

Low Rise Medium Density Housing Code Independent Review Report

July 2019

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Executive Summary

The purpose of this independent review is to provide advice and recommendations to the NSW Minister for Planning and Public Spaces (the Minister) on the implementation of the Low Rise Medium Density Housing Code (the Code) in deferred council areas¹. The review has identified broad support for increasing housing diversity across NSW.

NSW needs greater housing diversity to address its current and future housing needs. There are strong demographic and supply drivers underpinning the need for a more diverse range of dwelling types and sizes. Not all current and future households will be seeking single dwelling houses or multi storey apartments. There is social research evidence of strong community support for the availability of multi dwelling housing in the areas in which they live as well as a clear recognition of the shortage of this stock. Currently there is not enough of the type of housing the Code seeks to provide, commonly described as ‘the missing middle’.

Discussions with stakeholders have identified three key questions about the Code that have shaped the recommendations for its implementation in the 45 deferred council areas and more generally. These questions are:

1. What is the intent of the Code?
2. Can local housing needs and local character be recognised and enhanced through a complying development approach to low rise medium density housing?
3. Can private certifiers rely on the Design Verification Statement prepared by the building designer as being consistent with the Design Guide?

1. The intent of the Code

The compelling rationale for the Code and its role in delivering housing diversity in combination with other approval pathways available through Local Environmental Plans (LEPs) and State policies is not widely understood.

Regional and District Plans identify housing number (not housing diversity) targets and the need to prepare Local Housing Strategies. Many councils are not yet focussed on supplying housing for the ‘missing middle’, particularly smaller dwellings in addition to residential flat buildings.

It is currently unclear if and how the Code is intended to work in conjunction with other housing-related State Environmental Planning Policies (SEPPs) including the *SEPP (Affordable Rental Housing) 2009* that delivers affordable rental housing, boarding houses and secondary dwellings, and the *SEPP (Housing for Seniors or People with a Disability) 2004*. We have been advised that the Department is currently looking at this issue.

An overall policy approach to housing supply and diversity is warranted. We recommend that the Greater Sydney Commission work with councils to develop housing diversity targets within the overall dwelling number targets set for each local government area.

¹ These include Bathurst Regional, Bayside, Bellingen, City of Blue Mountains, Burwood, Byron, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Central Coast, City of Coffs Harbour, Cumberland, Georges River, City of Hawkesbury, Hilltops, Hornsby, Hunter’s Hill, Inner West, Kiama, City of Liverpool, Mid-Coast, Mid-Western Regional, Moree Plains, Mosman, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, City of Shellharbour, City of Shoalhaven, Snowy Monaro Regional, Strathfield, Sutherland Shire, City of Sydney, Tamworth Regional, The Hills Shire, Tweed, Upper Lachlan Shire, City of Willoughby, Wingecarribee, Wollondilly, City of Wollongong, Woollahra, Yass Valley until October 30th 2019 and in relation to land in a deferred area in the local government area of City of Ryde—1 July 2020.

The name of the code as The Low Rise Medium Density Housing Code contributes to the current lack of understanding. Medium density means different things to different people, with social research indicating that many view it as 3-5 storey development, generally in the form of a residential flat building. Some view medium density as a function of the number of dwellings per hectare, whereas the Code typifies medium density as particular dwelling forms. We therefore recommend renaming the Code the **Two Storey Housing Diversity Code**. We also recommend that more clarity about the kind of multi dwelling housing the Code seeks to deliver be articulated through the development of Planning Practice Notes.

The Planning Practice Notes should be promulgated through a continuation of the Department's existing extensive education program, emphasising the housing diversity aims of the Code for the missing middle, and providing information to address misunderstandings about the Code that have been identified through this review.

2. Local character

The key issue for local councils arising from this review is that the application of the Code allows medium density development to be approved as complying development, rather than through council controlled development assessment processes. Councils are concerned about the impact of the implementation of the Code on existing local character. While the Code requires designers to consider local character and the Design Verification Statement is to ensure consistency with local character, the current strategic planning work being undertaken by councils will support improved articulation of specific local aspects.

Councils across the state are currently undertaking significant, detailed local strategic planning as a result of recent reforms to the planning system. This work includes:

- Local Housing Strategies to meet the requirements of Regional and District Plans
- Local Strategic Planning Statements - due to be finalised by 31 March 2020 for Greater Sydney region councils and 1 July 2020 for all other councils
- Local Character work to reflect the State Government's commitment to ensuring local character is recognised and enhanced through local strategic planning and that this work informs planning and decision making at all levels. This work includes preparation of local character statements for inclusion in development control plans, and potentially to inform local character overlays in local environment plans².

This work aligns with the current directions of the planning system as articulated in the Planning Circular PS 18-001 emphasising the importance of respecting and enhancing local character³, and the mechanisms to achieve this that are outlined in the *Discussion Paper – Local Character Overlays*, February 2019.

Given the significant concerns raised by council officers about the potential impact of the Code on local character, and to allow time for local strategic planning work to be completed, we recommend that application of the Code be further deferred until 1 July 2020. Areas identified as being of Special Local Character can be excluded from the Code. Should the Minister be of a mind that the Code take effect from 1 November 2019, the Department should work with deferred councils to identify interim Special Local Character Areas that can be excluded from the Code while further local strategic planning work is completed. Final Special Local Character Areas for Code exclusion in deferred council areas would be agreed and implemented by 1 July 2020.

² In this report we refer to an area where a local character overlay might be applied as a 'Special Local Character Area'

³ Respecting and enhancing local character in the planning system: Circular PS 18-001, 16 January 2018

We understand that the property industry, ‘family’ and mid-sized developers are keen to see the Code switched on without further delay. Ongoing deferrals can undermine certainty of investment and confidence in the planning system. The approach we are proposing will achieve improved understanding and acceptance of the Code’s intent and greater uptake of its provisions.

Most stakeholders agree that strengthening the design aspects of housing diversity is important. Concerns have been raised about the range of factors that contribute to local character, and that a one-size-fits-all approach through a Code may not adequately address those character variations, particularly the variations between infill and greenfield areas. We recommend more detailed guidance is offered on respecting and enhancing local character, through Planning Practice Notes that can support the intended outcomes of the Design Guide, with a particular focus on locating dwellings within a precinct and local character context and in infill areas.

We are very aware of concerns from the development industry, some council planning staff, and individual community members (many of whom have contacted us directly during the course of this review) that some councils and communities may attempt to use local character statements as a means of ‘switching off’ some forms of development and code assessed development generally, on the basis of local character impact. That is why we would support such Code exclusions being permitted only on the basis that they are agreed to by the Minister, reflect local strategic planning work and can demonstrate that controls will facilitate not only the numbers but an appropriate diversity of supply in terms of housing type, size and affordability.

Definitional issues have been raised and we recommend amendment of the Standard Instrument LEP definition of **multi dwelling housing** to allow more flexibility in permissibility of the dwelling types permitted by the Code in R1 General Residential, R2 Low Density Residential and RU5 Village zones. We further recommend that development for the purpose of **multi-dwelling housing (terraces)** under the Code be limited to a maximum of 4 dwellings in a single complying development certificate in infill/greyfield areas.

It is our understanding that these recommendations mostly align with the positions of many councils, of the Planning Institute of Australia (PIA) and Local Government NSW (LGNSW), in that local variation to or exclusion from the Code to achieve local character outcomes should be permitted.

3. Certification

A significant challenge for the future implementation of the Code is its perceived complexity and the concerns by councils and private certifiers themselves around the process of private certification.

We understand the Code is unique in that it inserts a ‘merit based’ or qualitative assessment in relation to building design into the complying development system which is essentially intended to be a binary (yes/no) system. Certifiers have expressed concerns about risks, including risk of litigation, in issuing complying development certificates that sign off on Design Verification Statements prepared by third parties.

While it is beyond the scope of this review to address the raft of current community concerns with private certification, we recommend that the Design Verification Statement be deemed to be a “Compliance Certificate” for the purposes of Section 6.30 of the *NSW Environmental Planning and Assessment Act 1979*.

A gap in our review has been the availability of current data around Complying Development Certificates issued under this Code, and for secondary dwelling Complying Development Certificates under the *Affordable Rental Housing SEPP*. We understand that to date in the areas where the Code does apply there has been very limited uptake. State government monitoring of outcomes is essential and we recommend that uptake of the Code, and implemented in accordance with the recommendation of this report, be monitored and reviewed for a period of 21 months from 1 November 2019 until 30 June 2021.

1 Introduction

The purpose of this independent review is to provide advice and recommendations to the NSW Minister for Planning and Public Spaces (the Minister) on implementation of the Low Rise Medium Density Housing Code (the Code) in deferred council areas⁴.

This includes an assessment of the feedback and issues previously raised by councils and stakeholders, feedback from targeted consultation with local councils, the NSW Department of Planning, Industry and Environment (the Department), the Greater Sydney Commission (GSC) and peak groups undertaken during the review.

The review recommendations have considered:

- Any potential amendments to the Code
- Any potential policy directions for local planning
- How the objectives of the policy could be considered in other aspects of the planning system, including through local strategic planning.

The full Scope of Work for this review is at **Appendix 1**. In summary, the purpose of the independent review is to provide advice and recommendations to the Minister on implementation of the Code in the deferred councils.

Professor Roberta Ryan and Neil Selmon from the University of Technology Sydney have been appointed as independent experts to conduct this review over a four week period from late June until end-July 2019. We are the authors of this report.

