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29 February 2016

Mr Marcus Ray  
Deputy Secretary Planning Services  
Codes and Approval Pathways  
Department of Planning and Environment

cc. Minister for Planning

Dear Mr Ray

### **SHOROC submission on the Options for Low Rise Medium Density Housing as Complying Development – Discussion Paper**

SHOROC, a partnership of Manly, Mosman, Pittwater & Warringah Councils, welcomes the opportunity to comment on the Discussion Paper seeking feedback on the proposal to expand the range of low-rise residential development that can be undertaken as complying development across NSW.

The SHOROC region covers an area of approximately 288km<sup>2</sup>, has a population of around 270,000 people and is home to around 100,000 jobs. Our residents value the region's outstanding natural environment and vibrant communities and as such regional and local planning are of major importance. Whilst the Local Government sector is facing enormous change and challenges due to the spectre of forced amalgamations, the SHOROC councils remain committed to ensuring the built form that eventuates within its communities is sustainable, sympathetic to the current street-scape and provides for current and future residential amenity.

It should be noted that some confusion seems to exist consequential to the release of the Discussion Paper as to whether it would enable medium density development which had formerly not been permissible in low density neighbourhoods (primarily R1 and R2). Recent comments from the Planning Minister published in the media indicate that this was not the intent however the strategic planners within the SHOROC councils, and myself, are of the opinion that this indeed is what is being contemplated and if so, this is of great concern to the SHOROC Councils and their communities. Such an unwelcome outcome would be consistent with the previous introduction of the Affordable Housing SEPP which made a number of hereto non-permissible uses (such as Boarding Houses) permissible in all residential zones.

Please also note that this submission is made on behalf of the SHOROC and covers key concerns for the region however further and different issues may be raised in Councils' individual submissions. As local government will be first point of contact should the proposed changes take effect, and bear the brunt of community concern, we urge caution to ensure that this proposal is well constructed and that the primacy of strategic planning and planned-for growth is not lost for relatively modest gains in housing choice and housing growth. Simply put most Councils have strategically concentrated growth in their centres seeking to insulate their low-residential neighbourhoods from profound change. From the perspective of local communities, the introduction of new controls that override that historic and logical commitment to planned growth in urban centres would be a breach of faith and poor planning. As such, the SHOROC councils would appreciate your response to this submission and would welcome further discussion with the NSW Government on the matters raised therein.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. B. Johnson', with a long horizontal flourish extending to the right.

Dominic Johnson  
SHOROC Executive Director

# Option for Low Rise Medium Density Housing as Complying Development – Discussion Paper

## Response to questions within the Discussion Paper

### Dual Occupancies

*Should the development of dual occupancies on a single lot as complying development be permitted in R1, R2 and R3 zones?*

Whilst there is a variation between the SHOROC Councils in terms of permissibility of dual occupancies in R1, R2 and R3 zones, it is not considered appropriate to permit them to become complying development within these zones. Specifically the existing low-density built form in the SHOROC region has been established primarily in the late 19<sup>th</sup> and early to mid-20<sup>th</sup> centuries and would be at significant risk from the incursion of unplanned medium density development. Dual occupancies provide many challenges to appropriate streetscape design and engender considerable community concern for relatively modest gains in terms of density and housing choice. Specific amenity concerns regarding bulk and scale, overlooking, parking, traffic generation, maintenance and lot size means that this form of development is best suited to merit based assessment on an individual basis.

Whilst these challenges are potentially less problematic in R3 zones where some SHOROC councils already permit subdivision of Dual Occupancies, the overall prospect of overriding carefully considered growth primarily in urban centers means that individual Council controls regarding this form of development should be upheld.

*Should the minimum frontage be reduced to 14m so that the construction of 2 dwellings on a single lot can be carried out as complying development on more existing lots?*

It is not considered appropriate that the Codes SEPP introduce provisions for carrying out complying development for 2 dwellings per lot on existing lots, regardless of changes to minimum lot frontages. Lot frontage standards are created specifically to maintain streetscapes and to provide for, and preserve, building separation. It also has the additional benefit of providing for privacy, parking, landscaping and solar access. A reduction in lot width permissibility is likely to generate poor design outcomes and result in narrow buildings with challenges to solar access and internal circulation. Again deviations from already mandated lot widths is best addressed on a merit-based and individual basis by Councils and on this basis it is not supported by SHOROC.

