8.4 Draft Development Control Plan 2013 - Amendment 5 (House-Keeping Updates)

REPORT BY THE SENIOR PLANNER
TO 12 AUGUST 2020 ORDINARY MEETING
GOV400087, LAN900108

RECOMMENDATION

That Council:

A. receive the report by the Senior Planner on the draft Development Control Plan 2013 - Amendment 5 (House-Keeping Updates);

B. endorse and publicly exhibit the proposed housekeeping amendments to Mid-Western Regional Development Control Plan (DCP) 2013 outlined in this report, pursuant to Part 3, Division 3.6 of the Environmental Planning and Assessment Act 1979 and Part 3 of the Environmental Planning and Assessment Regulation 2000; and

C. receive a further report following conclusion of the public exhibition period to consider any submissions received, or if at the end of the public exhibition period, no submissions are received, adopt the changes to the DCP as proposed.

Executive summary

Mid-Western Regional Council’s Development Control Plan (DCP) needs to be updated periodically to ensure its currency with NSW planning legislation and policy, and to correct errors, omissions or provide clarity of content as identified through the day-to-day use of the plan in development assessment. This report outlines proposed housekeeping amendments to the DCP and seeks Council’s endorsement to publicly exhibit the proposed changes.

The amendments to the provisions of the DCP proposed as part of Amendment 5 are summarised as follows:

- Front and Side Setbacks in the R2 zone (land size 2000m2 to 1ha) – reduce from 15 metre front setback and 5 metre side setbacks to align with Complying Development Provisions being 10 metre front setback and 2.5 metre side setbacks.
- Maximum floor area of detached outbuildings (e.g. sheds and carports) in urban areas are currently 120m2 for a >2000m2 block of land – seek to provide additional floor areas for land sizes greater than 2000m2 and clarify what is ‘urban land’.
- New provision for rural outbuildings including floor areas.
- Amendment to subdivision road standards.
- Other minor updates to legislation references and typographical errors.

If endorsed, the draft DCP Amendment 5 will be placed on public exhibition for 28 days in accordance with the Environmental Planning and Assessment 1979 (as amended).

Disclosure of Interest

Nil.
Detailed report

Since introduction of the DCP in 2013, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP Code) has been amended so as to allow landowners and developers the option to utilise the provisions of the SEPP Code to obtain a Complying Development Certificate (CDC) - rather than submitting a Development Application through Council. Whilst a Complying Development is a 'streamlined' approach to certain forms of development throughout NSW, this can often create problems where there is an identified misalignment with local controls, stipulated in Council’s DCP.

One such misalignment occurs between the setback requirements for buildings in the R2 zone, on lots greater than 2000m². Under Council’s DCP, buildings on lots greater than 2000m² are required to have a 15m front setback, 5m side setback and 7.5m secondary/corner setback. This compares to the CDC provisions, which allow a 10m front setback, 2.5m side setback and 5m secondary/corner setback.

This causes disparity, as property owners who lodge applications as a CDC can have a reduced setback, compared to property owners lodging a Development Application. Most proponents will utilise the CDC provisions, owing to reduced setbacks, faster approval times and cost savings. Such is the dominance of CDC as a means of approving development, the established character of the streetscape has changed from that envisaged with 15m front, and 5m side setback, to that of a predominate character of a 10m front setback and side setback of 2.5m.

Those unable to comply with the CDC provisions are required to lodge a Development Application, even for minor technical breaches. In those instances where a Development Application is lodged, a high portion of applicants request to vary the setback controls in the DCP – arguing reduced setbacks are now the established normal in the relevant streetscape. For example, a review of Development Applications submitted to Council over the last 3 years in the R2 zone, where applicants have proposed variations to setbacks greater than 10%, found that Council approved 25 requests to vary the setbacks, each supported by staff, with memos circulated to Councillors.

Therefore, it is proposed that the current setbacks for residential and ancillary development such as sheds/garages/carports under (Part 2.1 and 3.1) be reduced as follows, to be consistent with the CDC requirements:

<table>
<thead>
<tr>
<th>Current Controls</th>
<th>Proposed Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>R2 where 2000m² to 1ha = 15m front setback, 5m side setback, 7.5m secondary/ corner setback</td>
<td>R2 where 2000m² to 1ha = 10m front setback, 2.5m side setback, 5m secondary/ corner setback</td>
</tr>
</tbody>
</table>

The proposed reduction in setbacks is not identified to have any residual impacts on R2 land up to 1 hectare as many existing developments have been able to comply with the CDC approval pathway.

It should be noted that where a developer seeks to further vary the proposed new controls, significant justification will be required and a memo will still be required where a variation greater than 10% is requested, in accordance with Staff Delegations. It is anticipated however that this reduction in setbacks will reduce the number of variations sought in this area.

