The property industry sits at the heart of the State’s economic rejuvenation. Over 300,000 people in NSW depend on the industry for a job and property generates over 11 percent of the State’s economic activity.

The industry is enjoying strong growth – but would prosper further with a more sensible planning regime.

Clear rules applied objectively sit at the heart of good planning systems and help attract investment.

In 2012, the Property Council commissioned a report on ways to extend use of complying development.

It is a simple concept common in other states: projects that meet pre-defined criteria advance efficiently through the planning system.

In other words, if you meet the rules, there is no good reason not to have an approval.

There have been improvements in some areas since 2012; but with broader planning reform stalled, we need to find new ways to transform the system.

That’s why we have once again partnered with JBA to explore:

- how NSW has progressed in the past three years, and lessons learned along the way, and
- how to accelerate the use of complying development across a new class of projects.

The recommended reforms are consistent with the original intent of planning reforms, regimes that exist interstate, and relevant to all asset classes.

Plus, our headline proposal for Priority Precincts will assist in meeting the Premier’s objective for 90 percent of housing approvals to be issued inside 40 days.

They should be embraced as they can help cut the time, cost and red tape for project delivery in NSW.

Glenn Byres
PROPERTY COUNCIL NSW EXECUTIVE DIRECTOR
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JBA operates under a Quality Management System that has been certified as complying with ISO 9001:2008. This report has been prepared and reviewed in accordance with that system. If the report is not signed below, it is a preliminary draft.

This report has been prepared by:

Yvette Carr

This report has been reviewed by:

Andrew Duggan
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Our 2012 report made a number of recommendations to expand complying development in NSW. In the three years since our report, how far have we come? Below is a report card which assesses the NSW Government’s responses to our top 10 recommendations.

A lot has been done but there is still work to do. This report provides an update on complying development activity since 2012 and recent legislative amendments, and makes additional recommendations to continue to supercharge the complying development system in NSW.

REPORT CARD

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OVERALL SCORE 🌟🌟🌟🌟🌟
RECOMMENDATIONS

We make the following recommendations to further expand opportunities for complying development:

1. Allow CDCs to be issued for development in Priority Precincts that complies with all LEP and DCP controls.

2. Introduce a new code allowing townhouses in medium density areas to be approved with a CDC.

3. The Department of Planning and Environment should issue a clear practice note explaining that the first use provisions of the Codes SEPP can be used even if there is a condition on a DA approval requiring a “DA” to be lodged for the first use of individual tenancies.

4. Reconsider the requirement to upgrade premises when an internal alteration involves an area of more than 500m². Consult with industry about what amendments could be made to ensure the Part 5 Code is practical and workable.

5. Amend clause 5.2(1)(a) of the Codes SEPP to clearly allow CDCs to be issued where the use has not yet commenced.

6. Consult with industry about what amendments are required to Part 5A Commercial and Industrial (New Buildings and Additions) Code to make this new Code practical and workable.

7. Amend Part 5A to insert development standards for additions and external alterations to warehouse or distribution centres.

8. Where the relevant LEP describes and maps the whole of the relevant land, an alternative mechanism should be available. Landowners should be able to request councils to certify which particular development categories under the Codes SEPP are compatible with the heritage item and its significance and therefore can be approved with a CDC. This could be done through a site compatibility certificate process or similar. Heritage compatibility certificates, if issued, could be recorded in the section 149 certificate. This would still give local councils control over the development process as they would be responsible for issuing the certificate.
9. The Department of Planning and Environment should issue a practice note explaining the intent behind the new heritage exceptions and when they can be used, with examples.

10. Reconsider blanket exemptions relation to heritage conservation areas. Amend the Codes SEPP so that councils can certify that particular development categories of development are compatible with a heritage conservation area and can be carried out as complying development under the Codes SEPP. This could be done through a site compatibility certificate process or similar. The same should apply to restrictions relating to draft heritage conservation areas.

11. The NSW Government should provide funding to local councils which must be directed towards promotion of the Codes SEPP (whether by amending the Council’s website or printing information brochures).

12. The NSW Government should also implement a communication and public awareness campaign to educate community members and local government about the Codes SEPP.

13. Implement procedures that allow development which does not comply with one or two development standards in the Codes SEPP to be assessed and approved as complying development with the approval/dispensation of the relevant Council. The Council’s assessment would be strictly limited to the area of non-compliance.
The complying development regime is a fast-track approval system for low-impact development that satisfies a set of specific criteria. Complying development approvals, known as Complying Development Certificates (CDCs), can be issued by private certifiers or the local council.