1.1 Approach

Our approach in responding to the Scope of Work has been informed by:

- A review of research into community attitudes to medium density housing and a jurisdictional review of various approaches to increasing housing diversity
- A desktop review of peak and industry body positions
- Reviewing relevant background material, including information provided by councils to support their requests for an extension to the deferral or exemption from the Code and the content of 17 planning proposals submitted by deferred councils
- Feedback from the peak, representative and industry bodies through stakeholder meetings, interviews (15 discussions) and on-going email exchanges as well as direct correspondence from members of the community concerned with their councils' deferral of the Code (there is no one stakeholder organisation that represents the views of these people)

⁴ These include Bathurst Regional, Bayside, Bellingen, City of Blue Mountains, Burwood, Byron, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Central Coast, City of Coffs Harbour, Cumberland, Georges River, City of Hawkesbury, Hilltops, Hornsby, Hunter's Hill, Inner West, Kiama, City of Liverpool, Mid-Coast, Mid-Western Regional, Moree Plains, Mosman, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, City of Shellharbour, City of Shoalhaven, Snowy Monaro Regional, Strathfield, Sutherland Shire, City of Sydney, Tamworth Regional, The Hills Shire, Tweed, Upper Lachlan Shire, City of Willoughby, Wingecarribee, Wollondilly, City of Wollongong, Woollahra, Yass Valley until October 30th 2019 and in relation to land in a deferred area in the local government area of City of Ryde—1 July 2020.

- Interviews with 27⁵ councils including those where the Code is in effect and others who have sought deferral or exemption.

1.2 Principles

The following principles have informed our analysis and the formation of recommendations:

- Importance of local strategic planning undertaken by councils which reflects community values and appreciates the needs of current and future communities
- Balancing local values with enabling increased supply of diverse forms of housing which goes beyond particular dwelling/building types to include smaller, more affordable housing planned for at a precinct scale
- Importance of strong, well-articulated, well understood rationale for the Code policy settings
- Supporting local and state planning by evidence supporting change
- Importance of strong transparency through ongoing access to data and reporting and monitoring and evaluation to understand policy impacts.

⁵ Interviews: Bathurst, Bayside, Bellingen, Blue Mountains, Burwood, Canterbury Bankstown, Coffs Harbour, Georges River, Hornsby, Hunters Hill, Inner West, Maitland, Mosman, Northern Beaches, Parramatta City, Port Macquarie Hastings, Ryde, Shoalhaven, Sutherland, Tweed, Upper Lachlan, Willoughby, Wingecarribee, Wollondilly, Wollongong. *Provided Correspondence:* Byron Bay, Canada Bay

We are very grateful to all these councils who engaged with us and responded in very short time frames. We would like to thank all the other stakeholders who so generously provided us information and their views. We would particularly like to thank LGNSW and PIA who brought together their members and provided detailed information to the review.

2 Policy intent and need – NSW and elsewhere

The Low Rise Medium Density Housing Code was introduced in mid-2018 with the stated aims of providing more housing choice to meet changing household needs and to improve housing affordability.

The new [Low Rise Medium Density Housing Code](#) will allow one and two storey dual occupancies, manor houses and terraces to be carried out under a fast track complying development approval.

The new [Code](#) will provide more housing choice to meet different household needs, and improve housing affordability. It forms part of the NSW Government's commitment to facilitate faster housing approvals and deliver a diverse range of housing options to support NSW's changing demographics.

The new Code includes clear and easy to understand planning rules, with explanatory diagrams. Low rise medium density housing as complying development is only allowed where medium density development is already permitted under a council's local environmental plan.

(NSW Department of Planning Complying development webpage 'The Low Rise Medium Density Housing Code')

Time and cost savings associated with a complying development approach to delivering medium density housing have been identified through reduced administrative and compliance costs, reduced delays in approval times and greater development approval certainty.

The implementation of the Code has been supported by detailed *Design Guidelines*. There has been considerable focus on the types and form of housing that might be enabled by the Code.

2.1 Why NSW needs increased housing diversity – *the need is compelling*

The NSW housing market responds to changing family structures, increased inter-generational housing and an ageing population by providing a variety of housing types and price points. Typically new housing in NSW has been dominated by two categories, freestanding homes and apartments.

More than half of new homes built in Sydney are high rise apartments. There were 30,880 apartment completions in Sydney in 2018, with another 194,000 in the pipeline⁶. While dwelling supply from high density apartments and from green-field land releases will continue to provide the most significant proportion of future housing requirements, there is a compelling case for an increase in different housing types across the established urban footprint, especially in middle ring suburbs which were developed in the post war years⁷. Between 1919 and 1962, few terrace houses were built in Sydney when they became out of favour, as homes on larger quarter acre blocks were developed across the city, aided by the construction of train lines and then the arrival of cars and motorways. Later when strata title legislation was introduced, apartments were increasingly developed. Currently, housing that is neither a freestanding house nor an apartment accounts for only 14 per cent of housing approvals in Sydney, with just 5,390 approved in 2015-16. This is despite there being the potential for almost 280,000 of these dwellings in Sydney based on current council zoning and planning controls⁸.

⁶ Source: UDIA, Q4 2018

⁷ Charter Keck Cramer, December 2016

⁸ DPE "The missing homes we need"

A growing proportion of Sydney's detached housing is occupied by 'empty nest' households, with many having reached or close to reaching retirement age. NSW's aging population is a significant factor in the need for increased housing diversity and choice.

In NSW by 2036 the percentage of the population aged over 60 will have increased by 56 per cent to more than 2.6 million people.

The other fast-growing age segment in NSW is young people and young families. By 2036, the percentage of the population aged 0-19 will have increased by 24 per cent to more than 2.4 million people. As home prices rise, home ownership levels for people in the 20-35 age group is currently falling.

At the same time, singles and couple only households will increase, accounting for more than 50 per cent of all household types in NSW. This is driving down the average household size to fewer than 2.5 people from over three at the start of the 1990s.

These demographic trends, together with high land values, contribute to housing affordability issues. The NSW Government recognised housing affordability as an important challenge by introducing a package of reforms on 1 June 2017.

Housing stock other than multi-storey apartments or larger suburban homes will provide more affordable homes, by providing compact, well designed houses on smaller land parcels. These dwellings are around 25% more affordable than detached houses (for newer or more recent stock in the same neighbourhoods).

Further arguments for more compact suburbs are well canvassed by scholars such as Peter Newton⁹ who argue that redirecting population and investment inwards to the established middle (and inner) suburbs is critical for social sustainability as well as environmentally sustainability outcomes.

These needs are not well understood.

The rationale for the Code is that current and future housing diversity can be addressed by increased choice and affordability. The importance of the Code in enabling this is not well understood, despite extensive education efforts by the Department (see **Appendix 2** for a chronology of the Department's consultation and education program as provided). The implementation of the Code offers one approach to enabling smaller, more affordable dwellings in low rise residential areas to meet changing demographics and to respond to the preferences of communities.

Some councils respond to the Code by stating that they will meet their numerical housing targets, without fully recognising the need for diversity of supply, particularly smaller dwellings.

The current implementation focus on the *types of dwellings* supported by the Code has also potentially distracted from appreciating the importance of diversity as *smaller dwellings*. Furthermore there remains concern about how medium density is defined.

Finding:

NSW needs greater housing diversity to address its current and future housing needs. There are strong demographic and supply drivers for the need for smaller dwellings as not all of current and future households will be seeking single dwelling houses or multi storey apartments. Currently the planning system is not providing enough of this type of housing.

⁹ <https://researchbank.swinburne.edu.au/items/396ab59e-d933-4b4e-ba69-7285c62676ed/1/>

2.2 What is low rise medium density?

The name of Code as the *Low Rise Medium Density Code* confuses the intent of the Code – is it to enable low rise housing (type/size) or is it to enable medium density (number) supply, or multi dwelling housing or all three? The development standards under the Code such as 8.5 metres in height, maximum of two storeys and smaller lots sizes indicate that the Code is to support the development of smaller dwellings on smaller lots. However the emphasis on some multi dwelling housing (such as rows of terraces) and the presentation of the Design Guide with images that look suited to green field or new subdivisions rather than single dwelling low rise suburbs reasonably leads to the impression that the inclusion of these types of dwellings in low rise single dwelling locations in infill areas might be contrary to local character.

There is a variety of ways to define medium density. In Western Australia it is the R-Codes that describe how many residences can go on a 1-hectare (10,000 square metre) parcel of land. Each R-Code also stipulates the average and minimum size of a residential block within that coded area. For example, an R-Code of R20 means you could have up to 20 dwellings per hectare of land, with each dwelling requiring an average site area of 450m² and a minimum site area of 350m². This is described as low density.

There are limited precinct scale considerations or definitions in the Code. This lack of a precinct scale policy lens leads to a situation if the Code is switched on in areas where there might be significant take up (which has not yet been the case in areas where the Code does apply, as we understand it) some councils fear it will lead to un-planned for increases in overall dwelling numbers which will impact on desired local character outcomes and that cannot be supported by existing infrastructure.

These fears are exacerbated by a lack of understanding of how the suite of housing-related SEPPs ([State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#), [State Environmental Planning Policy \(Housing for Seniors or People with a Disability\) 2004](#), [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#)), all code-assessable, work together to deliver housing supply and diversity.

