



THE LAW SOCIETY
OF NEW SOUTH WALES

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4 March 2016

Manager
Codes and Approval Pathways
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2011

By email: haley.rich@planning.nsw.gov.au

Dear Sir/Madam,

Discussion Paper - One Part of the 'Missing Middle' - Options for Low Rise Medium Density Housing as Complying Development

The Law Society of NSW appreciates the opportunity to comment on the Discussion Paper, *One Part of the 'Missing Middle' - Options for Low Rise Medium Density Housing as Complying Development*.

The Discussion Paper explores the possibility of introducing a complying development framework for low rise (one and two storey) medium density housing such as dual occupancies, manor homes, townhouses and terraces.

1. Overview

The Law Society considers it important that, if complying development is to be extended to this contentious area, community members, (and in particular adjoining landowners), need to be provided with more information about the proposed development. There should be a specified minimum period allowed between the issue of the complying development certificate and the commencement of work. Neighbours should be able, during this period, to examine the approved plans.

2. Community to scrutinise plans

The notification requirements currently in place for complying development in residential and rural areas, do not include access to the plans that have been approved. If complying development is to be extended, as proposed, the plans should be made available when notifications are made. Although notifications are advisory only, there should be the ability to challenge the development if the plans disclose that the development should not have been approved under the relevant Code provisions.

3. Commencement of work

Once a complying development certificate issues, there should be a sufficient period allowed, prior to the commencement of work, to allow the scrutiny of plans. This will allow adjoining owners to satisfy themselves, before work commences, that the plans comply with the relevant Code provisions.

4. Review of the building certification system

The Government has committed to expand the range and level of developments that can be undertaken as complying development. The objective is to reduce the costs and delays in proceeding with developments, while ensuring conformity with planning and building requirements. However, the effectiveness of this initiative is vitally dependent on the effectiveness and integrity of the certification process leading to the issue of complying development certificates.

In late 2014, the Assistant Minister for Planning (now the Minister for Planning), the Hon. Rob Stokes, initiated a broad review to examine certification and its application in the wider building industry.

The review's broad terms of reference gave the reviewer the ability to:

- assess the validity and efficacy of the current Act
- examine building and subdivision certification and its application in the wider building industry
- make recommendations for reform.

The Draft report was publicly exhibited during August-September 2015.

At page 259, the draft report concluded:

The evidence is that the system is not as effective and thorough as needed to have confidence in the outcomes generated through the Complying Development process. A precondition to expanding the Complying Development program and having confidence in the quality of the developments that are undertaken through this process is to both rewrite the Complying Development SEPPs so that there is full clarity by builders and certifiers about what is required and, second, to have a strong certification process that is focused on the public interest. The reforms proposed in this report will achieve these aims and hence facilitate the Government's objective of increasing the range and proportion of developments handled as Complying Development.

The final report has been delivered to the NSW Government.

The Law Society submits that any proposal to expand the categories of complying development should only be considered once the recommendations made in the review have been implemented.

If you have any questions in relation to this submission, please contact Liza Booth, Policy Lawyer, on (02) 9926 0202 or by email to liza.booth@lawsociety.com.au.

Yours sincerely,



Gary Ulman
President