In 2012, the Property Council and JBA prepared a report called ‘Supercharging’ the Complying Development System in NSW. We investigated and made recommendations on how the complying development provisions in NSW could be supercharged to achieve the stated goal in the NSW State Plan 2021 to further promote complying development.

At the time of our 2012 report, CDCs comprised only 18.5% of all local development approvals in NSW despite the fact that over 97% of developments were small scale and valued under $1 million. We made a number of recommendations aimed at increasing the proportion of developments assessed as complying development.

The purpose of this report is to see how far we’ve come since then. We have prepared a report card which assesses the NSW Government’s responses to our top 10 recommendations. In preparing this report we have:

- Met with certifiers and developers to discuss the success (or otherwise) of legislative changes that commenced in February 2014;
- Reviewed a sample of metropolitan and non-metropolitan council websites to gauge the level of information available to ‘mums and dads’ about complying development; and
- Explored further ideas for reform.

1.0 INTRODUCTION
2.0 COMPLYING DEVELOPMENT ACTIVITY SINCE 2012

2.1 COMPLYING DEVELOPMENT RATES HAVE INCREASED OVERALL

Overall, complying development rates have increased over the last three reporting years. In 2010-11, 15,038 CDCs were issued in NSW, comprising 18.5% of all local development approvals (DAs + CDCs). This increased to 24,770 CDCs in 2013-14 (29%) [see Figure 1]. The 2013-14 statistics relate to the year ending 30 June 2014, and do not provide a good indication of the full impacts of the changes to the Codes SEPP introduced in February 2014. The impact of these changes will be better known in late 2015 when the 2014-15 results are released.

2.2 THE BIGGEST GAINS WERE IN THE RESIDENTIAL SECTOR

Local performance monitoring data between 2010-11 and 2013-14 indicates that:

- The biggest gains were in the residential sector, particularly for single new dwellings (from 1,746 CDCs in 2010-11 to 6,015 in 2013-14). This is not surprising given low interest rates, levels of population and economic growth in NSW and the recent Australian Bureau of Statistics figures showing housing approvals are at their highest in two decades.
- Conversely, the commercial/retail/office sector saw a slight decline in the number of CDCs issued (from 3,501 in 2010-11 to 2,899 in 2013-14) [see Figure 2]. Hopefully the Codes SEPP amendments that occurred on 22 February 2014 (see next
chapter) will show an increase in commercial 
CDC approvals. Data for the new reporting year 
2014-15 should be available towards the end of 
this year.

- There has been no meaningful increase in 
CDCs issued for industrial development in the 
last three years.

The charts below show the number of CDCs issued 
for each development type between 2010-11 and 
2013-14 [Figure 2] as well as the proportion of CDCs 
issued for each development type as a proportion of 
all approvals [Figure 3].

Despite this upward trend in the residential sector, 
the vast majority of residential approvals are still

---

1 ‘Other’ means a development type apart from the Department’s six residential development types and seven non-residential development types, e.g. demolition only falls into ‘other’.

2 ‘Non standard category’ means not enough information was supplied to identify the correct development category (including where there was no development description).

DA consents. As the graph below shows, while CDCs comprise a much greater proportion of residential sector approvals now than they did in 2010-11, the proportion is still quite low, at only 30.5% for single new dwellings.

2.3 THE LARGEST INCREASES WERE IN GREENFIELD LGAS

The use of the complying development regime differs spatially across NSW. Not surprisingly, 7 of the top 10 local government areas with the highest number of determined CDCs in 2013-14 were areas with new...
residential release areas or greenfield land generally. In 2013-14, Blacktown City Council had the highest number of CDCs (1,243) closely followed by the City of Sydney (1,214) and Camden (1,037) [see Figure 4]. Since 2010-11, the largest increase occurred in the Camden LGA which is probably due to new greenfield lot production in the Oran Park and Turner Road Growth Areas.

A large number of CDCs continues to be issued in the City of Sydney LGA. Data for the last couple of years has not specified the proportion allocation of CDCs by development type, but historically most CDCs have been issued for commercial/retail/office development which is not surprising given the Sydney CBD’s continued position as the State’s commercial heart.

Figure 4 sets out the 10 councils with the highest number of determined CDCs in 2013-14, and compares this data to 2010-11.

