

Submission on Simplified Housing Code

SEPP (Exempt and Complying Development Codes) Amendment
(Housing Code) 2014

Prepared by Mirvac Homes (NSW) Pty Ltd
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Mirvac would like to thank the NSW Department of Planning and Environment for the opportunity to comment on the proposed new simplified Housing Code. Mirvac is actively working within the low and medium density residential market and recognise the unlocked potential of the Housing Code.

After conducting our review, Mirvac generally support the direction of the new Housing Code, particularly in regards to the move towards the use of plain English and explanatory diagrams.

We have however identified some inconsistencies within the proposed clauses and further, provisions which may reduce the use of the Housing Code which is contrary to the Departments objectives.

Mirvac's comments have been expressed via the following eight itemised points;

1. Land exemptions
2. Permissible development within easements
3. Maximum Gross Floor Area
4. Minimum landscaped area
5. Primary setback requirements
6. Minimum side setbacks
7. Rear setback requirements
8. Minimum Setbacks; Corner lots

1. Land exemptions

An impediment to the use of the Housing Code for newly registered lots pertains to the land exemptions under Clause 1.19 of the Codes SEPP.

In several instances Council and State Government Authorities' environmental constraints mapping do not reflect actual completed works. The delay in updating land constraints data (e.g. flooding, environmentally significant land) unnecessarily excludes land parcels for consideration under the Codes SEPP.

Recommendation: The Department of Planning introduce a process that permits site specific analysis that overrides outdated constraints data for registered lots.

2. Permissible development within easements

3.2 Development that is not complying development under this code

(1) The following development is not complying development under this code:

(d) the erection of a building over a registered easement, other than the following parts of the building that are in the airspace over the easement (if the easement permits them):

- (i) an aerial,
- (ii) an antenna,
- (iii) an awning,
- (iv) a chimney pipe,
- (v) a cooling or heating appliance,
- (vi) a down-pipe,
- (vii) the eaves,
- (viii) a flue,
- (ix) guttering

The permissibility for building within a registered easement varies from Council to Council. The Department is encouraged to apply a consistent approach in terms of what development can encroach registered easements (in consultation with Council) as well as the mechanism to pursue permissibility (e.g. via an 88B instrument)

Recommendation: That the Department collaborates with Councils to set acceptable development types and associated mechanism for building over easements.

3. Maximum Gross Floor Area:

3.7 Maximum Gross Floor Area

(1) The maximum gross floor area for all development on a lot is shown in the following table:

Lot Size	Maximum Gross Floor Area
200m ² -250m ²	90% of lot size
>250m ² -350m ²	85% of lot size
>350m ² -400m ²	75% of lot size
>400m ² -500m ²	65% of lot size
>500m ² -700m ²	60% of lot size
>700m ² -920m ²	50% of lot size
>920m ²	460m ²

The maximum permissible gross floor area (GFA) for the range of lot sizes is not equitable. For example the maximum permissible GFA on a 400m² lot equates to 300m²; whilst the development on a lot of 401m² would be limited to a maximum GFA of 260.65m².

Further, there is a considerable reduction of permissible GFA across many lot size ranges as compared to the controls contained within the existing Codes SEPP. For example, under the proposed provisions a 451m² lot can be developed to contain a maximum GFA of 294m² compared to 330 m² permitted under the current Housing Code; a significant variation of over 10%.

The reduction in permissible GFA would significantly reduce the number of applications administered under the Housing Code which is contrary to the intent of streamlining the process. In the event the Department has intended to reduce the permissible GFA, detailed consultation with the development industry and the public should occur (separate to this process). Such consultation shall include justification for such amendments.

Recommendation: Amend the proposed method of calculating maximum GFA to ensure an equitable outcome for lot size ranges.

Recommendation: Ensure that any new methodology does not reduce the GFA from that permitted under from the current Codes SEPP.

4. Minimum landscaped area:

3.8 Minimum landscaped area

(3) The percentage of the landscaped area that must be located in front of the building line is shown in the following table:

Lot width (measured at the building line)	Percentage of landscaped area in front of the building line
18m or less	25% of the minimum required landscaped area
More than 18m	50% of the minimum required landscaped area

Further clarification is sought in regards to the percentage requirement for landscaping within the front building line. It appears that the current clause may either ensure a certain percentage of the front building line is required to be landscaped, or, that a percentage of the overall site landscaping shall be located within the front setback.