2.2.1 Other Definitional Issues

The Code applies to *'any 1 or 2 storey dual occupancy, manor house or multi dwelling housing (terraces)'*. (Clause 3B.1) The use of other terms such as *'duplex'*¹⁰ (a term not defined by the Code or the Standard Instrument Local Environmental Plan) and the linking of the manor house definition to residential flat buildings though the Code has contributed to concerns regarding the type of housing supply the Code intends to enable.

If the Code aims to support the increase in supply of dwellings that are typically smaller than existing single dwellings in R2 zones and to encourage medium sized and compact homes that are comprised of the defined housing types of 1 and 2 storey dual occupancies, manor houses or multi dwelling housing (terraces) these definitional issues require further clarification.

Finding:

The term 'medium density housing' means different things to different stakeholders and its inclusion in the name of the Code has raised council and community concerns about the kind of development it permits.

¹⁰ Our interviews with councils indicated that the term *'duplex'* was being used to describe a two-storey attached dual occupancy.

2.3 Insights from other jurisdictions

Many cities in Australia and around the world are committed to increasing the provision of housing diversity. From about the 1980s, cities began to address a range of economic, social and environmental consequences of sprawl by promoting more compact urban forms and re-concentrating high density housing in selected urban centres.¹¹

Internationally, just as one example, Oregon has become the first state in the US to comprehensively bar local governments from imposing exclusive single-family residential zoning, and to effectively open up nearly all residentially zoned land to duplexes, triplexes and four-plexes. They have shown that neighbourhoods that have this diversity of housing are among the state's most desirable. They anticipate that the conversion of larger, under-used houses into multiple homes may be the biggest and most immediate impact of the legislation. Other provisions already exist that prevent sub national governments from downzoning and to undermine the intention of the legislation. Further the law stops them from imposing onerous parking requirements on new dwelling types. The key lesson here is that after many years of trying alternative approaches, in their context, state action was required to realise housing diversity.

Its passage (this new law) reflects well on state leadership in this important policy issue. But it's critical to note that HB 2001 (the name of this new law) is built on a decades-long foundation of key state mandates and limitations on local discretion in the housing market.¹²

Over recent years, governments have re-doubled their efforts to increase the provision of housing diversity. In Australia, lessons can be learnt from the recent experiences of Victoria, South Australia, Western Australia, and Queensland. See **Appendix 3** for further details.

Finding:

Experiences from other jurisdictions offer a number of useful insights for this review of the Code:

- *Ensuring a clear distinction between low density single detached multi dwellings and the range of potential housing typologies possible under the umbrella of housing diversity*
- *Taking a targeted approach to the use of zoning to establish permissibility reserving some zones exclusively for single detached dwellings, others for multi dwelling housing, and other zones where a mixture can be provided*
- *Ensuring zone objectives reflect existing local character, enable a diversity of smaller dwelling types and that development standards articulate the elements that most contribute to this character.*

2.4 Evidence of community views on housing diversity

A number of sources were reviewed to understand community views. These included a 2011 online survey of Sydney and Melbourne residents commissioned by the Grattan Institute (the Grattan Survey), a 2013 statistically representative phone survey of NSW residents by the University of Technology Sydney (UTS, the UTS survey), a 2016 online survey of residents Sydney and Melbourne by the Centre for Urban Transitions (the CUT survey), and a 2019 phone survey of Sydney residents by the Committee for Sydney (CfS, the CfS survey). Together, they asked respondents about preferred features and locations for low, medium and high density housing (the Grattan Institute, CUT, UTS and CfS surveys), and whether they wish to comment on development applications for different housing types (the UTS survey).

¹¹ <https://theconversation.com/coming-more-urban-attitudes-to-medium-density-living-are-changing-in-sydney-and-melbourne-84693>

¹² <http://cityobservatory.org/in-oregon-the-middle-isnt-missing-any-more/>

2.4.1 The Grattan Survey

The Grattan Institute surveyed over 700 residents in the in middle ring suburbs of Sydney and Melbourne about their housing preferences, asking them to take into account trade-offs between housing features, price and location. They found up to 25% of Sydneysiders would prefer to live in semi-detached medium density housing.¹³ The research also found a particularly acute mismatch between housing preferences and supply in middle and outer ring suburbs. Using 2006 Census data, the research found medium density housing represented 12% of Sydney's total stock and was the type of housing with the greatest mismatch in supply when compared to locational preferences.

2.4.2 The UTS Survey

In 2013, UTS surveyed 2,504 NSW residents and found a majority indicated they approved of the following housing types in their area:

- Granny flats at the back of detached dwellings (84%)
- An additional storey on single dwelling houses (84%)
- Semi-detached and town houses where there are currently detached dwellings (67%)
- Where located close to public transport, dwellings up to 4 storeys (50%)

A majority indicated they do not approve of the following housing types in their area:

- Apartments over 4 storeys (38% approve).

Spatial analysis showed very similar levels of approval across Sydney and regional NSW. The survey also asked whether respondents wanted input into development applications for the following development types even if a proposed development fitted in with the character of the surrounding area. A majority of residents indicated they would want to input into development applications for:

- Townhouse, semi-detached house or villa in a residential area (62%)
- Land subdivision in a residential area (69%)

Again, spatial analysis showed very little difference between Sydney and regional NSW.

2.4.3 The CUT Survey

The CUT survey presented 956 Sydney residents with three different housing options (detached dwelling, medium density, or high rise apartment). Just under half (45%) indicated a preference for medium density housing located close to public transport but with no garden. The same proportion indicated a preference for a detached dwelling (45%), and substantially fewer indicated a preference for high-rise apartments (9%).

Of the 358 Sydney residents that also indicated they planned to move within the next fifteen years, about 16% expressed a preference for semi-detached housing such as a townhouse, duplex or villa, with a small amount of private open space.

2.4.4 The Committee for Sydney Survey

The Committee for Sydney (CfS) survey asked 901 Sydney residents about locational preferences for different housing types. Of the respondents, a majority supported:

- Increased density in major centres, such as Parramatta and Liverpool, as well as outer suburbs such as the Hills District (53% support in major centres, over half in outer suburbs)
- Increased density in inner city suburbs (over half support, 23% oppose)
- Medium density in their own neighbourhoods (47% support medium density in their area, whereas 25% oppose high density in their area)

¹³https://grattan.edu.au/wp-content/uploads/2014/04/090_cities_report_housing_market.pdf

A relatively equal proportion supported:

- Increased density in inner city suburbs (41% support, 42% oppose)
- Increased density in the city's core (40% support, 37% oppose)

Support was highest amongst 18 to 34 year-olds, renters and highly educated, and lowest amongst over 50s, retirees and homeowners.

Finding:

There is strong support from communities for an increase in housing diversity, a clear recognition of the lack of supply and medium density is generally understood in the community as 3-5 storeys residential flat buildings.

3 Key issues identified through the review

3.1 Issues around the intent of the Code

3.1.1 Multi dwelling housing and zoning

The stakeholders we consulted expressed concern that planning proposals to limit application of the Code across existing R1 and R2 zones where multi dwelling housing is already permitted, or limiting the types of dwellings permissible in these zones, could lead to an overall reduction in the capacity to deliver housing diversity across NSW. To avoid this unintended outcome commencement of the Code should be deferred until councils have identified, through local strategic planning processes, those locations that are suitable for multi-dwelling housing.

Some council's noted they already prohibit multi dwelling housing in their existing R1 and R2 residential zones. Whilst they acknowledged a need for greater housing diversity to address the imbalance in the provision of single detached dwellings and high density apartments, they also noted a lack of capacity for multi-dwelling housing in R3 and R4 zones as these zones are mostly built out. Together, this means there is limited land available for additional multi dwelling housing in some council areas.

It was suggested councils needed to take a more targeted approach to permitting multi dwelling housing in R2, R3 and R4 zones such that some zones are reserved exclusively for single detached dwellings, others for either multi-dwelling or high-density, and others where a mix of housing is permissible.

Finding:

It is important that there is wide-spread provision of evidence regarding need for diversity of stock in particular locations, as well as the capacity to test that potential increase in dwelling numbers can be supported by adequate infrastructure provision.

3.1.2 Response to planning proposals received so far

A review of planning proposals submitted by councils to the Minister to amend how the Code is applied identified the most common proposals were to:

- limit permissibility of different types of multi dwelling housing in certain zones and/or locations, particularly dual occupancies and manor homes
- change development standards for some forms of medium density housing, particularly minimum lot sizes, frontages, side and rear setbacks, parking, and building heights for dual occupancies and manor houses

Other common proposals were to:

- restrict application of the Code across entire zones, and
- permanently exempt the Code applying across existing residential zones whilst adopting some Code controls within these zones

While some councils have recommended a targeted approach to applying the Code across existing residential zones where multi dwelling housing is already permitted, other industry stakeholders have emphasised the importance of consistent application in order to provide certainty.

A review of correspondence from councils provided identified approximately twenty councils have formally requested deferral of the Code applying until they have considered the provision of multi dwelling housing through current strategic planning processes. Some recently amalgamated councils also requested the Code be deferred until the process of harmonising the LEPs of the former local

government areas is complete. With respect to harmonisation, some noted the potential for inconsistent outcomes within recently merged LGAs depending on whether the former LEPs permitted multi dwelling housing in existing residential zones.

Removing permissibility for multi dwelling housing from the R2 zone will have the effect of there being less housing diversity, even though the DA process, than there was before the Code's introduction. Larger lot sizes can prevent the desired outcome of smaller houses on smaller lots in low rise residential areas (such as R2). An increase in lot size will in many cases could lead to an intensification of use of the lot rather than smaller more affordable dwellings, due the way the floor space ratios (FSR) can be applied.

