development where they would otherwise be prohibited under the LEP.

Council is concerned that the proposed expansion of the Codes SEPP will allow for a blanket approach by allowing medium density housing types to be permitted as complying development within zones where they are currently prohibited by the relevant Council's LEP. This has the potential to undermine the strategic planning work undertaken by Councils, which has overseen and guided development growth with both short term and long term benefit to the area character and amenity of residents.

Recommendation

- The proposed development types should only be permitted as complying development in zones where they are a permissible development type for that zone within the LEP. The current Clause 1.18(1)(b) contained within the Codes SEPP should be retained. Council has significant concerns regarding a blanket approach to allowing medium density development throughout R1, R2 and R3 zones indiscriminately.
- The proposed medium density development types should not be permitted within the R2 Low Density zone. The zone objectives will be undermined if land within this low density zone is permitted to be significantly intensified and fragmented by dual occupancy development and subdivision. The R2 Low Density zone is not suitable for the increased development density proposed.

1.2. Future District Plans and Local Housing Strategies

The Department is currently preparing a North District Plan which will help to set out how *A Plan for Growing Sydney* (Sydney Metropolitan Strategy) will apply to local areas. The North District Plan will guide the delivery of housing supply.

As part of this process, Councils will be required to update their local planning strategies to be consistent with the new plan to ensure the delivery of housing and jobs. The proposal to include medium density development as complying development will undermine the role of the district plans and updated strategies, by potentially allowing a significant proportion of medium density to be located within low density areas and without appropriate planning and provision of infrastructure.

The proposal does not provide any distinction between areas and locations that may be suited to this type of development, and areas and locations that are unsuitable for this type of development, for example greenfield areas and infill areas.

The proposed expansion of the Codes SEPP has no means of engaging with local Councils planning strategies, which consider the long term provision of dwellings and jobs, and seek to manage the impacts arising from developments.

Recommendation

- That instead of expanding the Codes SEPP for medium density, the provision of medium density development should be provided for through the dwelling targets established by the District Plans. This would allow Councils to investigate and identify appropriate areas for medium density development – instead of allowing medium density development indiscriminately across the LGA.
- The location of medium density dwellings is important in order to minimise traffic and parking impacts and improve access to shops, services, transport and improve neighbourhood amenity.
- Local communities should have an opportunity to provide comment on local planning strategies that would permit medium density development and identify appropriate locations for medium density development.

1.3. Use of Complying Development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The proposed use of Complying Development to provide for medium density is beyond the current scope of what Complying Development currently permits – which is straight forward, permissible development of low environmental impact. The proposal operates outside these basic parameters of the Codes SEPP, with the types of development proposed being of high impact and site intensification and operating outside of the local LEP.

Complying Development will be approved if it meets the pre-determined numerical development standards. The certifier and applicant do not have any obligation or discretion to make changes. This prescriptive approach does not allow for any merit assessment of issues. Complying development does not necessarily 'achieve better design outcomes' or 'promote good design' or 'improve the quality of housing' as claimed by the Discussion Paper. Experience with complying development approval of freestanding project homes demonstrates that 'good' or 'better' design outcomes are not achieved through this process.

The proposed expansion of the Exempt and Complying Development SEPP to include medium density development types is a blanket "one size fits all" approach for the provision of medium density housing. A strategically informed and targeted local approach to identifying where

medium density development would be preferential and compatible with other land use/management objectives.

Council is not opposed to medium density development, but this type of development should not be allowed to occur on an ad-hoc basis and without merit assessment.

Recommendation

- The proposed medium density development types are more appropriate to the Development Application pathway of assessment, which allows merit assessment and appropriate consideration of impacts on local character, neighbour amenity, environmental considerations, heritage and building design.
- Should State Policy be pursued for medium density housing types – the instrument of delivery should be more aligned with SEPP 65 and the ADG, and not the Codes SEPP, due to the high impact resulting from the proposed development types. The format of delivery via a standalone SEPP and design guide would align with Councils LEP provisions, and therefore provide consistency with Councils current development framework and standards within a local area, whilst providing a consistent state-wide approach, for medium density housing.

1.4. Dual Occupancy and SEPP53 Metropolitan Residential Development

There is significant concern regarding the proposed dual occupancy and subdivision of dual occupancy development via complying development.

Dual occupancy development is only permitted within the Ku-ring-gai local government area on a limited number of sites via Schedule 1 of the LEP. In this regard, the proposed medium density expansion of the Codes SEPP would introduce dwelling forms that are currently prohibited under the Ku-ring-gai LEPs. Should an applicant be unable to meet the requirements for complying development, there would be no opportunity to lodge the same proposal as a Development Application – as the development would be prohibited by the LEP. This outcome is inconsistent with the current application of the Codes SEPP.

The proposed subdivision of dual occupancies into 200sqm lots will have significant negative impacts to the existing subdivision pattern (which is generally large lots) which contributes to the character of the Ku-ring-gai area.

The former State Environmental Planning Policy No.53 permitted dual occupancy development within low density residential areas, and the following development standards applied for dual occupancy development:

- The allotment is to have an area of 400sqm or more where there are two attached dwellings
- The allotment is to have an area of 600sqm or more where the two dwellings are detached
- The building or buildings on the allotment after the development is carried out are to have a floor space ratio of 0.5:1 or less
- Subdivision not permitted unless it was permitted by another planning instrument.

Under SEPP53 dual occupancy dwellings were developed throughout Ku-ring-gai. These developments resulted in significant negative impact on the streetscapes, vegetation and existing residential character/amenity within suburbs of Ku-ring-gai.