*Should the height be limited to 8.5m? Should attic rooms be permitted? Should 2.7m floor to ceiling heights be imposed?*

Taking into account the comments above, the standard maximum height in low density areas within the SHOROC region is generally 8.5 metres. Certainly no additional height for complying development should be contemplated due to the impacts of overshadowing, view loss and changes to the streetscape. Attic rooms provide their own challenges, often viewed as a third storey, which can give rise to over-looking impacts as well as further eroding the existing streetscape. On this basis the SHOROC view is that they should not be permitted. Notwithstanding these points, a ceiling height of 2.7 metres would be consistent with an overall building height maximum of 8.5 metres.

*Should eaves and roof overhangs be required to comply with the envelope control? Would the application of a 1.2m setback and no building envelope be easier to implement?*

The issue of eaves as roof overhangs highlight deficiencies in the Code process in providing good quality design outcomes. Council encourages such elements in its DCP as design elements that can contribute to more sustainable building designs. At the same time mindful considerations must be given to the impacts of encroachments in terms of amenity such as overshadowing and view loss, which is very important in the SHOROC region.

An overly simplistic approach to side set-backs does not allow for site-specific variations and issues associated with site topography as well as non-compliant but historic setbacks of existing buildings. The application of a 1.2m setback and no building envelope is considered to likely result in poor design outcomes that are out of context of the site and surrounds and likely to result in significant impacts on the neighbourhood amenity. SHOROC considers that building envelope controls provide the greatest assurance against inappropriate encroachments occurring and contends that the ease of implementation is not the paramount consideration in intelligent and successful building design and regulation.

*Should Torrens tittle subdivision of 2 dwellings on a single lot be permitted as complying development? Should subdivision be permitted only after the buildings are completed?*

SHOROC considers that Torrens tittle subdivision of 2 dwellings on a single lot should not be permitted as complying development and that subdivision should not be permitted after the buildings are completed. As stated in the proceeding paragraphs, Torrens title subdivision as complying development would result in negative impacts on the pattern of subdivision which effects future long term planning of the locality. Torrens title subdivision should only be permitted on a case by case merit assessment (if at all), taking into consideration existing and desired subdivision patterns as well the topography of the land. Specific concerns relating to minimum resulting lot size and the necessity of the resulting lots to meet the objectives of the subdivision provisions, including the maintenance of urban amenity and streetscape, override the value of this proposition.

## **Manor Homes**

*Which zones would be more appropriate for manor homes? Should manor homes only be permitted on corner lots or lots with dual street access? Should manor homes on lots that do not have rear lane access be required to have a basement carpark?*

As 'Manor Homes' are not a development type identified in the Standard Instrument LEP, they should be transparently characterized as Residential Flat Buildings. For the reasons stated earlier, they should therefore not be considered appropriate for any existing zone in which medium density is currently prohibited. Whilst there may be specific instances in which two story Flat Buildings are appropriate in existing R3 zones in the SHOROC region, the broader issues regarding existing street character negate further exploration of specific sites (such as corner lots or dual street access).

In relation to the provision of on-site parking it is considered that the proposed complying development standards for manor homes should not rely on the alternative provision of basement carpark on lots that do not have rear lane access. In such instances, the site constraints are considered to be evidence that a Complying Development is inappropriate and the streetscape impacts of underground ingress points in low-density neighbourhoods would be profound.

*Instead of council certification of On-Site Stormwater Detention and waste, could certification by appropriately qualified specialist be provided?*

While this is somewhat of a moot point given the statements made above, the SHOROC Councils in general do not have an issue 'in-principle' with an appropriately qualified specialist carrying out certification for On-Site Stormwater Detention and waste subject to compliance with individual Council's Development Control Plans. SHOROC would be open to working with the Department of Planning to develop appropriate guidelines so all Councils can adapt their policies to allow consistent external certification and provide for alternative water sensitive urban design principles.

