PROPERTY COUNCIL of Australia

JBA

'Supercharging' the Complying Development System in NSW

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Foreword by the Property Council of Australia

The Property Council of Australia has welcomed the NSW Government's push to transform the State's planning system.
In short, our members:

- build *homes* needed to accommodate people
- finance, own and manage *workplaces*
- invest in and operate *retail* spaces where people shop
- provide *retirement living* options for an ageing population
- give NSW the accommodation assets needed to underpin *tourism*

The sector wants to invest in NSW with confidence and proposed planning reforms recognise the need to re-boot the State's reputation as a safe haven for capital.

Clear rules – applied objectively – should sit at the heart of the new system.

But the task of completing an overhaul of planning laws and seeing a new regime kick into full gear takes times.

The Property Council is keen to assist NSW accelerate the upside of these reforms. As a result, we have partnered with JBA to explore:

- lessons from the existing use of complying development . . . both here and interstate, and
- ideas for turbo-charging its use . . . regardless of the ultimate shape and timing of planning reform.

These ideas are consistent with the objectives of both *NSW 2021* and the proposed planning reforms.

They provide a platform for NSW to use the planning system as a micro-economic lever and help reposition NSW in the race for capital.

Glenn Byres
NSW Executive Director
Property Council of Australia

Seven big ideas to expand complying development

More strategy and code compliant development sit at the heart of planning reforms being progressed in NSW. The Government's Green Paper – as well as the Urban Activation Precincts program – both seek to leverage good strategic planning to elevate the role of complying development. Here are seven big ideas to help increase the use of complying development under the current planning system.

1. Introduce precinct specific complying development codes

Issue:

- Low impact development that does not comply with the Codes SEPP requires a full merit assessment, even if it is already envisaged and considered appropriate for a particular precinct.
- State wide codes are understandably less ambitious given their geographic breadth. The use of precinct specific codes allows for strategic and more tailored codes to be set which in turn can allow for a wider variety of code assessable development.

Solution:

- Allow development which is appropriate in a particular precinct to proceed as complying development. This could be done by allowing precinct-specific DCPs, development control strategies, master plans or Stage 1 development consents to be certified as 'codes' under the Codes SEPP or another planning instrument. Development which complies with the 'code' can be assessed and approved as complying development, instead of requiring full merit assessment.
- There has been discussion that significant industrial development (up to 20,000 sq metres) will be permitted to be approved as complying development. There is no impediment to permitting development of even greater size in nominated and strategically determined industrial precincts (e.g. Erskine Park).

2. Allow first use of commercial/retail and light industrial premises to be assessed as complying development

Issue:

- Under the Codes SEPP, the first use of new premises is not complying development, even if development consent for the base building has been granted and the first use of the premises is already known. Consequently, a DA and full merit assessment are often required for the first use of new premises.

Solution:

- Introduce a new provision into the Codes SEPP to allow the first use of approved premises to be approved as complying development. We understand this is currently under consideration by Government – and it should be advanced.

3. Allow all commercial fit-outs to be assessed as complying development

Issue:

- Fit-outs of a commercial tenancy can be dealt with as complying development where the use is already lawfully commenced. However, because the approved use cannot be commenced (in many cases) without fit-out first, this means many fit-outs automatically fall outside the complying development regime.

Solution:

- Amend clause 5.2 of the Codes SEPP to provide that fit-out of a lawfully commenced or lawfully approved premises is complying development.

4. Reconsider blanket exemptions for heritage items

Issue:

- Development on land comprising a heritage item is automatically excluded from the complying development system, even if the development will have no physical connection with or proximity to the heritage item.

Solution:

- State heritage items: Allow development (already specified in the Codes SEPP) to be complying development if it is carried out outside of the item's curtilage, as defined in the State Heritage Register or a Conservation Management Plan endorsed by the Heritage Council. Where there is uncertainty as to what constitutes the curtilage of the item, the Codes SEPP should allow the Heritage Council to certify what particular development categories are compatible with the heritage item and its significance.
- Local heritage items: allow development (already specified in the Codes SEPP) to be complying development if the council certifies, on request by the landowner, which particular development categories are compatible with the heritage item and its significance. This could be done through a site compatibility certificate process or similar. A time limit should be placed on this process. This certificate if issued could be recorded in the section 149 certificate.

5. Recognise complying development 'near misses'

Issue:

- Proposed development which does not comply with one (or more) development standards in the Codes SEPP cannot be approved as complying development and a full merit assessment is required – even for those aspects of the proposal which comply.

Solution:

- Implement procedures that allow an applicant or certifier to refer a non-compliant aspect of a proposal to a Council for the Council's merit assessment and approval. The Council's merit assessment would be limited only to the non-compliant aspect of the proposal, avoiding the need for a full and potentially lengthy merit assessment for a proposal which otherwise complies with the Codes SEPP.

6. Expand the Electronic Housing Code

Issue:

- Only 22 of 152 councils in NSW participate in the Electronic Housing Code (EHC) program. The EHC is an online system for the electronic lodgement of complying development applications under the Housing Code for lots $200m^2$ and above. The system also allows the user to track their application and to determine if their development is exempt or complying development.

Solution:

- Commit additional resources for the expansion of the EHC to encourage greater uptake by Councils. There should also be an online lodgement system for applications under other Codes to encourage involvement by Councils where there is a low use of the General Housing Code.

7. Greater promotion of the Codes SEPP by Councils

Issue:

- Many Council websites lack detailed or up to date information on complying development and the Codes SEPP. For example, some council websites state that complying development is specified in Council's LEP or DCP, not the Codes SEPP. In areas where the Council's controls are more restrictive than the Codes SEPP, this potentially means the Codes SEPP is not being utilised where it could be (particularly "mum and dad" developers who rely on the Council's website for information). The Codes SEPP must be clearly explained and promoted by local councils on their websites and in development information brochures and the like, particularly the housing codes which are most likely to be used by "mum and dad" developers. Single dwellings and residential alterations and additions comprise the majority (69%) of all development activity, therefore promotion of the housing codes is likely to boost the number of developments which are assessed and approved as complying development.

Solution:

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

1.0 Introduction

This research paper has been prepared by JBA Planning on behalf of the Property Council of Australia (NSW Division) (**PCA**). The purpose of the paper is to investigate and make recommendations on how the complying development provisions in NSW can be 'supercharged' to achieve the stated goal in the NSW State Plan 2021 to:

> *Increase the number of developments that are approved without the need for detailed assessment (lengthy merit assessment), by:*
>
> – *expanding the types of development covered as 'complying development'*
>
> – *further promoting 'complying development'*

Complying development is a type of 'code assessable development' which meets certain predetermined development standards specified in an environmental planning instrument. Complying development is common or routine and has a minor impact on the environment. Before complying development can be carried out, a combined planning and construction approval, known as a complying development certificate (**CDC**), is required.