Like the proposed expansion of the Codes SEPP, SEPP53 was a 'blanket' approach to dual occupancy, with no consideration of local area issues.

As seen in the development standards above, the requirements for dual occupancy developments under SEPP53 were more demanding – noting larger site areas for detached dual occupancies, inclusion of FSR and not permitting subdivision – than what is currently proposed for dual occupancy development under the expansion of the Codes SEPP. In this regard, the potential impacts resulting from the proposed expansion of the Codes SEPP could be even more detrimental.

Recommendation

- The proposed expansion of the Codes SEPP to include dual occupancy development should not be permitted, noting that dual occupancy development under the SEPP 53 has been repealed in favour of developing local planning strategies.

1.5. Impact on environmental and built character

The proposed standards demonstrate inadequate consideration of existing urban areas with established characters.

Ku-ring-gai is characterised by large lots, garden setting, significant trees and vegetation. The proposed medium density complying development will have a significant negative impact on the streetscapes, vegetation, existing residential character, amenity and heritage qualities of the local government area.

The Councils selected to undertake the analysis of development controls and development approvals do not have similar built form and environmental character to many other LGAs, for example, Pittwater, parts of Hornsby, Lane Cove and Ku-ring-gai. The proposed development controls for the medium density complying development are dissimilar and disparate from Ku-ring-gai Councils controls contained in the LEP and DCP for dual occupancy and townhouse developments; Council's controls seek to ensure the character of the locality is retained by ensuring that buildings and other development have a good relationship with neighbouring developments, the public domain and the landscape qualities of the locality. The proposed complying development standards are less sensitive than Councils current controls, will not improve this housing type within Ku-ring-gai and will significantly and negatively impact on the environmental and built character of Ku-ring-gai.

There has been insufficient testing, modelling and analysis of the proposed development standards applying to the medium density development types. There has been no analysis of the outcomes and impacts the proposed controls could have on streetscapes and suburbs. The sample of just six townhouse projects (Background Paper p30) is far too limited and the findings cannot be representative of the broad cross-section of approaches in LGAs across the Sydney Metropolitan area. The Discussion Paper and Background Paper provide an inadequate basis to support the major change in development control across the State.

The proposed lot sizes (400sqm, 500sqm and 600sqm) are too small to allow for proposed number of dwellings (2-10 dwellings) to still achieve other key planning objectives. In Ku-ring-gai the minimum lot sizes for dwelling houses within the R2 Low Density Residential areas, generally require a minimum lot size of 930sqm, while medium density developments within the R3 Medium Density zone require a minimum lot size of 1,200sqm to ensure adequate space for deep

soil landscaping and communal open space. The contrast between a single dwelling on 930sqm, compared to 10 dwellings on 600sqm is substantial.

The proposed controls are largely based on establishing the building envelope, with little consideration given to dwelling amenity, landscaping, streetscape, building design or character of the surrounding area.

The medium density complying development resulting from the proposed development standards will result in major intensification of the land, increase in footprint, bulk and scale, and the impacts on amenity and area character bear no resemblance to the existing areas in which they will be allowed or the current standards applying to medium density development in those areas. This will have a large cumulative impact on suburbs within Ku-ring-gai and other similar LGAs.

Recommendation

- The proposed medium density complying development controls would result in development that is inconsistent with the existing and desired future character of the locality.
- Further testing and modelling of the proposed development standards is required to understand the outcomes and impacts of the proposal on streetscapes and suburbs.
- The proposed medium density complying development is better suited to greenfield areas where there is not established built character, rather than in infill areas (like Ku-ring-gai) with well established existing character.

1.6. Design Quality

Council has concerns regarding the built form outcomes of the proposed medium density development types under complying development, noting that compliance with numerical standards will not automatically achieve a good design outcome for the surrounding streetscape or character of area. This concern is noted in the Background Paper (page 50) *"….. as the numerical controls alone will not automatically achieve good design".*

Council's DCP contains numerous controls to ensure dual occupancy and townhouse style developments are sympathetic to the streetscape, buildings are of a high architectural quality that contributes to the local character and are good places to live. However with the proposed process of medium density development via complying development – the certifier cannot ask for better or more sympathetic designs – if the proposed development meets the standards it will be approved. The proposed controls do not provide sufficient certainty of the built form outcomes resulting from the proposed medium density development types.

The State government has recently amended SEPP 65 and Apartment Design Guide to improve the design amenity of residential flat developments. It would be negligent to allow developments of a similar intensity to not be of such a high quality design and dwelling amenity.

The Background Paper recommends "*The development types and suite of controls would lend themselves to a standalone instrument accompanied by a design guide"* and *"To this end it would be appropriate to develop a design guide along the lines of the Apartment Design Guide to assist in layouts and design issues".*

A guidance document, like the Apartment Design Guide, for medium density development would result in better outcomes and ensure better design for medium density housing across NSW. The design guides are useful in showing how development can be delivered in different ways according

to setting such as greenfield locations or infill areas. There cannot be a one size fits all approach for this type of development due to its density and building form having the potential to drastically impact on streetscapes and area character. A merit based assessment regime is required to allow for a design guide to operate effectively.

This would provide cohesion in standards applying across the State for medium density development. However, any design guide would need to be given weight through a merit based assessment. This is antithetical to the proposed numerically based complying development assessment regime. Without attributing weight to a design guide through a merit assessment, any such document will be ignored in practice.