2.4 THERE ARE STILL SOME COUNCIL AREAS WHERE CDCS ARE RARELY USED

In 2013-14, there were 79 (out of 152) local government areas State-wide where the number of CDCs determined was less than 25% of the total number of DAs and CDCs. Most of these were in regional areas, where the number of CDCs and DAs determined was generally low. In the Sydney region, where development activity is generally higher, there


FIGURE 4 – TOP LGAs IN 2013-14 WITH COMPARISON TO 2010-11
were 11 local government areas where the proportion was less than 25%. They are shown in Figure 5 from lowest to highest.

The main reasons for the low proportion of CDCs in these areas are that;

- there are large portions of environmentally zoned or environmentally constrained land that is excluded from the Codes SEPP (e.g., Blue Mountains, Pittwater, Wollondilly, Hunters Hill, Hawkesbury),
- large portions of the LGA in a drinking water catchment (Wyong) or,
- large parts of the LGA that fall within a heritage conservation area (e.g., Marrickville, Leichhardt, Woollahra, Ashfield).

In Burwood’s case, the generally low levels of development activity may account for the low level of complying development activity.

2.5 MORE COUNCILS ARE PARTICIPATING IN THE ELECTRONIC HOUSING CODE

At the time of our 2012 report, only 22 of the 152 councils in NSW participated in the Electronic Housing Code, an online system for the electronic lodgement of complying development applications. Now, over 100 councils participate in the system.
3.0 RECENT CHANGES TO LEGISLATION

Since our last report in 2012, a number of amendments have been made to the Codes SEPP with the intent of expanding opportunities for complying development. The most significant changes occurred on 22 February 2014 and primarily related to commercial and industrial development.

The main changes that occurred on 22 February 2014 are summarised below.

3.1 FIRST USE OF NEW COMMERCIAL PREMISES

Previously, under the Codes SEPP the first use of new premises required a DA, even if the planning impacts of the use had already been considered by the consent authority in determining the DA for the base building.

The recent amendments included new provisions dealing specifically with first use. Now, the first use of most commercial premises can be approved with a CDC.

3.2 INTERNAL BUILDING ALTERATIONS

Previously, under the Codes SEPP internal building alterations (such as commercial fitouts) could be dealt with as complying development but only where the use had already lawfully commenced. In relation to commercial fitouts, because the approved use cannot be commenced (in many cases) without fitout first, this meant many fitouts automatically fell outside the complying development regime.

A CDC can now be issued for the alterations to new premises that have a development consent (DA or CDC) for use.

Furthermore, the internal alterations provisions only applied to commercial premises, light industry and warehouse or distribution centres, but now apply more broadly to any use other than residential, heavy industry, sex services premises or restricted premises.

3.3 CHANGE OF USE

The recent amendments expanded the range of commercial and industrial premises that benefit from the change of use provisions.
3.4 NEW INDUSTRIAL AND WAREHOUSE BUILDINGS

As of 22 February 2014, the construction of new industrial and warehouse buildings up to 20,000sqm GFA, or additions to existing buildings up to 5,000sqm GFA, can be approved with a CDC under the new Part 5A of the Codes SEPP.

3.5 ADDITIONS TO EXISTING COMMERCIAL PREMISES

Additions to existing commercial premises up to 1,000m² (retail) and 2,500m² (other) can now be approved via a CDC in the new Part 5A Code.

3.6 HERITAGE ITEMS

Where a heritage item is not located on the whole of the relevant land, complying development is now only restricted on that part of the land where the heritage item is “described and mapped”. Also, development that is enabled under the Codes SEPP and also identified in specific exemptions under the Heritage Act 1977 can also be carried out as complying development.

3.7 SIGNAGE

The amendments include a new Advertising and Signage Exempt Development Code, will allow small scale signage to be installed or erected without any approval at all, including building identification signs, wall signs, fascia signs, under awning signs, top hamper signs, window signs and others.

3.8 SUSPENSION OF COVENANTS CLAUSE

A new clause, 1.20 has been inserted which suspends the operation of covenants and other restrictions on land, with the usual exceptions (council imposed covenants, for example).
4.0 DISCUSSION AND RECOMMENDATIONS

This chapter evaluates some of the issues that have arisen with the recent legislative amendments that occurred on 22 February 2014, and reinforces and expands on recommendations we made in 2012.

4.1 PRIORITY PRECINCT – SPECIFIC CODES

The first recommendation of this paper is to allow CDCs to be issued for development in Priority Precincts (formerly known as Urban Activation Precincts) that complies with all relevant precinct-specific LEP and DCP controls.

This would help to deliver key actions of *A Plan for Growing Sydney* released by the NSW Government in December 2014, which aims to accelerate new housing supply across Sydney, particularly in designated infill areas known as Priority Precincts. The Priority Precincts program coordinates planning and investment to revitalise local centres, services and infrastructure. The program selects sites for urban renewal against five criteria:

- The site aligns with State, regional or local strategies that relate to housing, employment or urban renewal;
- There is potential to maximise existing and planned infrastructure, especially transport investments;
- The site is important to more than one Local Government Area and/or there is support from a local council;
- The precinct is environmentally, socially and economically sustainable and viable; and
- Development of the precinct would be financially viable and is consistent with market demand.

There are currently 10 Priority Precincts: North Ryde Station, Epping Town Centre, Wentworth Point, Carter Street Lidcombe, Herring Road Macquarie Park, Showground Station, Bella Vista Station, Kellyville Station, Banksia and Arncliffe. They have been rezoned to deliver medium density housing close to centres on the rail, light rail and/or rapid bus systems.

The Epping Town Centre provides a good example of where the use of CDCs could help to accelerate housing supply in Priority Precincts. This precinct is located within the Hornsby and Parramatta LGAs and is generally situated within an 800m radius of Epping Railway Station. Key features of this Priority Precinct include:

- About 54 ha of the 247 ha have been rezoned to provide about 3,750 additional homes.
- The rezoning allows buildings of between 8 and 22 storeys within a 400 metre radius of the railway station, for mixed commercial and residential uses.
- Buildings up to 5 storeys in selected residential areas are allowed within the Hornsby local government area.
- Four new conservation areas, an expanded Epping/Eastwood heritage conservation area and 17 new heritage items.
Leading up to the rezoning, detailed environmental and economic studies were carried out by the NSW Department of Planning and Infrastructure with input from Parramatta and Hornsby Councils as well as the local community. Issues such as urban design and built form, visual and view impacts, heritage, public domain, traffic and transport, overshadowing, infrastructure requirements and economic impacts were considered. Built form controls have been implemented in the Parramatta and Hornsby local environmental plans and development control plans.

With such detailed studies having been undertaken to determine the suitability of medium density development in this area, it would be unnecessary to require development that complies with the LEP and DCP to be assessed by the relevant local council. Council would be assessing matters that were already assessed through the strategic planning process.

In light of the above, CDCs should be able to be issued for development that complies with all LEP and DCP controls in Priority Precincts. This could be achieved through a simple amendment to the Codes SEPP. There would need to be some additional controls inserted into the SEPP, dealing with BCA-related matters.

Eventually, CDCs should be available for all residential flat buildings, even outside of a Priority Precinct. But Priority Precincts should serve as an opportunity to trial CDCs for areas where residential flat buildings have already been deemed acceptable by the Department, councils and the community.

### 4.2 TOWNHOUSES

Given that a key aim of *A Plan for Growing Sydney* is to accelerate housing supply across Sydney, consideration should be given to introducing a new code into the Codes SEPP to allow ‘multi-dwelling housing’ (i.e., townhouses) to be approved with a CDC. The new code could apply to land in medium density zones where multi-dwelling housing is permitted under an LEP, and that satisfies certain criteria such as minimum street frontage widths. Like the current Housing Code, specific development standards could be introduced such as minimum setbacks, open space and landscaped area requirements.

**Recommendation**

Introduce a new code allowing townhouses in medium density areas to be approved with a CDC.

### 4.3 FIRST USE OF NEW COMMERCIAL PREMISES

Despite the recent amendments relating to first use of commercial premises, accredited certifiers have told us they are often unwilling to issue CDCs because of standard conditions on DA approvals requiring a “DA” to be lodged for first use and fitout of individual tenancies.

For example, the City of Sydney’s standard condition states:

**USE – SEPARATE DA REQUIRED**

* A separate development application for the fitout and use of each individual...
Tenancy must be submitted to and approved by Council prior to that fitout or use commencing.

Despite the fact the Codes SEPP overrides such a condition, many council officers believe the reverse is true. Consequently, certifiers are not issuing CDCs until these conditions are modified, adding time and cost for the developer. This defeats the purpose of the complying development system.

**RECOMMENDATION**

The Department of Planning and Environment should issue a clear practice note explaining that the first use provisions of the Codes SEPP can be used even if there is a condition on a DA approval requiring a “DA” to be lodged for the first use of individual tenancies.

4.4 INTERNAL BUILDING ALTERATIONS

Despite the recent amendments relating to internal building alterations, accredited certifiers have told us there are still hurdles to the widespread use of these provisions. For example:

- If the alteration involves an area of more than 500m² for commercial premises, this triggers three upgrades to bring the premises into compliance with the current BCA: egress, sanitary facilities and light and ventilation. These upgrades often mean new facilities are required (e.g., toilets) causing a reduction in the leasable space. The problems are heightened for strata buildings if new plumbing is required.

There is no equivalent requirement for DAs5. Consequently, in some cases certifiers will recommend lodging a DA instead of obtaining a CDC to overcome this costly requirement. Of course, lodging a DA can mean delays for a project, again defeating the purpose of the complying development system.

Secondly, it is not clear how the m² is to be measured when the alteration involves a small portion of a larger tenancy. Thirdly, 500m² is a very small threshold and is triggered on a regular basis.

- The requirement to establish that the current use of the premises is “lawful” is difficult for older premises when a development consent cannot be found. The Codes SEPP does not allow the developer to rely on existing use rights for this purpose.

- The amended provisions now also apply to approved buildings (not just existing ones), meaning that a CDC for internal building alterations (including fitouts) can be issued even for a building that has not yet been built6. Despite this, clause 5.2(1)(a) of the Codes SEPP still requires that “the current use of the premises must be a lawful use”. This is causing confusion in the industry. Some certifiers are interpreting this to mean that the use must have already commenced, despite the February 2014 amendments.

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5 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, clause 5.2(2).
6 The only comparable requirement is triggered when alterations are made to more than 50% of the total volume of the building, and even then the consent authority can exercise its discretion as to whether it would be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia (Environmental Planning and Assessment Regulation 2000, clause 94). We are advised by a certifier that councils generally do not exercise this discretion for fitouts/interior works unless there is also a change of use.
7 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, clause 5.2.
4.5 NEW INDUSTRIAL AND WAREHOUSE BUILDINGS

In February 2014, a new Part 5A Commercial and Industrial (New Buildings and Additions) Code was inserted into the Codes SEPP. Part 5A has generated a lot of interest from industrial developers. However, accredited certifiers and a large industrial developer have told us that the requirements in the Codes SEPP are stringent and unworkable. For example:

- Clause 5A.24 requires car parking to be provided in accordance with relevant Council requirements. Council parking rates for industrial and warehouse buildings are often excessive. These uses have become less employment intensive over time, yet parking rates have not changed and are still tied to the proposed floor space. There is scope to negotiate proposed parking provision in a DA whereas the same flexibility is not available in the Codes SEPP.

- Clause 5A.27(2)(d) states that retaining walls must not be higher than 3m. Typically more than 3m is required on larger sites (to accommodate a 20,000m² shed).

- Clause 5A(3)(a) states that fill must not raise the existing ground level more than 2m. Again, this is generally too restrictive for larger sites.

Part 8 (Fire Safety Code) of the Codes SEPP also contains stringent requirements. Part 8 is applied to the installation of a new fire water storage tank required for a new industrial or warehouse development. The most stringent requirements relate to the maximum size and capacity of fire water storage tanks (maximum capacity of 100,000L, diameter of 6m and height of 12m). We have been told that a 100,000L tank is inadequate for a 20,000m² shed, and thus the maximum 6m x 12m requirements are also inadequate.

Furthermore, the new Part 5A states that it applies to additions and external alterations to warehouse or distribution centres, but does not contain any development standards for this type of development. This is seemingly an error and should be rectified to allow external alterations and additions to warehouses to be approved via CDC.

RECOMMENDATION
Consult with industry about what amendments are required to Part 5A Commercial and Industrial (New Buildings and Additions) Code to make this new Code practical and workable.
4.6 HERITAGE ITEMS

While the intention behind the heritage amendments is positive, in reality the new provisions are not often used because LEPs typically describe and map the whole of the relevant land rather than the particular heritage building or element on a larger parcel of land.

Furthermore, there is also some confusion in the industry as to how the clause should be interpreted. Some believe that complying development is automatically disallowed if the LEP heritage map applies to the whole of the relevant land. However, the new clause requires the relevant item to be both described and mapped for complying development to be disallowed. In other words, it is not necessary for both the map and written description to cover a particular area in order to disallow complying development.

Clearly, further consideration needs to be given to how complying development can be carried out on land comprising a heritage item where the proposed works will not affect the heritage item or its curtilage.

RECOMMENDATION

Amend Part 5A to insert development standards for additions and external alterations to warehouse or distribution centres.

RECOMMENDATION

Where the relevant LEP describes and maps the whole of the relevant land, an alternative mechanism should be available. Landowners should be able to request councils to certify which particular development categories under the Codes SEPP are compatible with the heritage item and its significance and therefore can be approved with a CDC. This could be done through a site compatibility certificate process or similar. Heritage compatibility certificates, if issued, could be recorded in the section 149 certificate. This would still give local councils control over the development process as they would be responsible for issuing the certificate.

RECOMMENDATION

The Department of Planning and Environment should issue a practice note explaining the intent behind the new heritage exceptions and when they can be used, with examples.
4.7 HERITAGE CONSERVATION AREAS

As outlined in our original 2012 report, the Codes SEPP does not allow complying development to be carried out within a heritage conservation area or draft conservation area under various codes, including the General Housing Code, Commercial and Industrial (New Buildings and Additions) Code. These provisions are unduly restrictive. For example, they prevent a second storey addition to the rear of a dwelling house or the replacement of a shop front awning in a heritage conservation area.

These types of development are not necessarily incompatible with heritage conservation areas.

RECOMMENDATION

Reconsider blanket exemptions relation to heritage conservation areas. Amend the Codes SEPP so that councils can certify that particular development categories of development are compatible with a heritage conservation area and can be carried out as complying development under the Codes SEPP. This could be done through a site compatibility certificate process or similar. The same should apply to restrictions relating to draft heritage conservation areas.

4.8 GREATER PROMOTION OF THE CODES SEPP BY COUNCILS

In 2013-14, a staggering 76% of new dwellings underwent full merit assessment, and only 24% underwent complying assessment. While these figures have improved since 2010-11, there is further room for improvement given the residential boom currently being experienced in NSW.

A lack of awareness or understanding of complying development among the general public is likely to account for this still low uptake. One of the most effective communication mechanisms is through local council websites. In preparing our original report in 2012 we looked up a number of council websites and found that information about complying development was often incomplete or out of date. In preparing this update report we undertook the same exercise, and found the same problem. For example:

- Many websites explain that complying development requires a CDC and must comply with nominated criteria, but do not explain that it is a fast-track approval process for low impact development. This is critical information for inexperienced developers to understand what complying development is.

- Most websites list examples of complying development, but some only list residential examples followed by a link to the Electronic Housing Code. This could suggest to an inexperienced person that complying development only applies to residential development.

- Many websites only mention some of the Codes in the Codes SEPP and fail to mention others. These websites appear to be out of date.
RECOMMENDATION

The NSW Government should provide funding to local councils which must be directed towards promotion of the Codes SEPP (whether by amending the Council’s website or printing information brochures).

RECOMMENDATION

The NSW Government should also implement a communication and public awareness campaign to educate community members and local government about the Codes SEPP.

4.9 ACCOMMODATE COMPLYING DEVELOPMENT “NEAR MISSES”

Under the current system, development which does not comply with a development standard in the Codes SEPP (or the council’s controls) cannot be assessed as complying development and will require full merit assessment. Essentially, every aspect of the proposal is “up for grabs” including those aspects which comply with the Codes SEPP.

Our original report discussed Victoria’s ‘report and consent’ system which allows local councils to consider and determine applications to vary the siting requirements of the Building Regulations. For example, if a proposed dwelling house does not comply with a particular development standard set out in the Building Regulations (e.g., one of the setback controls), the building certifier must obtain the Council’s ‘report and consent’ (dispensation) in relation to that particular non-compliance before issuing the building permit. The Council’s jurisdiction is limited to the area of non-compliance. This system avoids the need for a full and potentially lengthy merit assessment for a dwelling-house which otherwise complies with the Building Regulation.

Victoria’s report and consent system is consistent with the NSW Government’s recommendations in 2012 and 2013 for a new planning system.

RECOMMENDATION

Implement procedures that allow development which does not comply with one or two development standards in the Codes SEPP to be assessed and approved as complying development with the approval/dispensation of the relevant Council. The Council’s assessment would be strictly limited to the area of non-compliance.