In NSW in 2010-2011, the majority of approved developments were valued under $1 million – 97% of DAs and 98% of CDCs. Residential alterations and additions comprised 40% of all approved development.[1] These statistics demonstrate that the majority of development activity is relatively small scale.

Despite this, CDCs comprised only 18.5% of all local development approvals (development consents + CDCs) in 2010-2011.[2] Only 10% of new dwellings and 20% of residential alterations and additions are approved as complying development. Clearly, a disproportionate number of minor developments are still being considered and determined as merit-based development.

In our view, NSW should set a target of moving beyond 50%. This is essential to an efficient planning system. The benefits of a complying development system (particularly an expansive one) are numerous and include:

- **Cost savings for industry:** In 2009 the Property Council of NSW analysed indicative time and cost savings, demonstrating that the introduction of the General Commercial and Industrial Code would deliver estimated savings of approximately $6,300 for a standard (non-food) retail shop fit-out, $8,000 for an average food retail fit-out, up to $4,800 for a commercial office fit-out and to over $77,000 for an industrial/warehouse internal fit-out.[3] The Housing Industry Association also analysed the savings on faster approval times for a new dwelling prior to the introduction of the Codes SEPP. They found that implementation of the General Housing Code for Metropolitan Sydney would result in a saving of just under $10,000 per new house.[4]
- **Reduced red tape:** reduced submission requirements, simpler development controls and ease of access to and usability of the system (e-planning). It also enables faster development approvals (10 day approval timeframe for CDCs, compared to the average gross timeframe of 68 days for DAs in 2010-11).

[1] NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012

[2] This figure does not include major development approvals issued by the Minister for Planning.

[3] NSW Department of Planning (July 2009), *Better Regulation Statement: Proposed Codes SEPP Amendment (Commercial and Industrial) 2009*.

[4] *Better Regulation Statement for the proposed State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - Codes SEPP*.

- **Certainty:** an application which is permissible and complies with all requirements must be approved. This provides certainty for both applicants and the community in terms of what development outcomes can be expected in an area;
- **Consistency:** consistent approach to the assessment of applications within and between local government areas; consistent standards for development captured within State-wide planning controls; and comparable development systems to other Australian states which better tailor the level of environmental assessment to the scale or impact of a proposal than NSW;
- **Flexibility:** a system which allows merit assessment for non-compliant aspects of an otherwise complying development provides flexibility for a development to adapt to particular site/locality conditions and the demands of the market;
- **Reduced burden for councils:** council planners can focus on large, more complex DAs and on strategic planning for their communities. It also potentially introduces a new role for “certified planners” to extend the pool of professionals dealing with applications in NSW;
- **Maintains local environmental standards:** currently, development on environmentally sensitive land is automatically excluded from the complying development system. We propose a variation to this whereby this exclusion still ordinarily applies, except where the dispensation/concurrence of the relevant environmental agency is obtained. This recognises that some proposals do not necessarily affect a particular environmental sensitivity (eg heritage or critical habitat) which affects only a small part of a large parcel of land;
- **Complements strategic planning reforms:** Having clear regulations for new dwellings facilitates meeting targets for new dwellings in growth areas. If precinct-specific codes are implemented as recommended in this paper, it also ensures that development is carried out consistently with strategic planning framework;
- **Improved economic position for NSW:** Generates construction activity by simplifying the process, timing and cost involved in developing in NSW; maintains NSW’s economic competitiveness through clear and consistent regulation; and enables councils to redirect resources to more strategic issues, saving millions of dollars each year.

Some of the recommendations were informed by interviews with experienced practitioners in the property industry, including Development Managers and Design Coordinators from Lend Lease and Stockland, Planning Managers at FDC Construction and Fitout, Smith & Tzannes Architects, and McKenzie Group Consulting (private certifiers). JBA thanks these people for their valuable input.

2.0 Overview of the current system in NSW

Summary

- Complying development is specified in a number of environmental planning instruments in NSW, including State planning instruments and local council LEPs and DCPs. The main State-based instrument is the Codes SEPP, which covers low impact development including new dwelling houses, residential alterations and additions, minor commercial and industrial development, strata subdivision and minor demolition.
- To qualify as complying development, the development must satisfy a number of development standards including height, FSR, setbacks and the like.
- In some cases development will not qualify as complying development because it will be located on certain types of land, such as land comprising a heritage item, a critical habitat or that is within an environmentally sensitive area.

2.1 Three approval pathways

In NSW, there are three planning approval pathways for development as follows:

1. **Exempt development:** Exempt development should have minimal impact on the local environment (for example small fences, barbecues and pergolas) and can be carried out without the need to obtain any kind of planning approval. However, to qualify as exempt development certain standards must be met. For example, an above ground rainwater tank in a rural zone is exempt development if it is located at least 10 metres from each lot boundary and satisfies other standards set out in the Codes SEPP.[5]
2. **Complying development:** Complying development is generally common or routine and generally has a minor impact on the environment. To qualify as complying development, the development must meet certain predetermined development standards specified in an environmental planning instrument or development control plan (**DCP**). Before complying development can be carried out, a combined planning and construction approval, known as a complying development certificate (**CDC**), is required. A CDC can be assessed and approved by a certifying authority (either council or private accredited certifier) and must be determined within 10 days of lodgement.[6] If the proposed development does not meet one or more of the relevant standards, then the applicant must lodge a development application (**DA**) with the relevant local council. Complying development applications do not need to be publicly exhibited, but for some residential CDCs developers must notify nearby neighbours of their intention to commence works.
3. **Development permissible with consent:** This type of development requires a DA to be determined by the relevant consent authority (usually the local council, but sometimes the Minister for Planning or Joint Regional Planning Panel for larger projects). The DA will be assessed against the relevant planning controls and the merits of the proposed development. If the DA is approved, the applicant is issued with a development consent.

[5] Clauses 2.63 and 2.64(1)(b), *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*

[6] *Environmental Planning and Assessment Regulation 2000* (NSW), clause 130AA.

2.2 Legislative framework for complying development

The complying development regime in NSW is governed by the following legislation and environmental planning instruments:

Environmental Planning and Assessment Act 1979 ('EP&A Act')

This is the legislation which governs the planning system in NSW. The EP&A Act requires a CDC to be obtained before carrying out complying development (section 84A) and sets out the process for obtaining a CDC (section 85A).

Environmental Planning and Assessment Regulation 2000 ('EP&A Regulation')

This sets out more detailed procedural requirements for applying for CDCs and determining applications for CDCs.