The second key area which is proposed to be amended due to the number of variations sought is in relation to the maximum floor area for Garages, Outbuildings and Carports. It is proposed to amend the table within Part 2.1 and Part 3.1 as follows and insert a notation to clarify the ‘urban areas’ along with the height of sheds on lots under 2,000m².
Maximum size of garages and outbuildings in urban areas* shall be as follows:

<table>
<thead>
<tr>
<th>Lot size (m²)</th>
<th>Shed Size (m²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;750</td>
<td>50</td>
</tr>
<tr>
<td>751-1000</td>
<td>80</td>
</tr>
<tr>
<td>1001-2000</td>
<td>100</td>
</tr>
<tr>
<td>2001-3000</td>
<td>120</td>
</tr>
<tr>
<td>3001 and greater</td>
<td>150</td>
</tr>
</tbody>
</table>

*urban areas are limited to residential areas which include the R1, R2, R3 zones and where a dwelling-house is approved or constructed on the land. A garage or outbuilding is not permitted on vacant urban land where a dwelling is not approved or constructed.

A maximum building height of 4.5 metres from natural ground level to the ridge applies in urban areas where the lot is under 2,000m².

For comparison, under the Housing Code CDC pathway, a shed, carport or garage is permitted to have a maximum floor area of:

<table>
<thead>
<tr>
<th>Lot size (m²)</th>
<th>Maximum gross floor area (m²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;300</td>
<td>36</td>
</tr>
<tr>
<td>&gt;300–600</td>
<td>45</td>
</tr>
<tr>
<td>&gt;600–900</td>
<td>60</td>
</tr>
<tr>
<td>&gt;900</td>
<td>100</td>
</tr>
</tbody>
</table>

In addition, the CDC provisions permit a maximum detached building height of 4.5 metres if the building is located within 2.5m of the boundary.

As identified by the above requirements, Council permits a larger sized shed to be approved under a DA pathway. However, this does not accommodate the larger residential lots of land which is now sought to be included, along with the maximum heights of sheds on the smaller allotments.

In addition to sheds in residential areas, a new section is proposed to be inserted into Part 6.1 under Development in Rural Areas to include maximum shed sizes for the rural zones. It is proposed to insert the following table under Part 6.1:

Outbuildings including a farm building* must not negatively affect the amenity of the streetscape or adjoining properties. The following standards apply for rural areas:

<table>
<thead>
<tr>
<th>Lot size</th>
<th>Shed Size (m²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 5ha</td>
<td>150</td>
</tr>
<tr>
<td>Greater than 5ha and less than 40ha</td>
<td>200</td>
</tr>
<tr>
<td>Greater than 40ha</td>
<td>500</td>
</tr>
</tbody>
</table>

*Farm building is defined in the Standard Instrument as a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.
Again, for comparison, the Rural Housing CDC pathway only limits floor areas for outbuildings in the R5 zone where the lot size is under 4,000m$^2$, as follows:

(a) 500m$^2$, if the only purpose of the outbuilding is for agricultural use,
(b) 100m$^2$, in any other case.

In addition, farm buildings may be constructed without any form of approval by Council (exempt development under the SEPP Code) in Rural Zones (excluding the RU5 and R5 zones) as follows:

1. Up to 200m$^2$ per farm building; and
2. Maximum footprint of all farm buildings as follows:
   i) 0-4ha  2.5% of the area of the landholding
   ii) >4ha -10ha  1000m$^2$
   iii) >10ha  2,000m$^2$

Historically, it is likely that many farm buildings have been able to achieve the requirements of the exempt development pathway enabling a larger total floor area in accordance with the SEPP Code. However, Council has also received Development Applications for such buildings that cannot achieve the SEPP Code requirements and a merits based assessment is therefore undertaken in the absence of any DCP controls.

The third house-keeping amendment includes updated provisions in Part 7.2 Rural Subdivisions, which covers the previous report prepared and presented at the June 17 Meeting by Council’s Director Operations.

Lastly, a number of minor modifications have been made to cover updates to legislation including the Environmental Planning and Assessment Act and Biodiversity Conservation Act.

All changes proposed have been made in red throughout the draft DCP document included as Attachment 1.

**Public Exhibition**

The draft DCP Amendment 5 is required to be placed on public exhibition for a period of 28 days to enable submissions from the community in response to the proposed house-keeping amendments.

A further report will then be prepared and presented to Council for final adoption, unless no submissions are received, where the proposed changes will be adopted as presented.

**Community Plan implications**

<table>
<thead>
<tr>
<th>Theme</th>
<th>Looking After Our Community</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal</td>
<td>Vibrant towns and villages</td>
</tr>
<tr>
<td>Strategy</td>
<td>Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning</td>
</tr>
</tbody>
</table>

**Strategic implications**

**Council Strategies**

Nil.

**Council Policies**
The report is presented to consider an amendment to the Mid-Western Regional Development Control Plan 2013.

Legislation
The amendment to the DCP is being undertaken in accordance with Part 3, Division 4 of the Environmental Planning and Assessment Regulation 2000 and Schedule 1 of the Environmental Planning and Assessment Act 1979 (as amended).

Financial implications
Nil.

Associated Risks
If Council does not wish to proceed with the Draft Development Control Plan – Amendment 5, the risk is that there will be continued anomalies identified in the DCP by Staff and the community in undertaking development. This will result in continuation of variations being presented to Council for consideration.

KAYLA ROBSON
SENIOR PLANNER

LINDSAY DUNSTAN
MANAGER, STATUTORY PLANNING

JULIE ROBERTSON
DIRECTOR DEVELOPMENT

22 July 2020

Attachments: 1. Draft Development Control Plan 2013 (Amendment No.5). (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER