

LGNSW Submission on Draft Greenfield Housing Code

June 2017

Opening

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

LGNSW welcomes the opportunity to respond to the Department of Planning Environment's (DP&E's) draft Greenfield Housing Code which is outlined in the:

- draft *Explanation of Intended Effects: Proposed Greenfield Housing Code*; and
- draft *Background Paper: A review of Complying Development in Greenfields Areas*, May 2017.

Introduction

The purpose of the draft Greenfield Housing Code (draft Greenfield Code) is to further simplify the current provisions of the Housing Code, a state-wide complying code, to improve the take-up of Complying Development Applications (CDAs) in new release areas.

The material presented for comment only provides the background and the intended effects of the draft Greenfield Code, not the draft Code itself. It would be helpful for the actual draft Greenfield Code to be placed on public exhibition so that more detailed comment could be provided.

LGNSW accepts the use of complying development codes for simple forms of development, such as project homes on the urban fringe, but questions aspects of the draft Greenfield Code.

This submission provides comment on the key changes proposed under the draft Greenfield Code:

- changes to the development standards;
- the inclusion of diagrams to illustrate the application of the development standards; and
- changes to accelerate the approval pathway for CDAs.

The background material also provides advice for councils and developers on how to prepare master plans for neighbourhood precincts and planned communities, together with the associated Development Control Plans (DCPs), for the urban fringe.

Background

The NSW Government's planning reforms continue to widen the certification process to enable more complex forms of development to be approved under state-wide complying development codes. The Department of Planning & Environment (DP&E) is also reviewing current codes to make the existing codes more user-friendly. Part of the process will be to also make the development standards simpler to apply.

The legal framework that enables these codes to override local planning requirements is itself complex, requiring expertise in locating the relevant provisions. The provisions are contained across a number of State Environmental Planning Policies (SEPPs) including the Codes SEPP and ARHSEPP¹. To further confuse matters, the Codes SEPP (the predominant SEPP for complying development) contains a series of specific codes known as

¹ Codes SEPP is the State Environmental Planning and Policy (Exempt and Complying Codes) 2008 and the ARHSEPP is the Affordable Rental Housing State Environmental Planning Policy 2009.

the Housing Code, Alterations and Additions Code, Commercial and Industrial Code the Demolition Code and Strata Code.

All these codes are written in legalistic language that is hard to read and even harder to apply to local development sites. Hence DP&E is progressively reviewing these codes. Most recently, the former General Housing Code, now simply called the Housing Code, was updated and now includes diagrams to improve legibility.

The purpose of the draft Greenfield Code is to have a specific code that targets development on the urban fringe with a simpler set of controls. Many councils have questioned the need for another code, however DP&E is still seeking to impose a specific code as a means of delivering simpler set of controls for this context. In practice, development in new release areas is less homogenous than the DP&E may have assumed. Finding development standards suitable for all master planned estates is not simple. The Greenfield Code should be a baseline code to which appropriate local variations may be added.

LGNSW does not accept DP&E's proposition that all development standards need to be exactly the same across the urban fringe. Instead of requiring all housing estates to conform to a universal set of planning controls that may result in lowering the standard of some estates, LGNSW maintains that there needs to be provision for local development controls or local variations.

LGNSW position on complying development

LGNSW accepts the use of complying development codes for low risk, low density residential development. LGNSW is opposed to the expansion of state-wide codes to more complex higher density development as the scale, density and potential impacts warrant development assessment.

LGNSW specifically opposes the application of complying codes to:

- attached housing², as currently permitted under the Housing Code and included in the draft Greenfield Code; and
- medium density housing, as proposed under the draft Medium Density Complying Code (called the Missing Middle), which is currently under review.

Comments on the draft Greenfield Code

LGNSW welcomes the moves to make the complying codes more user- friendly with simplified language and the inclusion of diagrams to explain the development criteria. However, we do not accept that simplifying the code has to result in lowering the bar on important development standards that protect the character and amenity of emerging communities. With the introduction of ePlanning some variations in development standards can be incorporated into the state-wide complying codes without making them more complex.

1. *Need for local variations*

1.1 *Subdivision / Master Plan Guidelines*

LGNSW supports DP&E's emphasis on the master planning of neighbourhood precincts and the recommendations to develop guidelines. The Background Paper indicates that these

² For the purposes of this submission attached housing means development that is allowed to be built up to the side boundary on one of two sides depending on the size of the frontage.

guidelines will cover planning principles for master planning and accompanying DCPs, prepared by councils or developers.

However, LGNSW questions how these guidelines will be applied given that the draft Greenfield Code specifically overrides local DCPs.

Some developers have raised concerns that the design requirements associated with their own planned communities are ignored by the draft Greenfield Code. This has been raised in the Background Paper but not resolved.

Given that these local amenity requirements are commonly applied to new precinct development, it would be timely for DP&E to enable 'local variations' to be applied to the draft Greenfield Code in agreed circumstances. This simple change would be helpful in achieving a more integrated state and local code-based system. It would also provide the opportunity for the provisions of the DCP to be aligned with that of the relevant complying codes to deliver better design outcomes on the ground.

LGNSW does not argue that all DCP requirements should be incorporated into the draft Greenfield Code as local variations, but that they be restricted to an agreed list of amenity standards. This would ensure that the basic development standards are protected but that councils would be able to apply additional requirements for the relevant precinct.

1.2 Amend development standards

The draft Greenfield Code has gone too far in simplifying the development standards.

LGNSW observes that the development standards proposed under the draft Greenfield Code are lower than those contained in the former Housing Code, with front and side setbacks in some cases significantly lowered enabling less generous setbacks and thereby increasing the bulk of the development from the street and the adjoining neighbour's property. This will negatively impact on the streetscape and result in the loss of neighbour amenity through overshadowing and loss of privacy. In some estates the proposed front boundary setback of 3 metres will result in more prominent housing in areas where the current set back is 4.5 metres.

Front boundary setbacks commonly vary across new estates. This is an example where a 'local variation' could be applied to enable precinct based setbacks to be applied. Given the benefits of ePlanning, these sorts of changes can be inserted into the state-wide code at a local level without creating confusion.

This is an issue that can be referred to the Complying Development Expert Panel for consideration.

2. New ways to fast track approval processes of CDAs

The draft Code proposes a number of procedural changes to fast track the approval of a CDA. These include allowing approval:

- prior to the registration of the lot;
- prior to the final approval of a driveway crossing; and
- allowing the CDA to override an easement.

These changes would introduce an unacceptable level of risk that cannot be justified. The alleged delays caused by these matters are usually minor and the proposed solutions are out of proportion with the problem. Making sure the title is correct is essential, as is protecting easements and resolving the siting of a driveway before the dwelling is approved.

Conclusion

LGNSW is concerned that the proposed Greenfield Code goes too far in further simplifying complying development. It introduces unnecessary risk and lowers the standard of residential development.

LGNSW advocates that the proposed Greenfield Code include provision for local variations in the form of a set of agreed local development controls. The introduction of ePlanning provides the opportunity to do this without unduly adding to complexity. LGNSW recommends that the introduction of local variations be considered by the Complying Development Expert Panel.

LGNSW also opposes the fast track approval of CDAs:

- prior to the registration of the lot;
- prior to the final approval of a driveway crossing; and
- allowing the CDA to override an easement.

As a general comment, LGNSW also requests that proposed Codes and SEPPs be placed on public exhibition. The current approach is counter-productive and undermines confidence in a code-based system that is constantly in a state of flux.

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