Recommendation

- A design guide would assist in delivering better design outcomes for medium density development, ensure the high density standard required for these types of developments and have regard for local character.
- It is recommended that the proposed medium density development types should be designed by a qualified designer, similar to SEPP65, in order to assist in delivering positive built form outcomes for the streetscape, character of the surrounding area and adequate amenity for dwellings. As part of this process, proposal should be reviewed by an appropriately qualified Design Review Panel.

1.7. Development Contributions and Infrastructure Planning and Delivery

Ku-ring-gai's Contributions Plan has been designed to levy contributions on a per capita basis. As such, it can cater to increased cumulative growth by levying adequate contributions to support per capita delivery of facilities.

The potential to extend medium density developments to R2 zones has implications for both estimating the total quantum of new development in the LGA in such a manner as to support appropriate forward planning for infrastructure and for the delivery of facilities. In order to deliver geographic nexus to scattered development, very specific monitoring of scattered development will be required – and there is a greater risk that the critical mass to support new facilities might not be achieved in geographic proximity to scattered contributing developments.

At present, higher density developments such as villas and townhouses are carried out in R3 zones which are mostly centred on the local centres and St Ives. This ensures a critical mass and a foreseeable yield that supports geographic nexus – as well as causal nexus – in the delivery of the facilities that are actually required being demonstrably met. It would be more appropriate to retain the limitation of villas and townhouses, as well as manor homes, in R3 zones only. Council's Residential Strategy and considered responses to the next phase of dwelling targets, following investigation and exhibition, will allow the identification of appropriate additional R3 zones if applicable. This is good planning process and should not be by-passed in favour of an ad hoc approach.

The areas outside the local centres are also subject to the contributions cap which was fixed at $20,000 by s94E Direction first issued on 1 February 2009. The R3 zones within The Ku-ring-gai local centres are exempt from the cap. Under these circumstances, if the cap continues and begins to apply to medium density development by reason of geographic location only, there will be an increasing financial incentive for developers to target townhouse developments away from

these centres and, consequently, away from public transport. The potential disincentive or delay in developing local centres R3 zones, also has financial implications in terms of cash-flow for the delivery of centres-based infrastructure. This is not considered good planning practice.

Scattered ad hoc development of up to ten units will also increase demand for community facilities, however, without being able to estimate the quantum or location of such development, it will be difficult to justify augmentations to existing, advanced plans, for the delivery of new community facilities in centres such as Lindfield and Turramurra.

The other key aspect of the management of the development contributions system is the practicality of levying contributions and receiving due and timely payment without an excessive additional administrative load.

It has been our experience that private certifiers do not even attempt to calculate actual monetary contributions or correctly apply conditions in the manner that should be expected – and rarely do they contact Council for assistance. This has resulted in some time-consuming debt collection proceedings to date. It is our concern that this difficulty would be amplified significantly for larger developments.

Certifiers include conditions which are basically a copy/paste of the legislation and simplistically say that if contributions apply, then they should be paid. This is inappropriate and there is the increased potential for Council to be obliged to instigate legal proceedings for more – and larger – developments to obtain the appropriate contribution if the scope for CDCs is extended. Private certifiers should not be determining applications without including an appropriate condition that provides the applicant with information about the quantum of contribution due and facilitates their payment to the correct inflation quarter, yet they do so routinely. This presents a substantial issue for higher density development as complying development.

Recommendation

- The proposed scattered, ad hoc approach to allowing medium density development across R2 and R3 zones will result in increased demand for community facilities – however Councils will be unable to estimate the amount or location of such development. Therefore, should the proposal proceed, it is recommended that the proposed medium density housing only be permitted within R3 zones to ensure the delivery of facilities in areas where they are required.
- Private certifiers need to include an appropriate condition for development contributions which provide the applicant with information about the quantum of contributions due and facilitates their payment to the correct inflation quarter.

2. Application of development Standards and controls.

Ku-ring-gai Council is **opposed** to the expansion of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to include two storey medium density housing types. However, should the government proceed with SEPP amendments, the following discussion identifies concerns the proposed controls and offers without prejudice recommendations for amendments to improve planning outcomes from any future amended SEPP.

Council also strongly urges that any prosed changes to the SEPP be subject to further community consultation once they have been drafted and prior to being made.

2.1. Bush fire prone land, Biodiversity Protection and Riparian land

Ku-ring-gai LGA contains significant areas with high ecological values, such as biodiversity and riparian lands.

Council has identified strategically important biodiversity and riparian lands and mapped them as part of the LEPs. The LEPs also contain specific additional local clauses relating to the protection of biodiversity and riparian lands. Concern is raised that the proposed medium density complying development does not take into consideration biodiversity significance or riparian land on sites. The maintenance and enhancement of biodiversity and riparian values within the LGA is dependent on appropriate policy to manage the existing and future pressures.

The minimum lot sizes and width do not take into consideration steep topography, riparian zones, and the preservation of remnant vegetation and established gardens. Within Ku-ring-gai, locally occurring vegetation includes both critically endangered and endangered ecological communities and the integrity of its creeks and watercourses is important to the health of these vegetation communities. It would be impossible to construct the proposed medium density housing types within the minimum lot sizes and retain the environmental outcomes for the local area.

Bushfire risk represents a clear and present danger to the Ku-ring-gai community. The extent of bushland within and adjoining the LGA and the steep topography of the area results in significant risk from fire. Development has occurred in a number of areas where the local community is surrounded by extensive areas of bushfire prone vegetation, often with inadequate road networks to enable safe evacuation. Pressure to increase development in these areas has led to increasing evacuation risks for residents. The evacuation risk in these areas is recognised by the prohibition of development under SEPP (Housing for Seniors or People with a Disability) 2004 and dual occupancy development under former SEPP53 – Metropolitan Residential Development. Concern is raised that the proposal to allow medium density complying development is inconsistent with the recognised prohibition in these evacuation areas which seeks to limit increases in residential density – in order to reduce the number of people trying to leave an areas where there is a high risk of not being able to evacuate safely.

Recommendation

- Clause 1.19 should be amended to exclude medium density complying development on riparian land and areas of biodiversity as mapped under Councils LEPs.
- Clause 1.19 should be amended to exclude medium density complying development on bushfire prone land and/or areas of bushfire evacuation risk.

2.2. Heritage

Of concern to Ku-ring-gai is the impact of the medium density complying development on neighbouring lots. That is – complying development in the vicinity of heritage items and conservation areas.

Ku-ring-gai's current DCP stipulates setbacks – 12m separation from heritage items and front setbacks the same as adjacent heritage item – in order to protect the curtilage of heritage items and places within a heritage conservation area. The proposed 0.9m – 2m setback to the side boundary (which does not include roof overhangs and eaves) will encroach upon the visual curtilage of many of our heritage places.

Council's DCP includes specific controls relating to development on sites that either directly adjoin or are in the vicinity of a Heritage Item or HCA. These controls are in place to ensure that new development respects and conserves the significance of nearby Heritage Items or HCAs and their settings.

The Heritage Conservation Area boundaries in Ku-ring-gai were created to incorporate assessed areas of cultural significance. Ku-ring-gai did not "pad out" the Heritage Conservation Areas by unfairly creating a buffer of non-significant properties around these significant areas – but – clearly if these heritage properties are to be protected from unsympathetic complying development, a curtilage buffer within the statutorily recognised Heritage Conservation Area is required.

The canopy of mature trees provides a backdrop to Ku-ring-gai's historic buildings and streetscapes. The mature and established gardens and traditional garden setting of heritage places (both within their own lots and borrowed from their neighbours garden landscape) would be at risk if a significant portion of the LGA's soft landscaping could be built over by medium density complying development.

Long term effects as a result of the proposed medium density complying development could include pressure to erode, delist or demolish heritage items outside of HCAs due to impact on value. Owners of heritage items may not undertake maintenance – hoping to develop the site in the future.

Recommendation

- To not allow complying development on lots that adjoin heritage items and/or heritage conservation areas, and to allow assessment against Council development controls which protect the heritage values. Placing this affectation on these lots would represent only a marginal change in the availability of places for complying development across Sydney, but would represent a significant gain to heritage conservation.

2.3. Development standards and built form controls

Of particular concern is the dissimilarity between the proposed complying development standards and Ku-ring-gai Council's existing development controls relating to Dual Occupancy and Townhouse development. Ku-ring-gai's controls relating to these development types seek to ensure the character of the locality is retained by ensuring that buildings and other development have a good relationship with neighbouring developments, the public domain and the landscape qualities of the locality. Comparison tables of the proposed complying development standards and Ku-ring-gai Council's controls for Dual Occupancies and Townhouses are provided in **Appendix 1**

The proposed standards do not provide any controls to limit floor space ratio or gross floor area, unlike the General Housing Code and Ku-ring-gai Councils LEPs. Neither does it provide any other type of density control, such as site area per dwelling or maximum dwelling size. The lack of density controls will encourage the complete maximisation of footprint within the required setbacks and height. For example, the 'manor-home' depicted in Figures 12, 13 and 14 of the Background Paper is an unrealistic depiction of what may occur on this site, as it is showing approximately 43% landscaped area. Without a density control, this development can fill the area within the setbacks by removing any remaining deck or garden in the rear setback (down to the minimum 30% landscaped area), by removing articulation at the front door, and removing any additional balcony beyond what is required at the upper floors. This will make for large and boxy built form that is unsympathetic within their context in terms of footprint and bulk. A well measured density control can assist in preventing this type of maximisation that will result in overdevelopment.

Consideration should be given to providing an overall building length control in order to limit the overall bulk and scale. Consideration should also be given to providing a wall length control in order to break down longer walls with articulation.

The proposed controls do not shape car parking outcomes beyond driveway width, setback and car space numbers. There is no discussion provided regarding on-grade parking versus basement parking. Further consideration should be given to controlling on-grade parking outcomes with provisions such as number of car parking spaces grouped together, length of driveway, parking within setbacks and integration of landscape. In terms of basement parking, consideration should be given to controlling the distance from the street edge that driveway ramps can start (refer to Figure 10 Background Paper for a poor streetscape outcome), the treatment of basement walls partially out of the ground, access to and from basements given building class under the BCA/NCC and accessibility requirements.

- Consideration should be given to a form of density control to reduce the impacts associated with overdevelopment of lots.
- Consideration should be given to articulation controls which can assist to reduce bulk and scale as well and meeting required landscaped area requirements.
- Additional controls are required to shape car parking outcomes in a positive way as the current proposed controls will allow for negative design outcomes.

2.4. Dwelling Amenity

There are no proposed standards relating to the provision of minimum dwelling sizes. This is of particular concern, noting the small minimum lot sizes proposed for the development types, being 400sqm-600sqm and allowing up to 10 dwellings. This will encourage developers to crowd as many dwellings possible on each lot. It would be possible for instance to provide 10 25-30sqm studios in a single development. Standards should be provided on minimum dwelling size, and should be similar to, or exceed, those outlined in the Apartment Design Guide.