Recommendation: That the Department re-draft the provision to clarify the intent that a certain percentage of the front building line shall be landscaped.

5. Primary setback requirement:

3.9 Minimum setback for standard lots:

(2) If there are not 2 dwelling houses within 40m of the lot on the same side of the primary road, the dwelling house and all attached ancillary development must have a minimum setback from the primary road as shown in the following table:

Lot Width	Building Height	Minimum required setback from each side boundary
6m-10m	0m-5.5m	900mm
6m-10m	> 5.5m-8.5m	$=(\text{building height}-5.5\text{m}) \div 4 + 0.9\text{m}$
>10m -18m	0m-4.5m	900mm
>10m-18m	>4.5m-8.5m	$=(\text{building height} - 4.5\text{m}) \div 4 + 0.9\text{m}$
>18m -24m	0m-4.5m	1.5m
>18m-24m	>4.5m – 8.5m	$=(\text{building height} - 4.5\text{m}) \div 4 + 1.5\text{m}$
>24m	0m- 8.5m	2.5m

It appears the text within the third column contains an error as the provision relates to the minimum required setback from the primary road and not the side setback.

Recommendation: That the Department correct the text within the table to reflect the intent of the provision.

6. Minimum side setbacks:

3.9 Minimum setback for standard lots:

(7) Height of built to boundary walls

The height of a wall erected within 900mm of a side boundary must not exceed:

- (a) 3.3m above ground level (existing), or

- (b) if the height of the built to a boundary wall on an adjoining lot is higher than 3.3m—the height of that wall, but not more than 8.5m, or
- (c) if the building on the adjoining lot is subject to the same complying development certificate under clause 126 (4) of the *Environmental Planning and Assessment Regulation 2000*—the height of the wall on the adjoining lot, but not more than 8.5m.

3.10 Minimum setbacks for corner lots

(7) Built to boundary setbacks

Despite subclause (6), the dwelling house and all attached ancillary development may be built within 150mm of 1 or both side boundaries if the setback complies with the following table:

Lot Width at the building line	Conditions required for built to boundary setback
6m-8m	<p>The building may be built to within 150mm of both side boundaries if any wall of a building on the adjoining lot within 900mm of that boundary:</p> <ul style="list-style-type: none">(a) is of masonry construction, and(b) does not have a window facing that boundary.
>8m-12.5m	<p>The building may be built to within 150mm of only 1 side boundary if any wall of a building on the adjoining lot within 900mm of that boundary:</p> <ul style="list-style-type: none">a) is of masonry construction, andb) does not have a window facing that boundary.

Clause 3.9 (7) shall be amended to clarify that buildings may be developed to within 150mm, in line with Clause 3.10 (7).

Recommendation: Amend clause 3.9 item (7) to clarify that under certain circumstances, buildings may be developed to within 150mm of the side boundary {as per Clause 3.10 (7)}.

Clause 3.9 item 7(a) unnecessarily restricts wall height to within 3.3m above ground level. As illustrated in Figure 1 below, many contemporary facades incorporates parapet wall (above the garage) which abuts the side property boundary to within 150mm. As the parapet wall runs perpendicular to the side boundary, the impact of the wall height is minimal and thus the 3.3m maximum is deemed prohibitive.

Recommendation: That the building height restriction is amended to allow for parapet walls to exceed 3.3m. A height above existing ground level of 4.1m is suggested.

