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NSW DOP

Dear Sir/Madam

SUBMISSION

PROPOSED AMENDMENTS SEPP – Exempt & Complying Development Code BOUNDARY ADJUSTMENTS

I have reviewed the material on exhibition, specifically in relation to Clause 2.75 of the **SEPP (Exempt & Complying Development Codes) 2008**, and provide the following comments:

It is currently the case that amending a boundary between two allotments, where one of those lots is smaller than the minimum allotment size is a prohibited form of subdivision unless it is permissible via a specific clause in the local LEP. This situation has come about through a failure of the Department of Planning to recognise that provisions in the Model planning instrument make no provision for the adjustment of a boundary between two allotments, excepting where it is compliant with the Exempt provisions.

This has led to a situation in many LGA's including those of Maitland and Port Stephens, where an adjustment of a boundary between two allotments, where one or more have an area of less than the minimum lot size, now requires an amendment to the Council planning instrument. As there are many rural properties in these LGA's with areas of less than the minimum standard (40ha), boundary adjustments between two titles are now a prohibited form of development in the rural areas of Maitland and Port Stephens.

Prior to the amendments to the SEPP gazetted on 21 February 2014, the boundary adjustment provisions in the SEPP provided flexibility for appropriate development to occur. This flexibility was removed with the 21 February amendments to Clause 2.75 and this has resulted in an unfortunate impediment to the management of land in these LGA's. A similar situation is likely to exist in other LGA's who have the model LEP in place.

In July 2014 we wrote to the Minister for Planning with a request to reinstate the provisions of the SEPP back to the pre February 2014 version. A response was received in January 2015 were it was stated that the matter would be subject to review including a period of public consultation. The now proposed amendments to Clause 2.75 are provided as exhibition material however the precise draft wording of the Clause has not been made available for comment. It is to this aspect of the proposal that we direct our comments and provide draft wording which would address the short comings of the existing provisions.

The wording of Clause 2.75, prior to the February 2014 amendments, provided flexibility to allow for the boundary between two allotments to be realigned with appropriate checks and balances. The current wording of Clause 2.75 is most cumbersome and unworkable, particularly for those rural areas were numerous numbers of the existing allotments have areas of less than the minimum allotment size. For these reasons at least 34 LGA's have inserted a specific clause in their planning instrument to provide for boundary adjustments. See the LEP's of Narrabri, Wellington, Armidale Dumaresq (22.8.14), Bathurst, Byron (Clause 4.1C), Clarence Valley (Cl 4.2A); Coffs Harbour (Cl 4.2D); Dungog (Cl. 4.1B); Dubbo (Cl. 4.2A); Deniliquin (Cl. 4.1B); Glenn Innes Severn (Cl. 4.1C); Greater Hume (Cl. 4.2AA); Gunnedah (Cl. 4.2C); Gwydir (Cl. 4.2A); Guyra (Cl. 4.1B); Hawkesbury (Cl. 4.1C); Inverell (Cl.4.1B, & 4.1E); Kempsey (Cl. 4.2C); Kyogle (Cl. 4.1A); Lismore (Cl. 4.2D); Nambucca (Cl. 4.1C); Narrabri (Cl. 4.1C); Port Macquarie Hasting (Cl. 4.2C); Queanbeyan (Cl. 4.1A); Richmond Valley (Cl. 4.2A); Shoalhaven (Cl. 4.2E); Snowy River (Cl. 4.2C); Singleton (Cl. 4.1B); Tamworth (Cl. 4.2D); Tenterfield (Cl, 4,2B); Tumut (Cl. 2.4A); Walka (Cl.4.2B); Wingecarribee (Cl. 4.2B); Yass Valley (Cl. 4.2A).

Clearly this is evidence that the provisions of the SEPP fail to recognise the circumstances of boundary realignments in rural zones.

We suggest that in order to provide flexibility in the planning system, especially concerning rural land, the following words be deleted from Clause 2.75:

Specified development

2.75 Specified development

The subdivision of land, for the purpose only of any one or more of the following, is development specified for this code:

(a) widening a public road,

(b) a realignment of boundaries:

(i) that is not carried out in relation to land on which a heritage item or draft heritage item is situated, and

(ii) that will not create additional lots or the opportunity for additional dwellings, and

(iii) that will not result in any lot that is smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (unless a lot or lots whose boundaries are being realigned is or are already smaller than the minimum size ~~and that lot or those lots will only increase in size at the completion of the subdivision~~), and

(iv) that will not adversely affect the provision of existing services on a lot, and

(v) that will not result in any increased fire risk to existing buildings, ~~and~~

~~(vi) if located in Zone RU1, RU2, RU3, RU4, RU6, E1, E2, E3 or E4 that will not result in more than a minor change in the area of any lot, and~~

~~(vii) if located in any other zone that will not result in a change in the area of any lot by more than 10%,~~

(d) rectifying an encroachment on a lot,

(e) creating a public reserve,

(f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

The above amendments would restore the pre February 2014 provisions and provide for the flexibility as per the aims and objectives of the SEPP.

We see no reason as to complicate the provisions of this clause by way of application to specific zones, or quantum of the variation, ie the 10% provision, as such provisions do not apply to lands with an urban zoning. Such provisions are considered to be most discriminatory and reflect poorly on the Department's mantra of the universality of State planning policies. The primary issue in all of this centres on the provisions of dwelling entitlements, a matter adequately covered in Clause (b)(ii).

Having studied this matter in some considerable detail, and consulted widely with both the public and private sector, I would welcome the opportunity to be provided with a draft copy of the proposed amending instrument, prior to finalisation. My concern is that those drafting the Code, need to fully understand how the amended provisions will be interpreted by local government planning staff, and be alerted to potential shortcomings of the revised provisions.

This opportunity to provide a submission is appreciated.

Yours Faithfully

Richard Bennett
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