The Background Paper (page 25) outlines *"…ensures that amenity issues such as access to natural light and ventilation area readily achieved"* – however the proposed amenity standards for all development types outlined in the Discussion Paper do not include any standards relating to access to natural light or ventilation of dwellings.

The Discussion Paper notes that *"Amenity standards manage the impact upon the amenity of adjoining properties and control the appearance of the building.* None of the standards contained in Amenity Standards ensure adequate amenity for occupants of the dwelling.

At a minimum, standards should be provided for solar access to living rooms and private open spaces, daylight and ventilation of all habitable rooms, natural cross ventilation, maximum building depth and minimum room sizes. These should be similar to those outlined in the Apartment Design Guide, however as medium density housing is a lower density housing form, it is considered that solar access and natural cross ventilation should be provided to all dwellings rather than a percentage.

The proposed orientation controls which state 'no dwelling can be orientated towards a side boundary' is too simplistic and results in poor built form outcomes. Whilst this arrangement means that neighbouring sites will not be overlooked, the outcome is that the proposed dwellings will look into *each other* instead creating visual and acoustic privacy issues. The "all orientated to the front" arrangement is also particularly poor in terms of address and access, requiring pedestrian pathways and driveways winding in the depth of the site. A preferred orientation control is to allow rear townhouses to orientate towards the side boundary, but include grater side setback controls for these dwellings. This arrangement ensures adequate building separation and landscape between properties and simplifies address and access pathways

The Discussion Paper does not give any consideration of pedestrian access or circulation within the site. Standards should be provided which requires a dedicated pedestrian path is provided to each dwelling – separate from driveways. Consideration should also be given to ensuring that every dwelling that faces the street should have an address to the street and that every dwelling has a clear and positive address.

The Discussion Paper does not specify any provisions for storage within dwellings. Storage provisions should be similar to, or exceed, the volumes outlined in the Apartment Design Guide to ensure adequate storage is provided, particularly in smaller dwellings.

The Discussion Paper does not specify any provisions for a proportion of housing to be adaptable housing. It is noted that the medium density housing types proposed could be readily designed and constructed to be adaptable housing to assist ageing in place. It is recommended that standards should be included that require a proportion of the medium density housing to be designed, constructed and certified as adaptable housing. The standard should require compliance with the Liveable Housing Design Guidelines.

Recommendation

- Standards should be included to ensure the adequate amenity of dwellings. Standards should cover at a minimum solar access and daylight access, natural cross ventilation and natural ventilation, maximum building depth and minimum room sizes.
- An alternative orientation control should be investigated as the proposed control will result in poor built form.
- Standards should be provided around pedestrian access and dwelling address.
- Standards should be provided for the provision of storage within dwellings.
- Standards should be provided for the provision of minimum dwellings sizes.
- Standards should be provided that specify a proportion of the housing to be designed and constructed as adaptable housing in accordance with Liveable Housing Design Guidelines, with 100% of dwellings being constructed to Silver level, and 10% Platinum.

2.5. Landscape

Historically, Ku-ring-gai's planning policies have required deep front setbacks to provide space for the planting of canopy trees that reduce the dominance of built form. The imposition of a lesser 4.5m setback, or average setback between existing irregular built form, will reduce landscape and streetscape outcomes, undermining the intended planned character of the area as expected by the community.

Ku-ring-gai requires a minimum side setback of 3m in order to achieve landscape outcomes and adequate building separation. The imposition of a lesser setback of 0.9m-2.0m will reduce the scale of planting possible between properties as a landscape buffer, reducing the amenity and compromising the outlook for habitable rooms of the proposed development facing the boundary.

The proposed controls provide no requirements for screen planting, canopy tree planting or soft landscape treatments, with only vague suggestions for "opportunities" for driveway planting, boundary screen planting to side setbacks and landscaping to rear setbacks.

The definition of landscaped area should describe the area as "for planting such as lawns, groundcovers, shrubs and trees". Driveways, hardstands and hard paved areas need to be excluded from the calculation of landscaped area on a site.

The minimum requirement of 30% of the site as landscaped area is similar to SEPP (Housing for Seniors or People with a Disability) 2004, however the policies differ in a number of ways. For example, the SEPP Seniors requires a minimum 15% deep soil area (minimum 3m width). The proposed medium density complying development does not provide any requirements for deep soil landscaping.

Council's DCP requires 30-40% deep soil area for medium density style developments. Deep soil area is defined by Ku-ring-gai Councils DCP as follows:

The soft landscaped part of the site area:

I. *That is not occupied by any structure, whether above or below the surface of the ground, except for minor structures such as:*
   -paths to 1.2m wide
   - stormwater pipes of 300mm or less in diameter
   -lightweight fences
   -bench seats
   -lighting poles
   -drainage pits with a surface area less than 1sqm
II. *That has a minimum width of 2sqm*
III. *That is not used for car parking*
IV. *May be used for water sensitive urban design, provided it does not compromise the ability to achieve the screen and canopy planning required by this DCP*

The requirements for deep soil landscaping ensure there is sufficient space to provide for large and medium sized trees which provide shade and amenity, soften the built form, capture carbon and maintain and enhance the tree canopy. Concern is raised that by not specifying a requirement for deep soil landscaping to be provided on site, there will be insufficient space for planting of canopy trees, noting the proposed basement excavation setbacks.

Recommendation

- The method of controlling setbacks is insufficient to achieve desired landscape outcomes.
- Controls need to be included which require screen planting, canopy tree planting and soft landscaped area treatments.
- The definition of landscaped area should describe the area as "for planting such as lawns, groundcovers, shrubs and trees" and needs to ensure driveways, hardstand car spaces and hard paved areas are excluded from the calculation of landscaped area.
- Controls need to be included which require a minimum deep soil area to be provided on the site – noting that Councils DCP requires 30%-40% deep soil area.