*How should the proposed car parking controls be designed to ensure that adverse impacts on the transport network (including on-street parking) are minimised and active transport options are encouraged?*

SHOROC contends that adverse (and unplanned) impacts on the transport network are **exactly** why medium density development should not become complying in hereto low density areas, Simply put the issue needs to be dealt with on a site-specific basis and with close reference to individual Council DCPs which have evolved over many years taking careful account of local conditions and the need for private transport to integrate with public transport. Active transport options are already encouraged in the SHOROC region through both statutory and planning controls but only succeed when approached within the aegis of planned growth.

*Should subdivision only be permitted after the buildings have been completed?*

As SHOROC contends that this form of development should not be pursued, the answer is a resounding no.

### **Development of 3-10 Dwellings (townhouses/terraces)**

*In which zones should the development of 3-10 dwellings be permitted?*

The SHOROC response to this issue is consistent in both a general and specific sense to the answers given previously. The notion of having up to 10 townhouses or terraces approved and constructed under a complying development consent in a low-density zone or neighbourhood is contrary to the notion of good planning or development, and is indeed the most problematic of all the development proposed in this paper. SHOROC is of the view that a development comprising up to 10 dwellings on a site of 600sqm would be unacceptable in the majority (if not all) of the current low density zones in the SHOROC region and has a real potential of creating significant problems for extant and future communities. It should be noted that, should this notion become a reality, there could be a number of such developments within a single street or neighbourhood, each one creating unheralded demand for on-street parking, a departure from the existing streetscape and urban form, and a comprehensive change in character from low density detached style housing to a medium density housing style consistent only with a few existing areas in the SHOROC region.

Again only the R3 Medium Density Zone may be appropriate for such development. Limiting the Complying Development for 3-10 town houses to the R3 zone will allow Councils to target such development to areas with appropriate transport and infrastructure and facilitate the provision of additional infrastructure through section 94 contributions. However even in this case the individual merits of each development should be assessed and determined by Council to ensure that local considerations such as proximity to open space, traffic, heritage, streetscape and overland flow are adequately addressed.

*Instead of council certification of on-site stormwater detention and waste storage, could certification by appropriately qualified specialists be provided?*

Again this is somewhat of a moot point as the premise is not supported by SHOROC. As previously stated, the SHOROC Councils in general do not have an issue 'in-principle' with an appropriately qualified specialist carrying out certification for On-Site Stormwater Detention and waste subject to compliance with individual Council's Development Control Plans. It should be noted that given the proposed scale and density of this development type, the risks are greater, specifically in regard to the existing capacity of the stormwater system, which in some SHOROC areas is dilapidated or rudimentary.

*Should attic rooms in the roof be permitted to be carried out as complying development?*

No attic rooms in the roof should not be permitted as part of the complying development. As stated in the response to Dual Occupancies, attic rooms give rise to a number of amenity issues however the overriding consideration is that this form of development is manifestly unsuited to low density areas.

*Is the building envelope necessary in this instance? A minimum 2m setback already dictates a maximum height of 7.5m above ground level before the building envelope would be breached. As development is limited to 8.5m (2 storeys), is it necessary to also have an envelope control? Is the building envelope control as proposed easy to apply?*

A detailed response to this question is not warranted as the premise of complying terraces in low-density zones is not supported. Again SHOROC considers that building envelope controls provide the greatest assurance against inappropriate encroachments occurring and contends that the ease of implementation is not the paramount consideration in intelligent and successful building design and regulation.

*Should the proposed carparking controls be consistent with the requirements of the Guide to Traffic Generating Developments or should the relevant council controls for parking apply?*

Again maintaining strong opposition to this proposed change to the Complying Development SEPP, SHOROC's position is that Councils Parking DCP should be the primary consideration in designing new buildings and the parking required. Where there is no specific local guideline then the default should be the Guide to Traffic Generating Developments. It should be noted that the Guide is a Guide only and therefore averaged across a range of circumstances which do not take account of local circumstances. This 'one size fits all approach' is contrary to the principles of good planning particularly when one considers the difference in approach needed between Dee Why or Manly and the less dense areas of Warriewood or Church Point.

## **Implementations Issues and Discussion**

*Is it appropriate to permit excavation for basement carparking as complying development? What provisions or controls should be in place and information required to accompany an application?*

Development proposals involving basement carparking give rise to issues requiring merit based assessment in conjunction with medium density residential development and are thus considered inappropriate as complying development. In particular, basement excavation can involve works which extend beyond the boundaries of the site such as where perimeter anchor points are involved. In such cases where negotiation with adjoining owners and/or Council is required, the development is not considered appropriate for complying development. Further, consideration of the quantum of cut and fill is important from an ecological perspective, particularly in terms of slope stability, underground hydrology and soil disposal.

In terms of matters to accompany an application, it is considered essential that dilapidation reports be prepared including any appropriate mitigation measures for the protection of boundaries. Such reports are to involve recent survey/inspection data (including photographic

evidence) undertaken within 6 months. Further, the submission of contamination reports under SEPP55 are also to be required dealing with any likely need for site remediation. It may be difficult for a private certifier to ascertain whether a site has historically been used for activities that can cause contamination.

*Is up-front certification by Council for On-Site Stormwater Detention appropriate? Is it acceptable to have independent certification of OSD against Council's policies?*

SHOROC is of the view that up-front certification by Council and independent certification of OSD are possible, but further work with Councils to address broader concerns in regard to existing private certifier behavior, the function of the Building Professionals Board, and time to revisit Council DCPs covering Stormwater and OSD is merited.

*Should proposed waste management facilities be certified by Council's as part of the process? Could independent certification of compliance with a Council's waste management provisions in their DCP be the appropriate mechanism?*

SHOROC is of the view certification by Council of waste management facilities and independent certification of waste management requirements are possible, but further work with Councils to address broader concerns in regard to existing private certifier behavior, the function of the Building Professionals Board, and time to revisit Council DCPs covering Waste Management and Disposal is merited. It should be noted that a substantial risk exists that private certifiers will certify waste access arrangements despite the built form not accommodating Council waste vehicles thus promulgating a long standing issue and contention between the future owners and Council.

*What proportion of new housing stock should be adaptable housing?*

As a guide, somewhere between 10 and 20 percent.

*How easy is the envelope control to understand? Is an envelope control necessary given the combination of controls proposed? For development involving 2 dwellings, should the side setback control simply be mandated at 1.2m for ease of implementations and assessment? Should the setback be 1.5m for easier BCA compliance?*

Building envelope controls are not a new concept for building professionals and if correctly drafted can be readily interpreted by the typical layperson. In most instances, however, Councils continue to use Floor Space Ratios and height controls and these provide the surest provision against excessive density.

*Does the suite of suggested controls provide sufficient certainty of the built form outcome and management of potential impacts? Are there further controls that may assist in delivering positive outcomes?*

Absolutely not. This question misses the point that it is the proposed permissibility and consequential changes to the existing low density zones in existing neighbourhoods that will have the impact and that minor details regarding set back distances and building envelopes do not address this core issue.

*Should guidance on dwelling size be provided?*

Yes, in a similar manner and perhaps as an adjunct to the Apartment Design Guidelines under SEPP65.

*Are there other forms of supporting information that may be required?*

A statement that demonstrates compliance with the development standards similar to a Statement of Environmental Effects will assist certifiers determine the increasingly complicated Certificate applications. A Planning Certificate should be mandatory with any application. The Department should prepare suitable checklists for certifying authorities for these development types and ensure that they are kept up to date.

*Are there other matters that should be addressed as conditions of consent?*

Conditions of consent requesting compliance with the recommendations of a supporting Geotechnical, engineering or bush fire report are considered appropriate. Conditions requiring compliance with the requirements of relevant Australian Standards, the Roads Act in relation to driveway crossovers and the Local Government Act in relation to trust fund deposits are also appropriate.

### **Conclusion**

SHOROC, along with its member Councils, has considerable concern about this discussion paper and the changes to the Complying Development SEPP that are being contemplated. The first issue that needs to be clarified is whether this will permit medium-density development in areas currently zone for low density. Only once this matter has been clarified can a more informed and detailed discussion take place on how, if at all, does the 'missing middle' need to be addressed.