We anticipate that the resolution of these planning proposals will now be subject to the Minister's consideration of the outcome of this review.

Finding:

As a key justification for further deferral is to let local strategic planning proceed to inform localised controls for special areas (through negotiation) and to negate or amend the need for the planning proposals yet to be determined i.e. many councils want to introduce local character overlays for Special Local Character Areas into their LEP and local character statements into DCPs, which would be supported by the local strategic planning processes currently underway.

Achievement of the Code's intent of increased housing diversity and affordability may be hampered if lot sizes and FSRs for certain development types are increased. Intensification of development on larger lots will occur, housing diversity through smaller dwellings on smaller lots will be less likely.

3.1.3 Multi dwelling housing and strategic planning processes

Councils are currently engaged in conversations with their communities about the current and desired future character of residential zones through Local Strategic Planning Statements and Local Housing Strategy processes. This includes developing statements articulating those design elements that contribute to local character, and identifying locations where greater intensity of residential development could be achieved through multi dwelling housing.

Councils are keen to have conversations with their communities about locations suitable for increased provision of multi dwelling housing and this is occurring through the Local Strategic Planning processes.

3.2 Impact on local character

3.2.1 Multi dwelling housing and local character

Some councils expressed concern about the example housing typologies provided in the Design Guide and that these could be interpreted and replicated as 'model' typologies and lead to development that would not be in keeping with the character of their area. Different examples and case studies in the Guide could be developed for inner, middle and outer suburbs and regional areas such that example typologies better match the different characteristics of these areas.

There has been considerable discussion about the importance of streetscape design in allaying community concerns about potential amenity impacts of multi dwelling housing. Some councils are currently preparing studies to better understand streetscape design elements that contribute to local character to ensure these are articulated in zone objectives and development standards.

3.2.2 Development standards

The importance of tailoring development controls to ensure resulting development is sympathetic to local character, for example, differences in climate across NSW is important. To this end, it is argued that councils be able to modify key controls in the Code including car parking, landscaping, frontage widths, side and rear setbacks, and minimum lot sizes. Others suggested parts of the Code relating to these controls could be switched off so that the current controls of local councils are maintained. Stakeholders also raised concerns about the impact underground car parking requirements could have on development feasibility and that this could limit the uptake of multi dwelling housing.

3.2.3 Design specifications for multi dwelling housing

Some councils raised concerns with development standards and particular design elements contained in the Code and accompanying Guide. These included:

- Minimum dimensions for private open space for different types of medium density housing, and the need for merit based assessment where it is proposed to remove significant or heritage listed trees
- On-site parking including limiting the provision of parking structures, and the setback from side boundaries where underground parking is provided and subterranean works required
- External privacy screens and internal window screens depending on the height of windows above ground and separation distance between neighbouring dwellings
- Minimum lot sizes for different types of medium density housing in the event of subdivision and ensuring these are consistent with existing minimum lot sizes contained in Local Environment Plans
- Minimum frontage, side and rear setback distances, and upper level articulations for different types of medium density housing depending on the separation distance between neighbouring dwellings
- Limiting the number of storeys permissible for dual occupancy dwellings when located at the rear of the lot to avoid overlooking and maintain privacy

Some also queried the legal effect of the Guide and whether the guidance it contains is, or could be interpreted as, formal development standards. To address these issues, they suggested restructuring the Design Guide so the distinction between formal development standards and potential design solutions is clearer, removing and placing some material in practice notes, and removing development standards already contained in the Building Code of Australia to avoid duplication.

3.2.4 Achieving appropriate diversity

Some stakeholders have raised issues about the Standard Instrument LEP definitions relating to multi dwelling housing and the potential uplift in density the Code could permit. These issues are interrelated with the proposed application of the Code across existing R1 and R2 zones where multi dwelling housing is already permitted.

Despite multi dwelling housing already being permitted within R1 and R2 zones, some expressed disagreement with the proposed application of the Code across these zones as they are largely characterised by single detached dwellings. In particular, they considered a definition that permits redevelopment of a single detached dwelling into more than 4 dwellings could allow uplift in density of such magnitude that it would place additional pressure on local infrastructure, particularly roads, parking and community facilities, and be out of character with the local area. In particular, this relates to the potential for manor houses to be defined as multi-unit dwellings or residential flat buildings and the impact more intense forms of multi dwelling housing may have on local infrastructure and character.

For example one large metropolitan council argues that in R1 and R2 zones where medium density is already permitted the application of the Code could allow for an additional 67,000 dwellings and 198,000 new residents.¹⁴ To avoid strain on local infrastructure and development that may be out of character with these zones, some councils have sought to remove existing permissibility of medium density housing from R1 and R2 zones or alter the development standards of the Code.

Land within the Sydney Drinking Water Catchment that is seweraged but that has Sydney Catchment Authority licensing limitations on the number of Equivalent Tenements¹⁵ that may be discharged as treated water into the system, and where that system is close to capacity, should be excluded from application of the Code. The Department can work with affected councils and Sydney Water to identify the extent of such land. This land should be mapped and excluded from the Code¹⁶.

To limit additional multi dwelling housing that may place additional strain on local infrastructure and may be out of character with housing in the surrounding area, some suggested further controls on the ability to subdivide and amalgamate lots, for example, only allowing subdivision or amalgamation for lower impact forms of multi dwelling housing (i.e. 4 dwellings or less), only allowing subdivision or amalgamation post-construction, or prohibiting subdivision and amalgamation altogether. Whilst some recommended a more nuanced approach to lot subdivision and amalgamation, others emphasised the importance of consistent controls in order to provide certainty for industry, consent authorities and communities.

It is generally considered that multi dwelling housing of four dwellings or less will have less impact on local infrastructure and be of a bulk and scale more in keeping with the character of existing housing in zones where the Code is proposed to apply. Some suggested that larger and higher impact types of multi dwelling housing (i.e. 4 dwellings or more) should remain subject to council development assessment as this would allow consideration of the impact of these on local infrastructure capacity and local character. However, others noted the Code has been designed in such a way that the types of multi dwelling housing assessable through complying development are of low impact.

¹⁴ <https://www.cbcity.nsw.gov.au/media/news/cbcity-opposes-new-housing-code>

¹⁵ An equivalent tenement is a standard measure used to assess the impact of a particular development or land use on a water or sewerage system.

¹⁶ For example, the Village of Kangaroo Valley in Shoalhaven LGA is one area where the exclusion should apply.

Some councils also expressed concern about applying the Code in high-density zones (i.e. R3 and R4 notwithstanding the understanding that there is considerable variation in the application of what is permissible in these zones). They suggest multi dwelling housing would not be a feasible or competitive alternative in these zones and that they should be preserved for higher-density development, another potential unintended impact of the current application of the Code.

Some suggest that identifying appropriate locations for multi dwelling housing should be left to local strategic planning processes, such as the Local Strategic Planning Statements and Local Housing Studies currently being prepared by councils. This would allow for proper assessment of the capacity of local infrastructure as well as consideration of local character. However, others cautioned against more selective application of the Code and insisted broader application should be maintained in order to provide greater certainty.

As another solution, some recommended applying area-based controls to the Code. For instance, an accessibility threshold could be used to determine where higher impact forms of multi dwelling housing are permissible (i.e. townhouses, terraces and manor homes of 4 or more dwellings) such as within 400 metres of regular public transport services. They also indicated this could better enable the policy intent and ensure the scale of development is in character with the surrounding area, which is typically of higher density and amenity and has greater access to jobs, transport and services.

Finding:

The current approach to implementation of the Code does not address a key concern of local government regarding the ramifications of a blanket or LGA wide approach to development standards for multi dwelling housing and the potential impact on local character. Our discussions have identified that character means different things in different localities and is much more than built form.

We consider a more tailored and fine-grain approach to development standards that reflects the detailed local strategic planning work that identifies appropriate controls across the local government areas (LGAs) that can achieve housing diversity targets within the overall housing targets for each area, is more likely to achieve the intended outcomes of the Code, address potential unintended outcomes and achieve significantly more council and community support for its introduction.

A more fine-grained approach aligns with the current directions of the planning system as articulated in the Planning Circular PS 18-001 emphasising the importance of respecting and enhancing local character¹⁷, and the mechanisms to achieve this that are outlined in the Discussion Paper – Local Character Overlays, February 2019.

3.2.5 Local character impacts and available evidence

There has been no comprehensive monitoring of take-up of the Code in those local government areas where it was activated in July 2018. While little information is available, what we have indicates very limited take up in councils where Code is switched on. The Department has provided information on 8 certificates issued under the Code in Fairfield LGA (7 dual occupancies and 1 terrace development) and 1 in Waverley LGA (dual occupancy).

Anecdotal evidence from council interviews we have undertaken suggests this may be because:

¹⁷ Respecting and enhancing local character in the planning system: Circular PS 18-001, 16 January 2018

- The Code is very complex and potential users are using the DA pathway as a more 'certain' process. Some councils have or are preparing local controls that are simpler and locally contextualised than the Code requirements
- There is generally lesser take up of complying development in regional areas, with local and 'family' developers preferring to use the council DA process
- Certifiers are concerned about using the Code and relying on Design Verification Statements (DVS). They are concerned with the Code's qualitative assessment requirements to be signed off by a third party (accredited building designer or registered architect) which they must then accept and sign-off as part of the certification process.