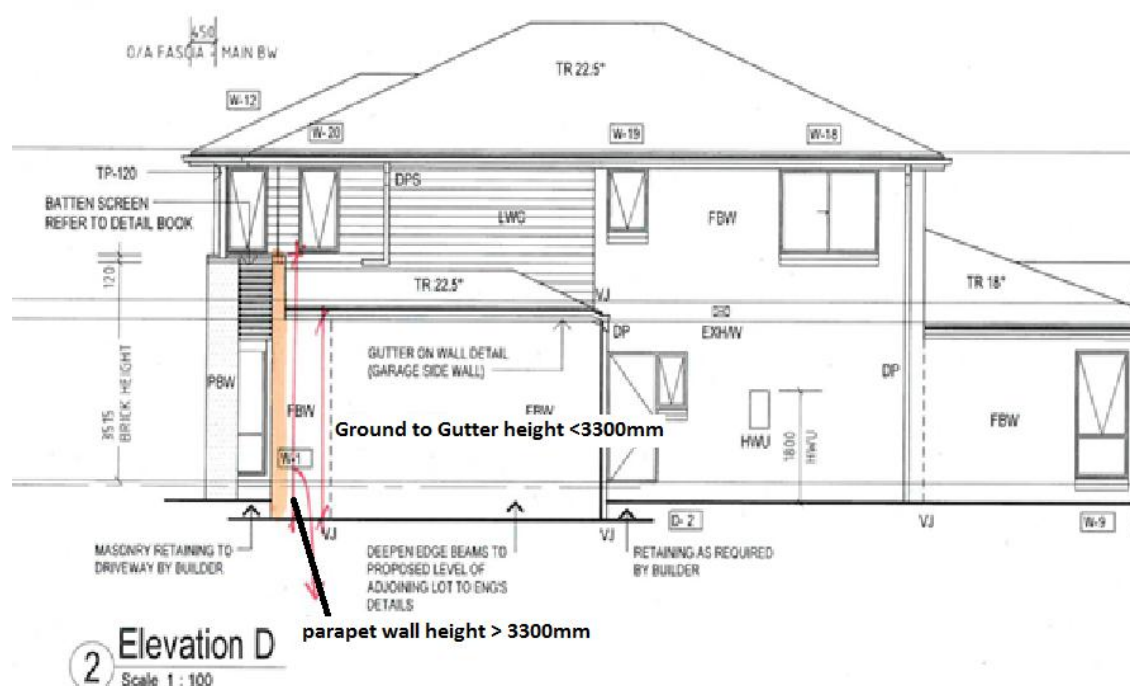


Figure 1: Example of contemporary design which include a parapet that exceeds the proposed 3.3m building height limit.

7. Rear setback requirements:

3.09 Minimum setbacks for standard lots

10) Rear Setbacks

The dwelling house and all attached ancillary development must have a minimum setback from the rear boundary as shown in the following table:

Lot Area	Building Height	Minimum setback from each rear boundary
200m ² -300m ²	0m-4.5m	3m
200m ² -300m ²	>4.5-8.5m	10m or the average rear setback of the 2 adjoining dwelling houses, measured at 4.5m above ground

		level (existing), whichever is the lesser
>300m ² -900m ²	0m-4.5m	3m
>300m ² -900m ²	>4.5m – 8.5m	8m
>900m ² -1,500m ²	0m – 4.5m	5m
>900m ² -1,500m ²	>4.5m – 8.5m	12m
>1,500m ²	0m-4.5m	10m
>1,500m ²	>4.5m-8m	15m

The proposed 10m setback required for the first floor component of dwellings (for lots between 200m² and 300m²) is deemed as excessive. Many of the objectives associated with building setbacks (including privacy, solar access, building separation and aesthetics) can be achieved with a setback of less than 10m. It is suggested the setback requirement is amended to 8m.

Recommendation: That the minimum rear setbacks for dwellings within the >200m² – 300m² lot size range is reduced to 8m where privacy and solar access provisions are fulfilled.

8. Minimum Setbacks; Corner lots

3.10 Minimum setbacks for corner lots

(5) The dwelling house and all attached ancillary development must have a minimum setback from the secondary road as shown in the following table;

Lot Size	Minimum setback from primary road
200m ² - 600m ²	2m
>600m ² -1,500m ²	3m
>1,500m ²	5m

It appears the text within the third column contains an error as the provision relates to the minimum required setback from a secondary road rather than primary road.

Recommendation: That the Department correct the text within the table to reflect the intent of the provision.

Conclusion:

Mirvac commends the Department in improving the legibility of the housing provisions within the Exempt and Complying Development SEPP. In particular, the implementation of explanatory diagrams is supported and further, the Department is encouraged to include such diagrams within the Standard LEP Instrument and the revised set of SEPP's intended to be rolled out within the next 12-18 months.

The consideration of feedback provided within this submission will encourage the increased use of the SEPP and will assist the Departments aim in increasing the proportion of applications assessed under the Codes SEPP.

Please do not hesitate to contact Theo Zotos, Development Manager on 9080 8062 or 0466 305 796 if you have any queries in regards to this submission.