2.6. Subdivision of Dual Occupancy

The proposed Torrens title subdivision of dual occupancy developments under the Codes SEPP is misleading, as once the subdivision is complete; the dwellings are no longer considered a dual occupancy – but a single dwelling on a single lot.

It is unclear whether the proposed 30% minimum landscaped area will apply to the sites before of after subdivision. If it only applies before subdivision, one Torrens Title lot can be deficient in landscaped area. Further, the Codes SEPP appear to allow the opportunity for additional development to the resulting Torrens Title sites under Exempt and Complying development that may increase environmental impacts. For example, outbuildings and decks permitted under the Codes SEPP may further reduce landscaped area.

It is noted that the detached form of dual occupancy discussed on p13 of the Discussion Paper is not further elaborated upon and does not appear to meet the proposed controls (Figure 2 shows that the minimum rear setback is not met). No testing appears to have been conducted for this type. It is suggested that this detached form should not be included until its workability is demonstrated.

Recommendation

- If Torrens title subdivision is to be permitted as complying development, then it should only be permitted after the dual occupancy buildings are completed.
- Conditions need to be included to prevent the multiple subdivision of sites, by staging a successive series of dual occupancies developments on the original site.
- Conditions or controls need to ensure that development creep on resulting subdivided Torrens Title lots which increases environmental impacts cannot occur.
- The detached form of dual occupancy should not be included until testing can demonstrate its workability

2.7. Stormwater, Waste and Earthworks

Council has concerns regarding the proposed standards relating to stormwater and waste for the proposed medium density development types.

The proposed Amenity Standards 2.1.3, 2.2.3, 2.3.3 relating to drainage are insufficient with regards to the requirement to the disposal of stormwater to an inter-allotment drainage system. The terms of the easement and existence of suitable infrastructure must be known. Connection of new stormwater works to a dilapidated or non-existent pipe causes flooding to neighbours. The installation of a new pipe in a long easement through a number of properties is not itself

complying development and would require its own development application. It should be noted that dual occupancy development also requires on-site detention.

With regards to the proposed standards 2.2.1 and 2.3.1 regarding on-site stormwater detention systems, it should be noted that water management has evolved past on-site detention. Rainwater retention and re-use as well as stormwater treatment are required to achieve the objectives of other planning instruments, such as SREP (Sydney Harbour Catchment) 2005, Clause 13(h) which requires:

Development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water……

Council certification of on-site detention designs and water management only applies to areas outside Sydney Water's area of operations (Section 68 of the Local Government Act 1993 and Clause 3.32 of the Codes SEPP) and should not be introduced elsewhere. Assessment in isolation means that other matters such as impacts on trees or effects on downstream properties through inadequate inter-allotment drainage infrastructure could be missed.

Appropriately qualified specialists could certify that the water management designs comply with Council policies, however how are they to be identified as being "appropriately qualified". At present, certification of water management designs for complying development is variable and can be unreliable.

With regards to waste management, Ku-ring-gai Council requires internal collection for development of more than four dwellings (not ten as proposed). This requires manoeuvring space to be provided for a 5.5m long truck as well as 2.6m minimum headroom and 20% driveway gradient. Other Councils do not have this requirement. In this regard, certification of waste management facilities in isolation is not a good idea.

With regards, to the proposed standard 2.2.3 relating to earthworks, retaining walls and structural support, there is a need to quantify what is meant by "proximity to side and rear boundaries". If the proposed side boundary setback is 1.2m, then any fill will be in proximity to the boundary.

Recommendation

- Proposed standards relating to disposal of stormwater via inter-allotment system is insufficient.
- Consideration of other water management systems such as rainwater retention and re-use and stormwater treatment instead of only on-site detention as proposed.
- Council certification of on-site detention designs and water management only applies to areas outside Sydney Water's area of operations and should not be introduced elsewhere.
- Outline specific accreditations to recognise "appropriately qualified" specialists, as at present certification of water management designs for complying development is variable and unreliable.
- Certification of waste management facilities in isolation is not recommended.
- Clarification of what is meant by "proximity to side and rear boundaries"

2.8. Implementation

Council has concern regarding the implementation of landscape maintenance period requirements, how would these be enforced and by whom?

Additional conditions need to be considered for the protection of Council property such as roads and footpaths within the vicinity of development sites, as this is presently not covered by the complying development conditions and already causes problems for Councils. Where excavation is involved (as proposed for the medium density complying development) the damage is likely to be worse due to the size and weight of vehicles involved. Conditions need to be included which clearly state responsibility for repairs during and after works.

With regards to stormwater and waste management, the protection of on-site stormwater detention systems is achieved by the imposition of positive covenants and restrictions on title. This would have to be included in the conditions for complying developments. In conjunction with internal waste collection, is the imposition of an easement for waste collection on title. This would also have to be included in the conditions for complying developments.

If Torrens title subdivision is permitted, conditions will need to be included for the creation of easements, rights of way. A surveyor should certify that these items are in the correct place before any subdivision plan is approved. A condition requiring the Sydney Water Section 73 Certificate will also need to be included.

Recommendation

- Conditions need to be included to ensure protection of Council assets
- Conditions need to ensure the imposition of positive covenants, easements restrictions on title with regarding to on-site stormwater detention and waste collection
- Conditions need to be included for Torrens title subdivision of dual occupancy to ensure creation of easements, rights of way, Sydney Water Section 73 Certificate.

2.9. Drafting of standards

The standards proposed are not sufficiently robust to be the basis of a numerically based complying development regime. The controls must be more thoroughly interrogated and based on a broader range of precedent studies and worked examples that expose the issues and complexity arising out of the proposed controls. Any proposed controls must be carefully drafted and coordinated, and the terms explicitly defined, to avoid future implementation and interpretation issues that will lead to uncertainty in the process and to unintended and diminished outcomes.

Specific examples include the following:

- The proposed controls do not anticipate the situation where a dual occupancy and townhouses lots may have a rear lane. The opportunity to provide parking from the lane with the landscaped area located centrally should be permitted.
- The proposed controls do not anticipate the triggering of BCA/NCC Class 2 construction for the ‘stacked’ duplex type, ‘manor house’ type, or ‘vertically’ attached townhouse type in terms of fire separation. Proposed controls for side setbacks range from 0.9m for dual occupancy to 2m for townhouses. This will mean that almost every medium density housing complying development proposal in New South Wales will rely on an alternative fire engineered solution for BCA/NCC compliance. Accessibility provisions are also triggered under BCA/NCC Class 2 which will need to be considered.
- The proposed controls do not anticipate the complexity of definition of distinguishing between ‘front’, ‘side’ and ‘rear’ setbacks for corner lots and irregularly shaped lots. The controls do not anticipate the complexity of definition for ‘rear’ setbacks when the site has stepped setbacks and the setback is based on a percentage of site length (for example Figure 17 in the

Background Paper). A clear and robust definition of front, side and rear setbacks is required to administer the controls adequately.

- The proposed control for 'front setbacks' is stated as '4.5m or the average of the adjoining setbacks, whichever is the greater'. This construction means that where front setbacks along a street vary greatly, proposed development meeting an average front setback will be different again. The wording of the control does not appear to anticipate the situation adjacent to corner lots where the neighbouring corner property is often built closer to a side setback, nor does it anticipate other irregularities such as the existence of battle-axe blocks as adjacent properties.
- The proposed control for 'building elements within an articulation zone to a primary road' states that 'building articulation elements are not to occupy more than 25 per cent of the street setback.' This wording defines an area within the front setback which would allow for elements such as porticoes and bay windows to reach all the way out to the street edge as long as they are not wider than a quarter of the frontage. This does not appear to be an intended or desired outcome.
- The proposed control for 'privacy' states that certain windows should be 'screened'. The term 'screen' should be defined so that its performance is not too little as to not provide adequate privacy, and not too much as to restrict outlook from habitable rooms. The screening of windows as a solution to privacy, as opposed to adequate setbacks, is not supported particularly within a numerically based complying development regime where it is likely to be the predominant outcome.
- The proposed control for 'car parking requirements' states that 'any parking on a battle axe lot development…'. Battle-axe lot development is not permissible under the controls as lots must have a minimum street frontage dimension under primary standards.
- The proposed control for 'removal or pruning of trees' states that 'a separate consent is required unless the tree is not listed on a significant tree register… kept by the Council'. The term 'significant tree register' is not sufficient to capture other definitions such as 'Areas of Biodiversity'. This exclusionary definition should be thoroughly researched and broadened to capture and protect all important tree definitions.

Any additional controls proposed will also need rigorous drafting and testing to ensure their workability and appropriateness for a numerically based complying development regime.

Recommendation

- Conduct further and extensive research on controls drawn from a complete cross section of current Council controls to appreciate where the proposed controls sit in relation to existing controls
- Interrogate and thoroughly test proposed controls to ensure that they are workable and consider how they are coordinated with the BCA/NCC and other relevant provisions such as Australian Standards.
- Carefully draft proposed controls to ensure they achieve their intention.
- Carefully define terms to reduce interpretation.

2.10. Errors

The Discussion Paper contains a number of errors as outlined below:

- 2.2 Development resulting in 3-4 dwellings – manor homes – page 24 under "Design Standard – Minimum side boundary setback" outlines minimum side boundary setback of 1.5m is

proposed. However, in the summary 2.2.5 on page 29, the minimum side boundary setback is outlined as 1.2m

- 2.3 Development resulting in 3-10 dwellings (townhouses/terraces) - page 34 under “Design Standard – Minimum side boundary setback” the text outlines that a minimum 2.0m side boundary setback is proposed and refers to figure 23. However, figure 23 indicates that the minimum side boundary setback is 0.9m.
- 2.3 Development resulting in 3-10 dwellings (townhouses/terraces) – page 37 under “Design Standard – Minimum internal separation” outlines a minimal internal separation distance of 6m between dwellings in the same development. However, in the summary 2.3.5 on page 40, the minimum internal separation distance is outlined at 6.5m.
- 2.3.1 Engineering Standards – Clause 5A.2 of the Codes SEPP in the Commercial and Industrial Development Codes does not refer to on-site detention systems, as it is about water supply and sewerage. Should Clause 5A.28 be referenced instead? This Clause references Section 68 of the Local Government Act which does not apply in Sydney.

APPENDIX 1 - Comparison of standards

Development – Dual Occupancies (2 dwellings)

Control	Proposed Complying Development	Ku-ring-gai Council LEP + DCP	Comparison
Minimum lot size	400sqm Torrens title subdivision – each lot 200sqm	Dual occupancies only permitted on sites identified in Schedule 1 KLEP 2015 : • minimum lot size of 1200sq Torrens title subdivision – each lot 550sqm	Proposed complying development standards significantly smaller lot size and subdivision size
Minimum frontage	12.5m detached form 15m semi-detached form	N/A	N/A
Maximum building height	8.5m 2 storey	9.5m 2 storey	Heights are comparable
Maximum FSR	N/A	0.4 : 1	No density standard proposed for complying development
Minimum front setback	4.5m or the average of the adjoining setbacks, whichever is the greater	For single storey: • Low side – 9m • High side – 12m For two storey : • Low side- 9m (minimum) 11m (average) • High side – 12m(minimum) 14m (average)	Proposed complying development standards significantly smaller front setback
Minimum rear setback	6m or 25% of the average length of the side boundaries, whichever is greater	Depth greater than 48m – 12m minimum rear setback Depth less than 48m – minimum rear setback 25% average depth of the site	Significantly smaller rear setback for deep lots under complying development Comparable rear setback for sites less than 48m deep.
Minimum side boundary setback	0.9m	Site width less than 20m: • Single storey – 1.5m	Proposed complying development standards

		• Two storey – 2m Site width 20m or more: • Single storey – 9% site width • Two storey – 12% site width	significantly smaller side setbacks
Minimum Separation between detached Dual Occupancy	N/A	7m	No standard proposed for separation between detached dual occupancy development under complying development
Minimum landscaped area	30% site area	2 x 1 storey dwellings – 50% site area 1x1 storey and 1 x 2 storey dwellings – 55% site area 2x2 storey dwellings – 40% site area	Proposed landscaped area significantly lower for complying development
Minimum private open space	24sqm and minimum dimension 4m at Ground Level 12sqm and minimum depth 2.4m balcony	At least one area of useable private open space – minimum depth 5m and minimum area 50sqm	Proposed standards for complying development significantly smaller amount of private open space
Garage/Parking setback	1m behind front setback	At or behind the front setback	Comparable
Driveway setback	1m	N/A	Comparable
Car parking spaces	In accordance with The Guide to Traffic Generating Development or the relevant Council controls, whichever is less	Dual Occupancy under 125sqm – 1 space per dwelling Dual Occupancy over 125sqm – 2 spaces per dwelling	Comparable

Development – Manor Homes (3-4 dwellings)

- Ku-ring-gai currently does not have any provisions for "manor homes" within the LEP or DCP.
- It is noted that the definition of "Manor Homes" is currently defined by the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* to refer to a two storey building containing four dwellings, and that is it proposed to change this definition to containing three-four dwellings. However, concern is raised that under the

Standard LEP definitions, a “Manor Home” would fall under the definition of “Residential Flat Building” being a building containing 3 or more dwellings.

Development – 3-10 Dwellings (townhouses/terraces/combination)

Control	Recommended Complying Development	Ku-ring-gai Council LEP + DCP	Comparison
Minimum lot size	600sqm	1,200sqm	Proposed complying development standard significantly smaller- only 50% of Councils requirement for minimum lot size
Minimum frontage	18m	Less than 1,800sqm = 24m 1,800sqm or more = 30m	Proposed complying development significantly smaller minimum site frontage
Maximum building height	8.5m 2 storey	9.5m -11.5m 3 storey	Council allows up to 3 storey
Maximum FSR	N/A	0.5: 1 0.8:1	No density standard proposed for complying development
Minimum front setback	4.5m	10m	Proposed complying development minimum front setback significantly smaller
Minimum rear setback	6m or 25% of the average length of the side boundaries whichever is greater	6m	Comparable
Minimum side boundary setback	2m	3m 6m where dwellings are orientated towards side boundaries	Proposed complying development side setback smaller and no standards applying to where dwellings orientated towards side boundary
Minimum Internal Separation	6-6.5m (both are stated – unsure what is correct)	Up to 2nd storey : • 3m between non-habitable rooms • 6m between	Comparable

		habitable rooms/balconies and all other cases 3rd Storey: • 12m between habitable rooms/balconies • 7m between habitable room/balcony and non habitable room • 3m between non-habitable rooms	
Minimum landscaped area	30% site area	40% deep soil landscaping area	Proposed complying development significantly lower landscaped area and no requirement for deep soil landscaping
Minimum private open space	24sqm and minimum dimension of 4m at Ground Level 12sqm and minimum depth 2.4m for balcony	35sqm at Ground Floor: • Single space 25sqm with minimum dimension 4m + direct access to living area • Remaining space minimum dimension 2m	Proposed complying development significantly smaller requirement for private open space area
Garage/Parking setback	1m behind the front setback	• Basement car parking • Garage integrated into building and located behind the building line	Council requires basement carparking or the garage to be integrated into building.
Minimum Driveway Setback	1m	3m	Council requires larger setback of driveway to allow for sufficient landscaping
carparking spaces	As per the guide to Traffic Generating Development of the relevant Council Controls, whichever is less	Within 400m railway station: • 1 bedroom = 1 space • 2 bedroom = 1 -1.5 spaces • 3 bedroom or more = 1-2 spaces • Visitor = 1 space per 4 units	Comparable

		All other locations: • 1 bedroom = 1 space • 2 bedroom = 1.25space • 3 bedroom = 1.5spaces • Visitor = 1 space per 4 units	
Minimum excavation setbacks	Compliance with all applicable building setbacks and maximum depth 4m	Meet front and rear setbacks and minimum 3m side boundaries	Comparable
Adaptable Housing	N/A	All multi-dwelling housing development are to contain at least one dwelling for each 10 dwellings or part thereof designed as adaptable housing in accordance with the provisions of AS4299-1995: Adaptable Housing Class C	Proposed Complying Development provides no requirement for adaptable housing