The Design Verification Statement template categorises character into Local Scale, Neighbourhood Scale and Streetscape and Site Scale. Without worked examples to examine it is unclear if the qualitative based assessment and the Design Verification Statements under these categories will address, and give sufficient weight to, the local character matters developed in a council's local character statements and Development Control Plan (DCP) requirements.

Finding:

The ramification of the lack of take-up or knowledge of take-up of the Code in the past 12 months is that there are few examples of how the Design Guide referenced by the Code actually works, nor examples or case studies of outcomes from the implementation of the Code.

Our review has identified potential impacts on local character as the key concern of councils who are deferred from the Code's operation, with lack of certainty or trust that the requirement for a Design Verification Statement addressing local character is sufficiently robust and enforceable to achieve outcomes that align with locally derived and desired character outcomes.

3.3 Issues around complying development and certification processes

3.3.1 Approval processes and private certification

Stakeholders raised a number of issues regarding the approval process for the Code implementation. These related to the appropriateness of the complying development approval pathway based on the perceived level of impact of different types of multi dwelling housing, as well as broader concerns with the operation of the private certification system in NSW.

Issues were raised about the capacity of private certifiers to assess design elements of multi dwelling housing applications, and more general concerns about the operation of private certification across NSW.

In particular, concerns were raised about design elements such as view corridors, open space, privacy and landscaping, that the design criteria outlined in the Guide do not consider the full range of design elements that councils would consider through development assessment, such as visual impact assessment, and the prescriptive operating procedures of the complying development pathway afford little opportunity to achieve better design outcomes as private certifiers cannot modify development standards through the assessment process.

However, others have noted design elements are adequately addressed through the broader development process because Code developments must be designed by a registered architect or accredited building designer and accompanied by a Design Verification Statement. They also noted the design criteria set out in the Guide are extensive and promote high quality outcomes.

With respect to operation of the private certification system more broadly, stakeholders raised longstanding concerns about lack of independence in the appointment of private certifiers, capacity constraints for local councils in monitoring and enforcing compliance with development controls for

multi dwelling housing approved through the complying development process, and lack of trust in private certifiers given a history of perceived poor outcomes achieved through complying development.

Finding:

There have been significant issues raised about the building certification and complying development aspects of the Code.

3.3.2 Code complying development and the Design Verification Statement

The Code has introduced a 2-stage assessment and certification process whereby an accredited building designer or architect signs off on the Design Verification Statement which is then signed off by the certifier through the certification process.

While it is intended that the DVS be given weight and that the certifier can rely on this, the Code inserts a qualitative assessment in relation to building design into the complying development system, which is essentially intended to be a binary system. That is, if a proposal fully meets a pre-determined set of standards it can be approved through a fast-track assessment process subject to a set of standard development conditions. For the certifier, it is a 'yes' or 'no' decision, where any non-compliance with pre-determined development standards pushes the proposal into the merit assessed development application assessment stream.

The Code and the Design Guide it references are lengthy and complex documents that require assessment of proposals against numerous design criteria. These include guidance on how to take local character into consideration in designing proposals. Potential impact on local character has been one of the most frequently raised concerns through this review.

Finding:

The 'hybrid' approach to the way the Code works does raise the question of how more complex proposals should be assessed, and against what criteria, and whether differing local character considerations can be dealt with through a standardised set of design criteria.

More guidance is required, through the issue of Planning Practice Notes, about how to recognise and enhance local character, with a particular focus on locating dwellings within a precinct and local character context, and on development in infill areas.

3.3.3 Liability concerns of certifiers

According to private certifiers there is a view that the current system leaves them vulnerable to legal challenge. This is perceived to have potentially significant impacts on private certifier's professional practice. In our investigations to date the reasons which have contributed to limited take up of the Code in the areas in which it has been switched on is the lack of willingness by private certifiers to undertake this work. They also have concerns that the requirements under the Code are too complex and not suitable for the complying development process. Further to that there is concern that the Design Verification Statement process leaves them accountable for what is primarily a value/subjective judgement, whereas certification is and should be a tick the box process against measurable quantitative standards.

The EP&A Regulations, Schedule 1 Part 2, clause 4(1) (n) requires the Complying Development Certificate (CDC) application to be *supported by a statement (this is the Design Verification Statement) (in the form approved by the Planning Secretary) by a qualified designer or a person accredited as a building designer by the Building Designers Association of Australia (BDAA)*. So, this

raises two issues - the role of the private certifier in the signing off of the Design Verification Statement and who is the appropriately qualified person to prepare the statement.

The concerns of the private certifiers are that the building design professional is not accountable for the correctness or otherwise of the DVS and there are no processes for repercussions for the designers if the DVS is made in error - hence the reluctance of the private certifiers to undertake these CDCs under the Code. The designer will make a statement that their design meets the Design Guide. If it does not meet the Design Guide and the statement is incorrect there is no scope for any repercussions for the designer. The Building Designers Association of Australia (BDAA) has an accreditation and a registration system and is working to create a disciplinary system. There are concerns from some that BDAA accreditation is not sufficient and that the qualification for the person making the statement needs to increase to at least being a registered architect. At a minimum, the designers making these statements should be accredited under the Building Professionals Board (BPB) accreditation scheme. In which case false statements could result in disciplinary action, potential deregistration and fines issued by the BPB. There will be some level of accountability that goes beyond the relationship with their client. For more details of how this might work see here¹⁸.

What this means, in simple terms, is that an Accredited Certifier in executing their narrow oversight role as the Principal Certifier (previously PCA) would be provided with numerous Compliance Certificates from a wide range of professionals, builders and trades as evidence of suitability. In this case in relation to the Code this would necessarily include the Design Verification Statement. The certifier liability would be limited and by tracking the issuers of Compliance Certificates proportional liability for design, manufacture, installation and maintenance would be assigned to the designer, manufacturer and installer.

There is a view by some private certifiers that these developments should not be assessed under complying development. They argue that complying development is place blind, code based assessment. If the proposal meets the numerical standards it MUST be approved, irrespective of the impacts on adjoining property. Multi dwelling development should be left to be assessed within the current local development application framework under S.4.15 of the EP&A Act. The benefit of S4.15 of the EP&A Act is that it has the safety net of likely impact of the development (S.4.15 (b), suitability of the site (s4.15(c)) and consideration of submissions made (s4.15 (d)). The argument is made that complying development should be left for what it was intended for – small scale, low impact routine development such as pool, dwellings and internal alterations to existing buildings.

¹⁸ *Environmental Planning and Assessment Act 1979 No 203*
Part 6 Division 6.8 Section 6.30

6.30 Satisfaction as to compliance with conditions precedent to the issue of certificates (cf previous s 109P)

(1) A person who exercises functions under this Act in reliance on a certificate under this Part of complying development certificate **is entitled to assume:**

- (a) that the certificate has been duly issued, and
- (b) that all conditions precedent to the issuing of the certificate have been duly complied with, and
- (c) that all things that are stated in the certificate as existing or having been done do exist or have been done, and is not liable for any loss or damage arising from any matter in respect of which the certificate has been issued.

(2) This section does not apply to a certifier (other than a council) in relation to any certificate that he or she has issued. The 1 July 1998 Certification regime's intention was one enshrined in the then Part 4B Proportional Liability provisions. This is what the private certifiers are seeking.

Finding:

There are concerns expressed by the private certifiers regarding their potential liability and the relationship between their roles and that of the Design Verification Statement. It is proposed that any certificate issued by any Accredited Certifier must be in the form of a Compliance Certificate under the EPA Act such that the Accredited Certifier, Council and Private Certifiers and others are protected under the EP&A Act.

3.4 Monitoring and compliance

Stakeholders noted the importance of monitoring the Code to ensure local character is not adversely impacted by increased housing diversity in existing residential zones. They suggested potential local character impacts of developments approved under the Code should be evaluated after a period of approximately 21 months.

Finding:

Uptake of the Code needs to be monitored for a period of at least 21 months, with a review making recommendations about potential amendments to the Code and its application.

A register of CDCs issued under the Code should be created, through publishing on the Department's Planning Portal (or similar means).

Local, District and Regional delivery of housing supply and diversity, through LEPs and the suite of housing-SEPPs, needs to be monitored and understood to ensure communities' housing needs are being met.

4 Recommendations

The intent of the Code

A clear policy framework will support the provision of the diverse range of housing needed in NSW.

- 1. It is recommended that a coordinated policy approach be developed which considers the implementation of the Code with other housing-related State Environmental Planning Policies (SEPPs) including the SEPP (Affordable Rental Housing) 2009 that delivers affordable rental housing, boarding houses and secondary dwellings, and the SEPP (Housing for Seniors or People with a Disability) 2004.**
- 2. The Low Rise Medium Density Housing Code should be re-named the Two-Storey Housing Diversity Code.**
- 3. 'Low rise medium density' should be defined. The definition should be articulated in practice notes.**
- 4. The Department to continue its education program for councils and communities, emphasising the housing diversity aims of the Code, providing information to address misunderstandings about the Code that have been identified through this review.**
- 5. The Greater Sydney Commission to work closely with councils in developing housing diversity targets (beyond describing built form) within the overall dwelling number targets for each local government area.**

Application of the Code in deferred Local Government Areas

- 6. It is recommended that the application of the Code be further deferred until 1 July 2020. Areas identified as being of Special Local Character can be excluded from the Code.**

This aligns with the current directions of the planning system as articulated in the Planning Circular PS 18-001 emphasising the importance of respecting and enhancing local character¹⁹, and the mechanisms to achieve this are outlined in the *Discussion Paper – Local Character Overlays*, Feb 2019.

This allows councils to complete their local strategic planning work²⁰.

Should the Minister be of a mind that the Code take effect from 1 November 2019, the following recommendation is applicable:

¹⁹ Respecting and enhancing local character in the planning system: Circular PS 18-001, 16th Jan 2019

²⁰ Local strategic planning work refers to the preparation of Local Strategic Planning Statements, Local Housing Strategies and Local Character Statements.

7. *Agreed interim Special Local Character Areas be excluded from Code operation until 1 July 2020.*

The Department will work with the deferred councils to identify and agree on an interim basis Special Local Character Areas for exemption from the Code. These areas will be mapped and placed as a schedule in the Code.

8. *There should be no LGA wide permanent exclusions from the Code and councils will be prevented from nominating the whole of an LGA or the whole of the R2 Low Density Residential zone as a Special Local Character Area.*

Before 1 July 2020 planning proposals can be submitted to the Department to include any necessary LEP amendments and final mapped areas for Special Local Character Areas.

The Department will prepare a SEPP that will give effect to these Planning Proposals and any necessary amendments to the Code, to take effect on 1 July 2020.

It is anticipated that the resolution of the current outstanding Planning Proposals submitted in response to deferred commencement of the Code will now be subject to the Minister's consideration of the outcome of this review.

9. *Where the Code currently applies in an R2 Low Density Residential zone it should not be removed from application through a Planning Proposal to prohibit multi dwelling housing or dual occupancy from that zone.*

10. *Planning Proposals should not increase the floor space ratio or minimum lot size requirements beyond the base level controls in the Code, on land to which it applies.*

The implementation of the Code

11. *More detailed guidance to be provided on respecting and enhancing local character, through Planning Practice Notes and case studies that can support the intended outcomes of the Design Guide, with a particular focus on locating dwellings within a precinct and local character context, and on development in infill areas.*

12. *The Standard Instrument LEP definition of multi dwelling housing should be amended to function as a 'group term', with multi dwelling housing (terrace houses) and manor house as subsets of that definition. Multi dwelling housing should remain a mandated 'permitted with consent' use in the Standard Instrument LEP R3 Medium Density Residential zone.*

13. *The Code should not apply to any unsewered area in any local government area.*

14. *Land within the Sydney Drinking Water Catchment that is seweraged but has Sydney Catchment Authority licensing limitations on the number of Equivalent Tenements that*

may be discharged as treated water into the system, and where that system is close to capacity, should be excluded from application of the Code²¹.

Code Complying Development

There is insufficient community trust in the certification process to manage the risk of potentially poor outcomes in more complex applications for which the Code can apply. Fully addressing these issues is beyond the scope of this review; however we make the following recommendations to assist with managing this.

- 15. Development for the purposes of multi dwelling housing (terraces) under the Code should be limited to a maximum of 4 dwellings in a single Complying Development Certificate in infill/greyfield areas.***
- 16. The Design Verification Statement should be deemed to be a “Compliance Certificate” for the purposes of Section 6.30 of the Environmental Planning and Assessment Act 1979.***
- 17. The Department create a register of CDCs issued under the Code through publishing on the Department’s Planning Portal or other similar means.***

Review of the Code

- 18. Uptake of the Code, implemented in accordance with the recommendations of this report, is to be monitored and reviewed for a period of 21 months from 1 November 2019 until 30 June 2021.***

The review at the end of the monitoring period is to assess the number and outcomes of Complying Development certificates issued under the Code (with a focus on smaller dwellings not just dwelling types), in terms of meeting the stated aims of the Code which are improved housing diversity and a more efficient approval process. The review will make recommendations for potential amendments to the Code.

²¹ It is unclear to us if recommendations 13. and 14. are necessary as these areas may already be excluded from the Code. Either way this is not understood to be case by affected councils.

5 Appendices

5.1 Appendix 1: Scope of Work

Purpose

The purpose of the independent review is to provide advice and recommendations to the Minister on implementation of the Code in the deferred councils.

The review will include an assessment of the feedback and issues previously raised by councils, and feedback from targeted consultation with peak groups undertaken during the review.

- The review will consider the relationship between the standards of the Code and:
- The standards of underlying LEPs;
- The land use permissibility in different zones in the LEPs;
- The different application of the Code across different local government areas (e.g. the implications of further deferrals, exemptions or area-specific provisions);
- The implications for wider planning policy considerations.

Recommendations should consider:

- Any potential amendments to the Code;
- Any potential policy directions for local planning;
- How the objectives of the policy could be considered in other aspects of the planning system, including through local strategic planning

Engagement

The final report is to include a summary of feedback obtained from peak representative and industry bodies and detail how these views and issues have been considered in preparing the final report and recommendations. Stakeholders to be consulted during the review include:

- DPE
- Greater Sydney Commission (GSC)
- Planning Institute of Australia (PIA)
- Urban Taskforce
- Urban Design Institute of Australia (UDIA)
- Property Council of Australia (PCA)
- Australian Institute of Architects (AIA)
- Local Government NSW (LGNSW)
- Housing Institute of Australia (HIA)
- Building Designers Association (BDA)
- Australian Institute of Building Surveyors (AIBS)
- Association of Accredited Certifiers (AAC)
- Homeworld

The views of individual local governments should be carefully considered by assessing existing public statements and planning policies (including planning proposals submitted in response to the deferral) and through targeted consultation with councils subject to the deferral.

5.2 Appendix 2: Department of Planning Education Program Chronology

Medium Density Chronology (as provided by the Department)

Date	Action
December 2010	NSW Government released the Metropolitan Plan for Sydney 2036. Part D looked at Housing Sydney's Population
March 2011	Department of Planning exhibited Draft Good Design for Medium Density Living
2011-2015	<p>Consideration of various industry articles and presentations regarding housing in Sydney and medium density housing including:</p> <ul style="list-style-type: none"> - Grattan Institute Cities Program Report - The Housing we'd Choose - Jane-Frances Kelly (June 2011) - Grattan Institute Cities Program Report - Getting the Housing we want - Jane-Frances Kelly (November 2011) - Research and housing population data- Urban Ideas magazine - Urban Taskforce (December 2014) - AHURI Research Paper Processes for developing affordable and sustainable medium density housing models for greyfield precincts - Appendix-1 - Monash University (January 2015) - <i>Population growth and housing affordability in the modern city - Sydney a case study</i>. Angelo Karantonis - University of Technology, Sydney (February 2015) - Bankwest housing density report 2015 - national media release - Australia's medium density housing approvals near record high. (February 2015) - Research and housing population data - Ipsos - Presentation - Sydney Metro Housing Preferences Presentation (March 2015)
27 November 2015 – 1 March 2016	<p>Department of Planning and Environment exhibited the following regarding expanding complying development to include two storey medium density housing types.</p> <ul style="list-style-type: none"> - Background paper - Discussion paper - FAQ
24 February 2016	Presentation to Homeworld regarding expanding complying development for low rise medium density housing
21 June 2016	Missing middle workshop with Industry and Council stakeholders
27 June 2016	Complying Development Expert Panel meeting, including discussions on medium density
2 July 2016	Missing Middle workshop 2
12 October 2016 – 23 December 2016	<p>Exhibition of:</p> <ul style="list-style-type: none"> - Draft Medium Density Design Guide - Explanation of Intended Effect for new Medium Density Housing Code - FAQ
4 November 2016 – 16 December 2016	<p>Missing Middle Design Competition invited architects, designers and other industry professionals to showcase their visions for the future of medium density housing in NSW and test the draft Code and Design Guide.</p> <p>111 entries received</p>
10 April 2017	Winners of the Missing Middle Design Competition announced
15 June 2017	<p>CDEP meeting, discussion of the Code and resolution to form Medium Density Sub-committee</p> <p>CDEP comprises members of the Building Professionals Board, City of Sydney Council, Blacktown Council, Penrith City Council, Local Government NSW, Australian Institute of Building Surveyors, Planning Institute of Australia, Property Council of Australia, Housing Industry Association, Building Designers</p>

	Associations, Urban Development Institute of Australia, Smith and Tzannes Architects and Association of Accredited Certifiers.
8 August 2017	CDEP Medium Density Sub-committee Meeting Subcommittee members consisted of Urban Development Institute of Australia, Camden Council, Building Designers Association, Shaping Suburbia, Penrith City Council, Randwick City Council, SJB, Blacktown City Council, Building Professionals Board and Smith & Tzannes Architects.
30 August 2017	CDEP meeting, update from Medium Density Sub-committee
2 November 2017	CDEP meeting, update on Medium Density Code
9 November 2017	CDPE Medium Density Sub-committee meeting
	-
6 April 2018	The Low Rise Medium Density Housing Code (<i>State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low rise Medium Density Housing) 2017</i>) announced: <ul style="list-style-type: none"> - Amending Regulation announced (<i>Environmental Planning and Assessment (Low Rise Medium Density Housing) Regulation 2017</i>) - Amending Order announced (<i>Standard Instrument (Local Environmental Plans) Amendment (Low Rise Medium Density Housing) Order 2017</i>) - Medium Density Design Guide announced - Department's website updated
April-May 2018	The Department answered more than 2,000 phone calls. The vast majority of callers sought to clarify misunderstandings, were supportive of the Code and were typically querying how they could utilise it in their council area.
18 May 2018	Amendment to the Code (<i>State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low rise Medium Density Housing) Amendment 2018</i>) gazetted: <ul style="list-style-type: none"> - Clarifies where manor houses would be permissible - Deletes Schedule 2, which contained proposed amendments to certain LEPS
5 July 2018	Gazettal of key amendments to the Code including: <ul style="list-style-type: none"> - Amendment to the Code, including definitions for 'manor house' and 'multi dwelling housing (terraces)' into the Code, and deferring the Code for 47 LGAs until 1 July 2019 (<i>State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low rise Medium Density Housing) Further Amendment 2018</i>) - Repeal of Amending Order gazetted, repealing any changes to the Standard Instrument as definitions are now included in the Code. (<i>Standard Instrument (Local Environmental Plans) Amendment (Low Rise Medium Density Housing) Repeal Order 2018</i>) - Amendments to the Regulation gazetted, introducing definitions for 'manor house' and 'multi dwelling housing (terraces)' in the EP&A Regulation and giving effect to the Design Guide for Development Application by requiring a consent authority take it into consideration in certain circumstances (<i>Environmental Planning and Assessment Amendment (Low Rise Medium Density Housing) Amendment Regulation 2018</i>)
5 July 2018	Letters to 50 Councils from the Acting Executive Director granting a temporary deferral until 1 July 2019.
6 July 2018	Low Rise Medium Density Housing Code commences in 78 council areas: <ul style="list-style-type: none"> - Department's website updated - Amending Regulation commenced - FAQs - Design Guide for Complying Development commenced - Design Guide for Development Applications released

13 July 2018	<i>State Environmental Planning Policy (Exempt and Complying Development codes) Amendment (Low Rise Medium Density Housing Exemptions) 2018</i> gazetted, deferring a further three LGAs until 1 July 2019 (Bathurst Regional, City of Liverpool and City of Penrith)
May 2018 – current	<p>The Department worked with councils to understand how they can be supported to implement the Code and to assist them in preparing their local strategic planning statement, local housing strategy and any relevant amendments to their LEPs.</p> <p>15 deferred councils have received \$2.5 million funding to accelerate a review of their LEPs within two years, to align with the relevant District Plans.</p>
May 2018 - current	<p>The Department undertook an extensive Education Program to assist councils and industry in understanding and implementing the Code. These communication initiatives with councils and industry professionals included face-to face sessions and a webinar, since the announcement of the Code.</p> <p>To date, the Department has carried out:</p> <ul style="list-style-type: none"> - A webinar to councils and industry (370 registered, including 83 councils) - Council Education workshop on the Codes SEPP – 36 councils, with 881 attendees (Greater Sydney and Regional) - Industry – 22 organisations, reaching over 1227 attendees (Greater Sydney and Regional) <p>The Department has recommenced the council and industry education sessions from 22 July 2019.</p>
May 2018 – current	The Department is developing an eLearning module to provide ongoing training on the Code to be released following the Independent Review.
October 2018 – Current	The Department is working with Lake Macquarie to support their strategic planning work and help them deliver low rise medium density housing.
June 2019 – present	The Minister announced an Independent Review to assess progress on the Code to date, identify impediments to the Code’s delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the Code’s implementation.

5.3 Appendix 3: Detail on what is happening in other places

For Australia, this development trajectory has resulted in cities with some of the largest houses and lowest densities in the world. Punctuated by high-density urban centres, they offer limited variation in housing types and Australians are generally faced with a choice between single detached dwellings or high-density apartment living. The provision of medium density housing that was more commonly provided in colonial era cities and which is considered more desirable and appropriate to changing household needs, particularly as household sizes have shrunk and housing costs have increased, has not kept pace.

For example, at Ecco Ripley on the outskirts of Brisbane, duplexes, terraces and townhouses have been introduced alongside traditional single detached dwellings. This master planned community has been designed using accessibility thresholds to ensure each house is no more than 400 metres from parkland or green space. In South Australia, the Planning and Design Code has also promoted the provision of more diverse housing stock whilst safeguarding amenity and promoting good design by discouraging over-provision of parking and ensuring development standards maintain visual privacy.

In 2014, the Victorian Government reformed residential housing zones to better target the uptake of medium density housing. It introduced a new medium density only zone, three mixed zones that allow for dual occupancy and other forms of medium density housing alongside single detached dwellings, and a new low-density zone exclusively for single detached dwellings. Zone objectives specified the neighbourhood character and design outcomes to be achieved and controls on the number of dwellings that could be built on a lot were replaced with a minimum open space requirement to protect the open garden character of existing low-density residential areas with single detached dwellings.¹

Similarly, in Brisbane, recent opposition to higher intensity forms of medium density housing has been addressed by changing zoning to ensure townhouses and unit complexes are permissible in areas already zoned for medium density housing and not areas zoned exclusively for single detached dwellings.

Issues such as ageing in place, baby boomer downsizing, manageable dwellings closer to transport and amenities, homes to suit millennial lifestyles, the declining need for backyards, getting young people on the property ladder — all of these and other challenges can be addressed to some degree by medium-density development

David Caddy, Chairman West Australian Planning Commission, The West Australian, November 14 2018

It can sometimes seem that housing in Queensland exists exclusively at very disparate ends of the spectrum, with the choice solely between high-rise, high-density living or free standing suburban family homes

Jackie Trad MP, Minister for Planning, Queensland Government, The Fifth Estate, May 25 2017

The policy rationale is simple: bring jobs closer to where people work, and bring people's houses closer to where their jobs are. Medium density will help provide more housing choice for people who don't want to live in an apartment, but also don't need a large, stand-alone house. It will help improve affordability, while more houses close to public transport will mean fewer cars on our roads and less time spent commuting... Simply put, medium density enhances the character of neighbourhoods...Medium density housing also increases job density, with more jobs located closer to people's homes...Sydney will not fix its jobs imbalance without also fixing its imbalance in housing density.

Committee for Sydney, Medium density housing essential to creating more jobs in West, May 23 2018

5.4

Appendix 4: Document review with information available prior to the commencement of the review.

A range of documents were reviewed to identify the views of selected industry and community stakeholders about the Code. These included submissions to the NSW Department of Planning and Industry's *Discussion Paper: Options for low rise medium density housing as complying development* and the *Draft Medium Density Design Guide and Explanation of Intended Effect* (the Guide), and other relevant planning processes such as the Greater Sydney Commission's draft District Plans. Publicly available policy positions, media releases and commentary since the NSW Government's decision to defer operation of the Code were also reviewed. A summary list of documents is at the end of this section.

The review was concerned with identifying views about the policy intent and operation of the Code as well as recommended changes to the Code and Guide as they relate to planning matters. It is acknowledged some of the changes recommended by stakeholders through the submissions, particularly those relating to specific development standards, have been addressed in the final Code and Guide.

Views of the following stakeholders were considered:

- Planning Institute of Australia (PIA)
- Urban Taskforce
- Urban Development Institute of Australia (UDIA)
- Property Council of Australia (PCA)
- Australian Institute of Architects (AIA)
- Local Government NSW (LGNSW)
- Housing Institute of Australia (HIA)
- Committee for Sydney
- Building Designers Association (BDA)
- Australian Institute of Building Surveyors (AIBS)
- Association of Accredited Certifiers (AAC)
- Better Planning Network
- Selected local councils

5.4.1 Policy intent:

Generally, there is broad support for providing more medium density housing across NSW. A range of reasons for this support were expressed, including:

- Meeting changing needs and preferences of different household types including the increasing proportion of smaller household sizes
- Enabling older homeowners to downsize into smaller housing more appropriate to their needs as they age by redeveloping their existing home
- Boosting supply to improve affordability for younger generations and create jobs in the building and construction sectors
- Rebalancing the supply of housing so that a more even distribution of low, medium and high density development is provided across NSW
- Better utilizing land through increased infill development and so that more housing is provided closer to jobs, services and transport
- Delivering a more compact urban form and providing a style of housing that can help provide a more gradual transition between adjacent areas of lower and higher density development.

Like the Minister for Planning, LGNSW would like to see the community embracing medium density forms of development, as a viable and attractive housing alternative, adding to housing supply and providing more housing choice.

LGNSW believes there is scope for expediting medium density development approvals and for improving consistency in decision-making. These objectives could potentially be achieved

<p><i>through greater standardisation of DCPs as they relate to medium density development. This could involve incorporating major elements of the Guide into DCPs as common standards.</i></p>
<p>Local Government NSW, Submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016</p>
<p><i>The Government’s initiatives over recent years have invested in traditional separate houses or strata-titled apartments. What has been missing has been a concerted focus on the ‘Missing Middle’ – the housing that transitions the scale between low density detached houses and strata titled apartments...</i></p> <p><i>Most homes built in NSW broadly fall into the two categories, traditional free-standing homes or apartments...Low rise medium density provides relatively more affordability and relatively more liveability compared to a free-standing house and caters for our growing population</i></p>
<p>Urban Development Institute of Australia, ‘Making Housing More Affordable’, and Submission to Inquiry into Land Release and Housing Supply in New South Wales, 2017</p>
<p><i>We get that townhouses are required...Residents broadly want townhouse-style housing</i></p>
<p>Northern Beaches Council, Missing muddle: government gives ground on terrace housing plan, Sydney Morning Herald May 18 2018</p>
<p><i>Faster approvals of these types of homes will address both supply and affordability. They are typically built on smaller blocks of land than traditional free-standing homes, which helps improve affordability</i></p>
<p>Housing Industry Association, NSW moves to fast-track low-rise medium density homes, The Fifth Estate, April 10 2018</p>
<p><i>For example, a retiring couple looking to downsize from a five-bedroom family home into a terrace that’s close to family is unlikely to find any terraces for sale. This is a phenomena known as the ‘missing middle’, where there is a shortage of medium-density building types that bridge the gap between detached houses and apartment blocks</i></p>
<p>Urban Development Institute of Australia, Choosing a home for now and the future, Domain.com.au, May 31 2017</p>
<p><i>The thrust of the policy responds to the increasingly diverse lifestyles and housing needs of major urban areas, including smaller household sizes and an ageing population.</i></p>
<p>Planning Institute of Australia submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016</p>
<p><i>Some of the biggest conflicts at the moment are where we have multi-residential [development] smashing right up against suburban development</i></p> <p><i>The Institute strongly supports increasing density in existing established areas – not further sprawl – and the Low Rise Medium Density Code and Design Guide are positive steps towards achieving higher density responsibly and sustainably, while fostering greater liveability for the people of Sydney.</i></p>
<p>Australian Institute of Architects, ‘Election promise to end medium density housing code a</p>

backward step: Institute', Architecture AU, 22 February 2019

A number of stakeholders noted local councils experience greater community opposition to applications for medium density housing compared to high-density. Despite this, some suggested enabling the lower impact, but still higher density form of medium density housing envisaged by the Code would assist with shifting community attitudes towards higher density housing. Some stakeholders also noted apparent community confusion regarding the types of medium density development permissible under the Code and that community members perceived it allowed for a higher density of development than is actually the case.

Medium density housing where it is not expected is one of the biggest complaints we get from residents

Hills Shire Council, 'Election promise to end medium density housing code a backward step: Institute', Architecture AU, 22 February 2019

It was disappointing to see resistance to the Code arising from misunderstanding of its implications. The code only permits low-rise development (maximum two storeys) and only where council already permits medium density development.

Australian Institute of Architects, 'Election promise to end medium density housing code a backward step: Institute', Architecture AU, 22 February 2019

Where support was not expressed for the Code intent, this related to preferred urban growth models and whether medium or high density housing better match changing housing preferences, rather than operation of the Code.

We accept that small areas of medium-density could be built in council-initiated, appropriately zoned areas, but the rest of the suburbs must be protected...We believe that carefully planned high-rise housing in limited locations in town centres and around railway stations is a better option than widespread medium density to accommodate part of Sydney's growth. This type of housing in apartments has become a preferred way of living for demographic groups who want a more urban lifestyle and to use public transport, including metro rail, to get to work.

Save Our Suburbs and Urban Taskforce, Limited high-rise can halt sprawl and preserve our suburbs' character, Sydney Morning Herald, June 7 2019

Codes are used widely and successfully in Queensland and Victoria...the Property Council has long championed greater use of complying development in NSW to reduce approval times, provide quality housing and improve certainty for communities.

It's important to remember that the Code was consulted upon for two years with input from a range of stakeholders to get it right – we need a clear separation between the Code itself and how it was implemented; if the Code is to be scrapped, then we need a different plan to deliver more housing in existing suburbs.

More diverse housing needed across Sydney, not less, Property Council of Australia, February 28 2019

Whilst there appears broad support for the policy intent, stakeholders have expressed concern over a number of issues relating to the operation of the Code. These include the:

- relationship between the definition and potential density of different types of medium density housing permitted under the Code and implications for local infrastructure and character
- process and mechanism for identifying where the Code is applicable
- level of rigour and consideration of development standards through the assessment process, particularly those standards concerned with character and design

Whilst some stakeholders have recommended a targeted approach to applying the Code across existing residential zones where medium density housing is already permitted, others have emphasised the importance of consistent application in order to provide certainty for industry, consent authorities and communities.

The broader application of the Guide will provide a consistent set of design controls for these housing types across NSW when considered as a development application. This is also strongly supported. Regardless of the approval path, consistent controls create much greater certainty for industry, consent authorities and the community about the type and nature of residential development that may occur.

Housing Industry Association, Submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016

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

Local Government NSW Submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016

[We have allowed villa-style and townhouses for the past few decades]...under our current controls they seem to work in appropriate areas...but what this code is doing makes them inappropriate. The only way we could have the code not override our controls is to prohibit them completely.

Canterbury Bankstown Council, Missing middle: government gives ground on terrace housing plan, Sydney Morning Herald May 18 2018

If the Code was to be introduced, it would allow for dual occupancies, terrace housing and 'manor' homes in R2 and R3 residential zones under the Hurstville Local Environmental Plan, and in the R3 residential zone under the Kogarah Local Environmental Plan.

This could potentially mean more than 10,000 lots in the Local Government Area could be affected by the Code. The Code is likely to significantly increase the number of dwellings permitted in low-density areas, and will impact on traffic, availability of car parking, parks, and open spaces, a loss of trees, and sporting facilities becoming overcrowded

Council resolved to raise these concerns directly with the NSW Government and seek an exemption from the Code until our planning controls have been adjusted to restrict this type of development to appropriate zones

Georges River Council, Mixed feelings over Sydney's medium density design code, The Real Estate Conversation June 1 2018

Low-density residential housing is by far the dominant residential land use in Sydney and NSW. Allowing complying medium density in these areas, even if initially restricted to Council areas where

dual occupancy or multi-dwelling housing is a permissive use with consent, would have the potential to significantly change their character and would create public uncertainty as to the extent and concentration of medium density.

Better Planning Network submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016

To limit uplifts in density that place additional strain on local infrastructure and may be out of character with development in the surrounding area, some stakeholders suggested further controls on the ability to subdivide and amalgamate lots, for example, only allowing subdivision or amalgamation for lower impact forms of medium density housing (i.e. 4 dwellings or less), only allowing subdivision or amalgamation post-construction, or prohibiting subdivision and amalgamation altogether. Whilst some stakeholders recommended a more nuanced approach to lot subdivision and amalgamation, others emphasised the importance of consistent controls in order to provide certainty for industry, consent authorities and communities.

HIA supports the proposal to allow for Torrens title subdivision of certain medium density developments approved using the Code. As the Code already allows for approval for strata-title subdivision it is a sensible extension of this to provide for concurrent approval of Torrens title subdivision of dual occupancy developments that meet the standard requirements for this type of subdivision using complying development. Battle-axe dual occupancy designs should be included in this permissibility as complying development...

Housing Industry Association, Submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016

LGNSW is also opposed to certifiers being able to subdivide land after the development has been approved, where this would result in the lot sizes being smaller than that permitted under the council's LEP. In addition, LGNSW firmly believes that any provision that would allow land to be amalgamated to permit large-scale medium density development should be subject to the DA process.

Local Government NSW Submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016

Any planning to comply with the medium density housing code should be done in the context of an overarching local housing strategy, and we want to make sure this is done first, so any changes are done in an integrated and strategic way and with community consultation.

Northern Beaches Council, Sydney councils scrambling ahead of deadline for medium density code, Domain.com.au May 7 2019

More of the missing middle, such as townhouses, terraces and duplexes, is being constructed, providing greater proximity to employment, which is highly valued

Urban Development Institute of Australia, Choosing a home for now and the future, Domain.com.au May 31 2017

Danger is that a piecemeal roll-out of the missing middle policy – where the street you live in undergoes incremental change; this site developed, the site next door not – will inflame exactly the

sort of planning conflicts and neighbourhood disputes that will bring the policy down

Richard Pearson, How to eliminate NIMBYs: let householders unite as developers, Sydney Morning Herald, February 28 2019

The reliance on blanket expansion of complying development for medium density to deliver housing targets would remove the ability for councils and communities to determine important location and design considerations for these types of development.

The proposed Medium Density Housing Code would see these housing types (referred to as the 'missing middle') certified as complying development, bypassing councils' local policies and preempting the requirement in the draft District Plans for councils to prepare local housing strategies which would identify the most appropriate locations for medium density housing in their areas.

Councils should be afforded the opportunity to identify the preferred locations for medium density housing through their local planning strategies, rather than imposing a blanket medium density housing code...

Local Government NSW Submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016

BPN is of the view that implementation of the MDH Code as Complying Development in the residential zones R1, R2, and RU5 would be particularly problematic and would not be in the public interest. While medium density development as complying development would be less of a problem in an R3 zone, the preferred method of utilizing the MD Design Guide would be by a similar mechanism to the Apartment Design Guide, where all development applications are determined by Council on merit and neighbours and the community are given the opportunity to comment

Better Planning Network submission to Draft Medium Density Design Guide and Explanation of Intended Effect, December 2016

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ⁱ This project was conducted by Professor Roberta Ryan and Neil Selmon from the University of Technology Sydney.

Roberta Ryan was most recently the Director of the UTS Centre for Local Government and the UTS Institute for Public Policy and Governance. She has positive working relationships with NSW local councils and has worked extensively with the NSW Department of Planning over the last 8 years in supporting the reform of the planning system.

One of Australia's most respected public policy, strategic planning, stakeholder engagement and evaluation specialists, she has considerable experience developing and implementing large scale policy reform in Australia and internationally. She has deep knowledge of the value of effective monitoring and evaluation for successful program delivery.

ⁱⁱ Neil Selmon is an urban planner with nearly 40 years' experience working in the NSW planning system, in local and state government agencies and in private practice. He has held senior positions in the NSW Department of Planning and in a number of local councils. Neil has specialised skills in strategic planning and in translating strategic outcomes into effective statutory planning provisions.

Neil is highly regarded in state and local government as an expert in land use permissibility. He is currently completing a PhD investigating the factors that facilitate or mitigate alignment of local and regional strategic planning outcomes.