Building Professionals Act 2005

This legislation provides for the accreditation of certifiers for the purposes of the EP&A Act, the regulation of accredited certifiers, making complaints against accredited certifiers and the investigation of certifying authorities. It also established the Building Professionals Board.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ('Codes SEPP')

The Codes SEPP is the main environmental planning instrument governing exempt and complying development in NSW. It sets out general requirements for exempt and complying development, exclusions from the SEPP and specific development standards which development must meet to qualify as exempt or complying development. In relation to complying development, the Codes SEPP is split into the following codes:

General Housing Code
The General Housing Code applies to:

- new single storey and two storey dwelling houses;
- alterations and additions to existing single and two storey dwelling houses;
- the addition of a second storey to an existing single storey dwelling house; and
- certain new ancillary development,

on any lot in Zone R1, R2, R3, R4 or RU5 that has an area of at least 200m^2 and a width at the front building line of at least 6m.

Development standards under the General Housing Code relate to:

- maximum site coverage and floor area – 30-65% site coverage, maximum floor area of 180-430m^2
- building heights and setbacks - maximum height of 8.5m above existing ground level.
- articulation zones (eg new doors and windows required on front façade);
- privacy;
- landscaping;
- private open space;
- car parking and access;
- earthworks and drainage;

- ancillary development and outbuildings.

The General Housing Code also includes development standards for bush fire prone land and flood control lots. For example, development on bush fire prone land must conform to certain specifications/guidelines, the part of the lot on which the development is to be carried out in not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ) and the lot must have direct access to a public road.

The General Housing Code requires the person having the benefit of the CDC to give at least 2 days' notice of the intention to commence works to the owner or occupier of each dwelling that is situated within 20 metres of the lot on which the works will be carried out.

Rural Housing Code
The Rural Housing Code applies to:

- new single storey and two storey dwelling houses;
- alterations and additions to existing single and two storey dwelling houses;
- the addition of a second storey to an existing single storey dwelling house; and
- certain new ancillary development,

on lots in Zones RU1, RU2, RU3, RU4 and R5.

Development standards under the Rural Housing Code relate to:

- minimum lot size – 4,000m^2 (except in R5 zone)
- maximum site coverage and floor area
- building heights and setbacks - maximum height of 8.5m-10m above existing ground level, primary building setbacks between 15m and 50m.
- landscaping, private open space, privacy and articulation zones(only lots less than 4,000m^2);
- car parking and access;
- earthworks and drainage;
- ancillary development and outbuildings.

The Rural Housing Code includes specific development standards for buildings adjoining intensive agriculture, rural industries, forestry and extractive industries. Development requirements and restrictions relating to bushfire prone land and flood prone land are generally the same as those contained in the General Housing Code.

Housing Alterations Code
The Housing Alterations Code provides standards for:

- Internal alterations – may be carried out for approved dwelling houses and certain strata-titled buildings provided that the works do not change the building's BCA classification or the creation of an additional dwelling.
- External alterations – must not alter the floor area or footprint of the dwelling house. In heritage conservation areas, works are restricted to ground floor alterations behind the rear most building line. Other development standards include requirements for the provision of privacy screens to some new windows and openings.
- Attic conversions – must be contained entirely within the existing roof space, must not alter the roof pitch and (except in heritage conservation areas) must include at least one dormer window.

Other standards apply for the development types specified under this code which include specific design requirements, such as dimensions for building openings and dormer windows, and requiring compliance with the BCA.

General Development Code
The only development type currently specified under the General Development Code Bed is 'Bed and Breakfast Accommodation', which was previously specified as Exempt Development under the Codes SEPP. Under the code an existing dwelling house may be converted for a bed and breakfast with up to four guest bedrooms (or more if permitted under a Standard LEP) on land that is not bushfire prone and where bed and breakfast accommodation is a permissible use. Other standards, such as requirements for on-site carparking and guest bathrooms, also apply.

General Commercial and Industrial Code
The General Commercial and Industrial Code applies to:

- Internal building alterations – permits alterations to bulky goods, commercial and light industrial premises and warehouse and distribution centres, where the current use of the premises is a lawful use, the gross floor area is not increased and the capacity of any loading dock is not reduced. Additional standards apply for food premises.
- Change of Use – for certain changes of use to warehousing, distribution centres, light industry, bulky goods premises, ancillary offices and certain commercial premises. Premises must continue to comply with existing development consent conditions or Council policies for car parking, hours of operation and landscaping.
- Mechanical ventilation systems – must not emit noise exceeding an LAeq more than 5 dB(A) above background noise and satisfy the location standards identified in the code.
- Shop-front and awning alterations – must maintain existing level of access for disabled persons and not reduce the glazing or transparency of the shopfront.
- Skylights and roof-windows – for buildings not located on bush fire prone land.

Further detailed development standards apply for each development type, requiring for example compliance with the BCA and relevant Australian Standards.

Subdivisions Code
The Subdivisions Code permits the strata subdivision of buildings as Complying Development within 5 years of development consent being issued for the building. The subdivision must not contravene the conditions of development consent, and for buildings approved prior to 2011 subdivision may only occur under the code where parking spaces are allocated to individual dwellings under the conditions of consent.

Demolition Code
The Demolition Code applies to:

- Dwellings;
- Ancillary development;
- Swimming pools;
- Industrial building; and
- Commercial buildings (if they could have been constructed as Complying Development).

The Demolition Code includes standard which must be observed prior to and during demolition, for example works must be carried out in accordance with AS 2601—2001 'Demolition of Structures' and appropriate erosion and sediment controls must be put in place. Demolition within heritage conservation areas is limited to outbuildings and works which could be constructed under the Housing Alterations Code.

State Environmental Planning Policy No 60 – Exempt and Complying Development ('SEPP 60')

SEPP 60 aims to provide for exempt development and complying development in certain local government areas that have not provided for those types of development through a local environmental plan. It now has very limited operation and only applies to parts of the Campbelltown and Parramatta local government areas.

The only type of complying development specified in SEPP 60 is development and use of an industrial building or warehouse (including alterations and additions) on land zoned industrial where its use is not for an actually or potentially hazardous or offensive industry, but is consistent with the classification of the building under the Building Code of Australia. This is subject to setback, FSR, height, drainage, garbage and storage area, landscaping, parking, loading and unloading requirements.

State Environmental Planning Policy (Infrastructure) 2007 ('Infrastructure SEPP')

The Infrastructure SEPP is not primarily concerned with complying development, but rather establishes a state-wide planning regime for the provision of infrastructure and services. However, a number of provisions specify certain development as complying development, namely alterations or additions to certain types of infrastructure, or development that is ancillary to certain types of infrastructure. Examples of complying development under the Infrastructure SEPP include:

- Existing schools and TAFE establishments: new libraries, administration buildings, gyms, classrooms, theatres, tuckshops and the like;
- Small wind turbine systems;
- Solar energy systems;
- Certain minor development on port land that is managed by a port corporation; and
- Minor development relating to telecommunications facilities.

State Environmental Planning Policy (Affordable Rental Housing) 2009 ('ARH SEPP')

The ARH SEPP provides a regime for the provision of affordable rental housing, including incentives by way of expanded zoning permissibility, floor space ratio bonuses, non-discretionary development standards and provisions for complying development.

The ARH SEPP includes the following complying development provisions:

- Development for the purpose of a secondary dwelling (eg granny flat) may be complying development if it is on a lot that has an area of at least 450m^2 and has a maximum floor area of 60m^2.
- Development for the purpose of a group home may be complying development if it is on a lot that has an area of at least 450m^2 and does not cover more than 70% of the site area.

The above provisions are subject to many of the land-based exemptions in the Codes SEPP.

Local council complying development controls

All local councils have local environmental plans (**LEP**) and development control plans (**DCP**) which may specify development that is complying development. To avoid confusion and overlap, either the Codes SEPP or the council's controls will apply to a particular type of development, not both.

For example, the provisions of 'Standard Instrument LEPs' (and DCPs adopted for the purpose of those LEPs) do not apply if they and the Codes SEPP specify the same development as complying development. 'Non-standard' LEPs/DCPs (which are usually more than 5 years old) continue to apply where there is an overlap (see clause 1.9 of the Codes SEPP). This means that an applicant can choose between the Codes SEPP and a non-standard LEP/DCP when seeking approval for complying development.

2.3 General requirements for complying development

The Codes SEPP, Infrastructure SEPP and council complying development controls contain a number of *general* requirements which must be met for development to qualify as complying development. These instruments also contain *specific* development standards which apply to specific forms of development (for example, maximum heights for dwelling houses or minimum setbacks for above ground water tanks).

In relation to the *general* requirements, clause 1.18 of the Codes SEPP and clause 20B of the Infrastructure SEPP specify that, for development to qualify as complying development, the development must, for example:

- be permissible with consent in the land use zone in which the development is carried out;
- meet the relevant provisions of the Building Code of Australia;
- have approval under the *Local Government Act 1993*, if required, for an on-site effluent disposal system and an on-site stormwater drainage system; and
- have written consent under the *Roads Act 1993*, if required, for the opening of a public road.

Development that does not satisfy the above requires a DA.

2.4 Exclusions from complying development

The complying development regimes in the Codes SEPP and Infrastructure SEPP generally apply to all land in NSW. However, there are some instances in which development will not qualify as complying development because it will be located on certain types of land or within specific locations.

Clause 1.17A of the Codes SEPP states that, to qualify as complying development, the development must not be:

- development that requires concurrence (ie the approval of a particular public authority in addition to requiring development consent, for example excavation above or near a rail corridor may require the concurrence of Railcorp before development consent is granted);
- on land that is critical habitat or part of a wilderness area;

- on land that comprises, or on which there is, a heritage item; or
- on land that is within an 'environmentally sensitive area' (for example, land within an internationally significant wetland, a national park, land with high Aboriginal cultural significance, etc).

There are additional specific land exemptions for certain types of development. For example, development covered by the General Housing Code and Rural Housing Code is not complying development if it is carried out on:

- land within a heritage conservation area or draft heritage conservation area;
- land that is reserved for a public purpose in an environmental planning instrument;
- land identified on an acid sulphate soils map as being Class 1 or Class 2;
- land that is subject to a biobanking agreement;
- excluded land identified in an environmental planning instrument;
- land in a foreshore area;
- land that is in the 25 ANEF contour or a higher ANEF contour;
- unsewered land within certain drinking water catchments; or
- land declared to be a special area under the *Sydney Water Catchment Management Act 1998*.

2.5 Electronic Housing Code

On 28 October 2011, the Minister for Planning and Infrastructure launched an online tool called the Electronic Housing Code (**EHC**). The EHC is an online system for the electronic lodgement of complying development applications under the General Housing Code, Housing Alterations Code and Rural Housing Code. The system also allows the user to determine if their development is exempt or complying development.

As the EHC program is fairly new, only 22 councils currently participate in it. The program is actually operational in only 10 local government areas, with the remaining 12 councils expected to be "live" on the system later in 2012 and 2013. The EHC is currently operational in Bankstown, Blacktown, Lake Macquarie, Port Macquarie-Hastings, Rockdale, Shellharbour, Sutherland, Tamworth, The Hills and Tweed Shire Councils. Liverpool Council is expected to be "live" in mid to late 2012. An additional 11 Councils have recently become involved in the EHC and are expected to be "live" on the system by mid-2013. The additional councils are Camden, Campbelltown, Coffs Harbour, Great Lakes, Holroyd, Kogarah, Penrith, Warringah, Willoughby, Wingecarribbee and Wyong Shire Councils. These 22 councils together represent 30% of the land parcels in NSW.

The NSW Government has awarded the DoPI an additional $4.3 million over 2 years to enable the expansion of the EHC to incorporate an additional 24 local government areas (and additional certifiers working in these areas) and to expand the scope to include the Commercial and Industrial Code. This is a positive step and hopefully the EHC will be expanded to even more councils in the future. There should also be an online lodgement system for applications under other Codes to encourage involvement by Councils where there is a low use of the General Housing Code.

Aside from the substantial funds required to implement the EHC, there are some potential obstacles to its widespread usage across all local government areas. Obviously, the EHC will not be widely used in areas where the housing codes are infrequently used, such as areas with typically small land parcels and land which is

subject to the land-based exemptions under the Codes SEPP. In these areas it may not be worth those councils investing in the EHC. The expansion of the EHC to the Commercial and Industrial Code would be beneficial in these areas, particularly the City of Sydney where 99% of all CDC applications are for commercial or industrial development.

3.0 Rates of complying development approvals in NSW

Summary

- In 2010-11, 15,085 complying development certificates (CDCs) were issued in NSW, comprising only 18.5% of all local development approvals (DAs + CDCs).
- The introduction of the Codes SEPP caused a substantial increase in the number of CDC approvals. CDC approvals comprised only 11.7% of all local development approvals in 2008-2009, increasing to 17% in 2009-2010. There was only a slight increase of 1.5% the following year, to 18.5% (current rate).
- A staggering 90% of single new dwellings underwent full merit assessment, and only 10% underwent complying assessment.
- 97% of approved developments were valued under $1 million.

3.1 Current situation

In 2010-11, 15,085 CDCs were issued in NSW, comprising **18.5%** of all local development approvals (DAs + CDCs).[7] More detailed statistics are provided below.

CDCs by development type

CDC determinations by development type in 2010-11 compared to 2009-10 are summarised in **Table 1** below. In 2010-11, residential alterations and additions accounted for most determined CDCs (43.8%), followed by commercial/retail/office developments (23.2%) and then single new dwellings (11.6%). In total, residential development accounted for 63.3% of determined CDCs.

Table 1 – CDCs determined in NSW by development type 2010-11 and 2009-10

	2010-11		2009-10	
Development type	**Number of CDCs determined**	**As % of total CDCs determined**	**Number of CDCs determined**	**As % of total CDCs determined**
Residential- Alterations and additions	6,602	43.8	6,385	44.6
Residential – Single new dwelling	1,746	11.6	1,905	13.3
Residential – New second occupancy	248	1.6	87	0.6
Residential – New multi unit	98	0.6	27	0.2
Residential – Seniors living	4	0	5	0
Residential – Other	867	5.7	736	5.1
Tourist	4	0	3	0
Commercial/retail/office	3,501	23.2	2,618	18.3
Mixed	37	0.2	31	0.2
Infrastructure	36	0.2	84	0.6
Industrial	90	0.6	69	0.5
Community facility	170	1.1	814	5.7

[7] These figures do not account for section 96 applications or major development proposals determined by the Minister for Planning and Infrastructure.

Subdivision only	95	0.6	68	0.5
Other[8]	714	4.7	989	6.9
Non standard category[9]	873	5.8	494	3.5

Source: NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012

Assessment path by development type

The NSW Department of Planning and Infrastructure (**DoPI**) has also released statistics illustrating the assessment path used for different types of development. In 2010-11, 83% of all residential development underwent merit assessment, and 17% underwent complying assessment.[10]

Table 2 sets out the proportion of applications by development type which were determined as CDCs as a percentage of all determinations (DA+CDC). For example, 20% of alterations and additions underwent assessment as complying development compared with 80% which underwent merit-based assessment. These statistics demonstrate a low take-up of complying development considering the value of development activity (see separate heading below).

Table 2 – CDCs determined as percentage of all determinations (DA+CDC) by development type

Category of development	2010-11 (%)	2009-10 (%)
Residential – Alterations and additions	20	18
Residential – Single new dwelling	10	11
Residential – New second occupancy	11	5
Residential – New multi unit	9	3
Residential – Seniors living	4	5
Residential – Other	26	22
Tourist	1	1
Commercial/retail/office	33	25
Mixed	8	6
Infrastructure	12	24
Industrial	5	4
Community facility	16	41
Subdivision only	3	2
Other	11	14
Non standard category	57	41

Source: NSW Department of Planning and Infrastructure, *Local Development Performance Monitoring: 2010-11*, February 2012, page 27.

Assessment path by council area

The use of the complying development regime also differs spatially across NSW. Sydney City Council had the highest number of CDCs determined by far (1,010), while Port Macquarie had the second highest (533). 99% of Sydney City Council's CDCs were for commercial/retail/office development (see Table 3). Sydney City Council's large number of determined CDCs particularly for commercial/retail/office development is not surprising given the Sydney CBD's continued position as the State's business centre and consequently the extent of commercial/retail/office

[8] 'Other' means a development type apart from the Department's six residential development types and seven non-residential development types, eg demolition only falls into 'other'.

[9] 'Non standard category' means not enough information was supplied to identify the correct development category (including where there was no development description).

[10] NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, page 26.

development in that LGA. **Table 3** sets out the 10 councils with the highest number of determined CDCs.

Table 3 – Top ten councils with the highest number of CDCs issued

Council	Number of CDCs determined	% Residential alterations and additions	% Single new dwellings	% Commercial/ retail/office	% Non standard category	CDCs as % of DAs + CDCs
Sydney City Council	1,010	1	0	99	0	33
Port Macquarie-Hastings Council	533	70	24	4	0	48
Blacktown City Council	525	1	10	55	0	< 20*
Sutherland Shire Council	505	43	7	11	0	29
Ryde City Council	428	40	6	47	0	40
Hornsby Shire Council	415	59	10	15	0	29
Wyong Shire Council	404	68	5	20	0	24
Penrith City Council	377	51	26	16	0	22
Parramatta City Council	368	33	8	23	0	31

Source: NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, pages 36.
* Proportion unknown. Statistics not provided for councils where CDCs comprise less than 20% of total determined DAs and CDCs

Rural councils had the highest proportion of CDCs determined as a proportion of all DAs and CDCs. **Table 4** shows the councils which reported to have over 20% CDCs of total determinations in 2010-11. Except for Port Macquarie-Hastings Council, the top 10 councils are rural councils with a small number of total determinations. Not surprisingly, the vast majority of councils shown in Table 4 are rural and regional councils – 44 of 60 councils listed. This is not surprising because the General Housing Code, Housing Alterations Code and Rural Housing Code (which are the most frequently used Codes) are easier to comply with in regional and rural areas than in metropolitan (particularly inner city) areas given minimum lot size requirements and the like. Sydney City Council's appearance in this list is explained by the fact that very few of their determined CDCs are for residential development (see **Table 3**).

Table 4 – Local government areas with at least 20% CDCs compared to total DAs + CDCs

Council	Number of DAs determined	Number of CDCs determined	CDCs as % of DAs + CDCs
Coolamon Shire Council	13	50	79
Jerilderie Shire Council	6	13	68
Junee Shire Council	50	61	55
Cobar Shire Council	33	36	52
Temora Shire Council	46	49	52
Port Macquarie-Hastings Shire Council	576	533	48
Parkes Shire Council	79	73	48

Council	Number of DAs determined	Number of CDCs determined	CDCs as % of DAs + CDCs
Murrumbidgee Shire Council	16	14	47
Lachlan Shire Council	44	32	42
Uralla Shire Council	67	48	42
Tamworth Regional Council	518	364	41
Tenterfield Shire Council	79	55	41
Orange City Council	380	252	40
Ryde City Council	654	428	40
Berrigan Shire Council	96	62	39
Armidale Dumaresq Council	238	132	36
Coonamble Shire Council	20	11	35
Ku-ring-gai Council	813	446	35
Narrandera Shire Council	28	15	35
Bourke Shire Council	27	14	34
Inverell Shire Council	174	90	34
Walgett Shire Council	34	17	33
Sydney City Council	2,055	1,010	33
Glen Innes Severn Shire Council	112	55	33
Greater Hume Shire Council	124	60	33
Conargo Shire Council	15	7	32
Mid-Western Regional Council	353	163	32
Cootamundra Shire Council	107	49	31
Parramatta City Council	808	368	31
Shellharbour City Council	469	204	30
Kempsey Shire Council	280	116	29
Sutherland Shire Council	1,219	505	29
Wagga Wagga City Council	620	255	29
Hornsby Shire Council	1,014	415	29
North Sydney Council	465	189	29
Liverpool Plains Shire Council	89	34	28
Cowra Shire Council	103	39	27
Lane Cove Council	293	103	27
Willoughby City Council	684	248	27
Weddin Shire Council	47	17	27
Botany Bay City Council	167	57	25
Canterbury City Council	595	203	25
Bombala Council	24	8	25
Griffith City Council	276	90	25
Strathfield Municipal Council	218	70	24
Wyong Shire Council	1,263	404	24
Wakool Shire Council	63	20	24
Dubbo City Council	493	155	24
Burwood Council	216	66	23
Holroyd City Council	624	186	23
Nambucca Shire Council	219	65	23
Narrabri Shire Council	109	32	23
Penrith City Council	1,299	377	22
Murray Shire Council	173	50	22
Albury City Council	626	178	22
Gwydir Shire Council	47	13	22
Hay Shire Council	29	8	22
Campbelltown City Council	726	199	22

Council	Number of DAs determined	Number of CDCs determined	CDCs as % of DAs + CDCs
Kiama Municipal Council	315	79	20
Bathurst Regional Council	519	130	20

Source: NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, pages 34-35.

Most metropolitan Sydney councils have low complying development activity (less than 20%) as a proportion of overall development activity (DAs + CDCs). Statistics are not provided in the DoPI's reporting for these councils, so exact proportions are unknown. The following metropolitan Sydney councils have less than 20% of overall development activity determined by CDC:

- Ashfield Council;
- Auburn City Council;
- Bankstown City Council;
- Blacktown City Council;
- Camden Council;
- City of Canada Bay Council;
- Fairfield City Council;
- Hunters Hill Municipal Council;
- The Hills Shire Council;
- Hurstville City Council;
- Kogarah City Council;
- Leichhardt City Council;
- Liverpool City Council;
- Manly Council;
- Marrickville Council;
- Mosman Municipal Council;
- Pittwater Council;
- Randwick City Council;
- Rockdale City Council;
- Warringah Council;
- Waverley Council;
- Woollahra Council.

There are a number of possible reasons why the above councils have low levels of complying development as a proportion of all development. For example:

- land within the above areas may be excluded from the operation of the Codes SEPP (eg large areas of Marrickville and Mosman, or land within the Western Sydney Parklands);
- land within the above areas may be within a heritage conservation area (eg large areas of Woollahra);
- land within the above areas may be too small to satisfy the General Housing Code and Housing Alterations Code requirements (eg small lots in Leichhardt and Randwick which are under 200m^2 or otherwise too small to enable minimum setback or other requirements to be satisfied); or

- there may simply be a lack of knowledge of the existence or operation of the Codes SEPP.

Anecdotally, it is understood that some council planners have been known to discourage applicants from lodging a complying development application. Some Council websites lack detailed or up to date information on complying development and the Codes SEPP. For example, some refer to the Codes SEPP in the context of exempt development, but refer to the council's LEP or DCP in the context of complying development. Others refer to the potential to carry out complying development under the Codes SEPP but do not explain what this means.

Value of approvals

In NSW in 2010-2011, the majority of approved developments were valued under $1 million – 97% of DAs and 98% of CDCs.[11] **Table 5** summarises construction value estimates for approved CDCs and DAs. It shows that the typical (median) value of CDCs in 2010-11 and 2009-10 was $27,000, reflecting that a high proportion of complying development comprises residential alterations and additions.[12]

Table 5 – Construction value estimates for approved CDCs and DAs

	CDC value 2010-11	CDC value 2009-10	DA value 2010-11	DA value 2009-10
Mean	$121,844	$215,017	$274,592	$228,225
Median	$27,000	$27,000	$46,500	$40,000

Source: NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, page 19.

Average determination times

The EP&A Regulation requires CDCs to be determined within 10 days from lodgement, or a longer period if agreed to by the applicant. However, in 2010-11, the mean determination time for CDCs determined by councils was 14 days (inadequate data was available from private certifiers). Mean determination times differed greatly depending on the type and value of the development. Mean determination times are summarised in **Tables 6 and 7**.

Table 6 – DA + CDC determination times by value (council determined CDCs only)

	Mean determination times		Median determination times	
Value range	CDCs	DAs (gross*)	CDCs	DAs (gross*)
$0 value	25	80	11	41
Under $100K	14	58	8	36
$100K-under $500K	17	72	8	51
$500K-under $1m	25	119	14	93
Under $1m	14	65	8	43
$1m and over	40	261	18	173

Source: NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, pages 45-51.
*Gross determination time refers to the full length of the development assessment process, including referral and stop-the-clock processes.

[11] NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, page 19.

[12] NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, page 19.

Table 7 – DA + CDC determination times by development category for the three most common development types for CDCs (council determined CDCs only)

	Mean determination times		Median determination times	
Category	**CDCs**	**DAs (gross*)**	**CDCs**	**DAs (gross*)**
Residential – Alterations and additions	14	57	7	Data not available
Residential – Single new dwelling	12	63	7	Data not available
Commercial/retail/office	14	73	8	Data not available

Source: NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, pages 48-51.

3.2 Changes over time

The CDC system was introduced in NSW in 1998 and the Codes SEPP commenced in February 2009. Before the Codes SEPP was introduced, complying development was specified primarily in local councils' LEPs and DCPs, and some was specified in SEPP 60 (for those councils who did not prepare local controls) and the Infrastructure SEPP.

The number of DAs and CDCs approved in NSW since the introduction of the CDC system in 1999 is illustrated in **Table 8**.

Table 8 – Total approved DAs + CDCs issued in NSW 1999-00 to 2010-11

Year	Number of Das approved	Number of CDCs issued	Total DAs+CDCs approved	CDCs as % of total DAs and CDCs
1999-00	145,574	3,554	149,128	2.4%
2000-01	111,567	8,811	120,378	7.3%
2001-02	124,990	7,972	132,962	6%
2002-03	127,649	14,392	142,041	10.1%
2003-04	131,532	14,829	146,361	10.1%
2004-05	119,092	13,007	132,099	9.8%
2005-06	91,165	12,698	103,863	12.2%
2006-07	83,773	11,241	95,014	11.8%
2007-08	80,104	10,619	90,723	11.7%
2008-09	69,340	9,160	78,500	11.7%
2009-10	69,617	14,275	83,892	17%
2010-11	66,109	15,038	81,147	18.5%

Source: NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012

The introduction of the Codes SEPP caused a substantial increase in the number of CDC approvals and the proportion of CDC approvals of all local development approvals (DAs+CDCs). While CDC approvals comprised only 11.7% of all local development approvals in 2008-2009, this increased to 17% in 2009-2010. There was only a slight increase of 1.5% in the following year, to 18.5% (the current rate).

The Codes SEPP has been amended a number of times since it commenced. The most significant amendments occurred in December 2010 and February 2011 which expanded the categories of complying development. The amendments included:

- Expanding the General Housing Code to allow complying development on lots above 200m^2 and with a minimum lot width of 6m (previously the minimum lot size was 450m^2);

- Introducing the Rural Housing Code to allow complying development on lots above 4,000m^2 in Rural Zones and the R5 Large Lot Residential Zone;
- Expanding the Housing Alterations Code to allow minor external alterations to be carried out as complying development (previously this Code applied only to internal alterations). New standards were also introduced to ensure that external alterations in heritage conservation areas do not impact on the character or amenity of the area;
- Introducing the General Development Code to capture additional development types which do not fit within other sections of the Codes SEPP. So far the General Development Code only captures bed and breakfast accommodation in existing dwelling houses consisting of not more than 4 guest bedrooms;
- Allowing limited low impact works to be undertaken in heritage conservation areas and draft heritage conservation areas, subject to compliance with the relevant development standards, under the General Housing Code, Rural Housing Code, Housing Alterations Code and Demolitions Code. Included works are limited outbuildings in rear yards, swimming pools and minor external works to the rear of an existing dwelling house. This amendment was consistent with the approach that had already been taken by a number of local councils;
- Allowing complying development to be undertaken on “low risk bushfire prone land” subject to compliance with a rigorous assessment regime for bush fire risk; and
- Allowing complying development to be undertaken on “low risk flood control lots”, subject to complying with a rigorous flood risk assessment process.

The impact of these reforms is not necessarily reflected in the modest increase in CDCs between the 2009-10 and 2010-11 reporting years. As stated in the NSW DoPI’s *Local Development Performance Monitoring: 2010-11*, past experience has shown that the impact of legislative reform may not be evident in the monitoring results until a subsequent reporting period. This may be because it takes time for developers and home owners to adapt their building designs or to become knowledgeable so as to take advantage of the legislative changes. Results for 2011-12 may be more informative on the effectiveness of the most recent changes to the Codes SEPP.[13]

[13] NSW Department of Planning, *Local Development Performance Monitoring: 2010-11*, February 2012, page 25.

4.0 Proposed new planning system for NSW (Green Paper)

In July 2012, the NSW government released its Green Paper proposing the policy direction for a new planning system for NSW. Two critical elements of the paper which are relevant to complying/code assessable development are as follows.

- **Strategic Planning:** The Green Paper proposes a significant shift in the emphasis of planning in NSW from development assessment to strategic planning. It is the intention that evidence based strategic plans will be prepared on a state wide, regional and local level. There will be NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Land Use Plans. Subregional Delivery Plans and Local Land Use Plans will contain zoning and development controls.
- **Streamlined code assessment for strategically compliant proposals:** Approvals processes for development that conforms to standards and requirements set out in a Subregional Delivery Plan and Local Land Use Plan will be streamlined through code assessment. Fully compliant proposals must be approved within prescribed timeframes with no further referral or concurrence required. Non-compliant proposals will be subject to full merit assessment with a combined code and merit based assessment undertaken for partially compliant schemes. Codes will provide for a 10 day fast track code approval for low risk low impact development. Partially compliant development will have a 25 day approval timeframe and non-compliant development a 50 day approval timeframe.
- **Use of concept DAs:** The Green Paper recommends that, where building envelope controls are not specified for a site in a Subregional Delivery Plan or Local Land Use Plan, they can be set out in a Concept DA (currently known as a Stage 1 DA) which will be determined in consultation with the community. Subsequent proposals which comply with the Concept DA can proceed as complying development with no neighbour notification.

Steps can be taken now to implement these initiatives, without having to amend the EP&A Act. In summary, it is recommended that:

1. Development which is appropriate in a particular precinct should be able to proceed as complying development. This could be done by allowing precinct-specific DCPs, development control strategies, master plans or Stage 1 development consents to be certified as 'codes' under the Codes SEPP or another EPI. Development which complies with the 'code' can be assessed and approved as complying development, instead of requiring full merit assessment.
2. Procedures be implemented that allow an applicant or certifier to refer a non-compliant aspect of a proposal to a Council for the Council's merit assessment and approval. The Council's merit assessment would be limited only to the non-compliant aspect of the proposal, avoiding the need for a full and potentially lengthy merit assessment for a proposal which otherwise complies with the Codes SEPP.
3. The NSW Government provide funding to local councils which <u>must</u> be directed towards promotion of the Codes SEPP (whether by amending the Council's website or printing information brochures). The NSW Government could also implement a communication and public awareness campaign to educate community members and local government about the Codes SEPP.

5.0 Complying development models in other jurisdictions

Summary

- In Queensland in 2010-11, 80% of all applications were code assessable, reflecting Queensland's focus on strategic planning and allowing development which complies with the strategic framework to proceed with minimal assessment. Queensland has a track-based assessment system (including a code assessable track) which appropriately tailors the level of assessment undertaken to the complexity of the project and its likely impacts. Both the State-based Regulations and local planning schemes specify which assessment track applies to development.
- In Victoria, there is no complying development regime as such, but there is a system reflected in the Green Paper which allows part-code and part-merit assessment. New dwellings on larger lots do not require a planning permit, but do require a building permit (this covers about 80% of new dwellings). For a building permit to be issued, the development must comply with certain prescriptive requirements set out in the Building Regulation. If the proposal does not comply with a particular requirement, the dispensation of the relevant council must be obtained in relation to the proposed non-compliance. The council's assessment is limited to that part of the proposal which does not comply. There is a requirement to notify adjoining owners only if the applicant proposes a non-compliance with setback requirements.
- The Western Australian system includes some aspects of a track-based assessment regime through zoning and land use tables in planning schemes. In addition, new single dwellings do not require planning approval, except where the proposal seeks to vary the provisions of the Residential Development Codes, or is on heritage land.

5.1 Development Assessment Forum (DAF) model

In 1996, the Small Business Deregulation Task Force released a report entitled *Time for Business*. This report recommended (Recommendation 29) that the three spheres of government develop a reform strategy for referral and concurrence procedures in the building and development industry. The then Prime Minister John Howard endorsed these findings in his response to the report.

The Development Assessment Forum (**DAF**) was established in 1998 to respond to Recommendation 29. It examined ways to speed up assessment and cut red tape, without sacrificing the quality of the decision-making or development outcomes. In March 2005 the DAF released *A Leading Practice Model for Development Assessment in Australia* (**DAF model**).

The DAF model proposes:

- Ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.
- Six 'tracks' that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.

The six tracks proposed under the DAF model are:

- Exempt;
- Prohibited;
- Self-assess;
- Code assess;
- Merit assess; and
- Impact assessment.

Each track is described below.

Table 9 – DAF Model – Six assessment 'tracks'

Track	Description
Track 1: Exempt	– Development that has a low impact beyond the site and does not affect the achievement of any policy objective should not require development assessment. – Development that does not require development assessment should be simple to identify without the need to submit an application. – The statutory plan may specify parameters below which no consent is required. If these parameters are not met, it should be clear whether the proposal then requires a permit or is prohibited.
Track 2: Prohibited	– Development that is not appropriate in specific locations should be clearly identified as prohibited in the ordinance or regulatory instrument so that both proponents and consent authorities do not waste time or effort on proposals that will not be approved. – It should not be necessary to submit an application to determine that a proposal is prohibited.
Track 3: Self Assess	– Where a proposed development can be assessed against clearly articulated quantitative criteria and it is always true that consent will be given if the criteria are met, self assessment by the applicant can provide an efficient assessment method. – The criteria must be set out in advance so that a proponent can prepare an application that conforms to the criteria and submit it with suitable documentation to show that it meets the criteria. – Assessment in this track is against the criteria only, so this type of application will generally be suitable for certification by a qualified person. Little judgement will be required as to whether the criteria are met and there would be no need for public notification. A standard consent would issue. – There is also no need for any review mechanism as an application will either meet the requirements or will not. Consent is only available to applications which comply with preset criteria.
Track 4: Code Assess	– Development assessed in this track would be considered against objective criteria and performance standards. Such applications would be of a more complex nature than for the self assess track, but still essentially quantitative. – Assessment would be by an expert assessor and judgement would be required, for instance as to whether or not a design solution meets a performance standard. Private sector certification is possible. – Provided the application meets the criteria, a standard consent would be given. – There should still be an opportunity for an applicant to seek review of an assessor's decision not to give consent, but no other parties would be involved.
Track 5: Merit Assess	– This track provides for the assessment of applications against complex criteria relating to the quality, performance, on-site and off-site effects of a proposed development, or where an application varies from stated policy. Expert assessment would be carried out by professional assessors. – In specified circumstances, the views of other parties or agencies may need to

	be sought before making a decision. Where assessment involves evaluating a proposal against competing policy objectives and where objective rules and tests are not available, or do not cover the application, opportunities for notifying the community may be provided. – Consent is likely to require the formulation of a set of consent conditions specific to the proposal. – Generally, an applicant will be provided with the opportunity to seek a review of conditions or of a refusal to consent. In specified circumstances, an opportunity for third-parties to seek a review of the decision may be appropriate.
Track 6: Impact Assess	– This track provides for the assessment of proposals against complex technical criteria that may have a significant impact on neighbouring residents or the local environment. – Expert involvement would be required to prepare the application and generate predictions. Expert involvement is required to assess impacts and the accuracy of predictions. – This track expects that the proponent would prepare an impact assessment as part of the application and that there would be pre-set criteria for the content and quality standards of that impact assessment. – Assessment of these proposals is likely to benefit from the views of a range of parties and agencies and a decision about the need for and extent of public notice would usually be required. – Generally, assessment would require the evaluation of the applicant's documentation and the views of other parties by an expert assessment panel. This type of application would generally be of such a scale or significance that it should appropriately be determined by elected representatives (local government or the Minister) based on the advice of the expert assessment panel. – Consent would always include complex performance conditions that would require ongoing compliance. – As the views of all parties would have been considered during the expert panel process, a further opportunity for review is not necessary.

Source: Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*, March 2005.

5.2 Queensland

The *Sustainable Planning Act 2009* (Qld) (**SPA**) is the overarching legislation governing the planning system in Queensland. Queensland adopts a 'track' based method of development assessment similar to the DAF model. The categories of development under the SPA include:

- Exempt development;
- Self-assessable development;
- Compliance assessable development;
- Assessable development (which may require either code assessment or impact assessment); and
- Prohibited development.[14]

In Queensland in 2010-11, code assessable applications represented 80.08% of all 'compliance assessment' and 'assessable development' applications.[15] The high proportion of code assessable applications compared to other applications is illustrated in **Figure 1** below.

[14] QLD Department of Infrastructure and Planning, *Your guide to the Sustainable Planning Act 2009* (September 2009), page 26.

[15] Queensland Government, *Growth Management Queensland: Development Assessment Monitoring and Performance Program Annual Report 2010-2011*, page 4.

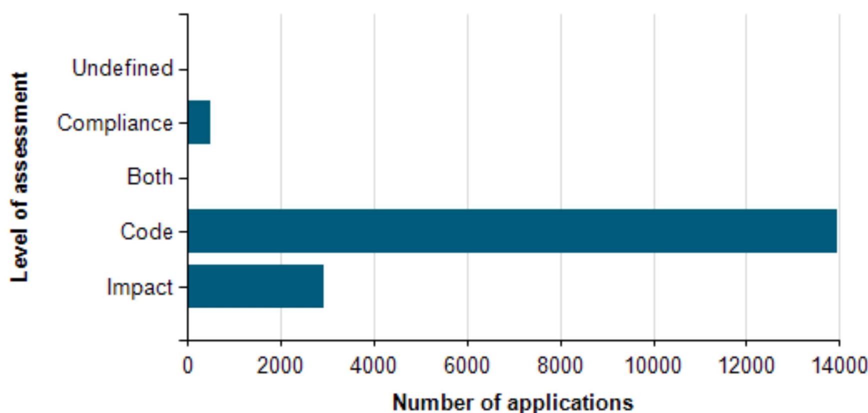

Figure 1 – Number of code assessable applications in Queensland

Source: *Growth Management Queensland: Development Assessment Monitoring and Performance Program Annual Report 2010-2011*, page 49

Exempt development

All development is exempt unless it falls within one of the other categories specified below. A development permit is not required for exempt development.

Self-assessable development

Self-assessable development does not require a development or compliance permit, however it must comply with any applicable codes. In some circumstances self-assessable development may require a building permit.

The Queensland Planning Provisions provide that self-assessable development "must be assessed against all the identified self-assessable acceptable outcomes of the applicable code(s)". "Self-assessable acceptable outcomes" are essentially development standards (height, site coverage etc).

Where the development does not comply with one or more of those outcomes, the development becomes either development requiring compliance assessment or assessable development (as specified in the planning scheme). Where the development becomes compliance assessable, the assessment criteria for the development application is limited to the subject matter of the self-assessable acceptable outcomes that were not complied with. The development must still comply with all compliance outcomes. Development that cannot comply with the compliance outcomes of the applicable code(s) becomes assessable development.[16]

Self-assessable development may be specified in the regulations, a State planning regulatory provision, a planning scheme, master plan or preliminary approval.

The Southern Downs Local Planning Scheme (one of only two adopted SPA planning schemes) provides an example of how self-assessable development works under a local planning scheme. Each land use zone has a table of permissible land uses which specifies, for each land use, the level of assessment required (self-assessment, compliance assessment, code assessment, impact assessment). For example, in the Residential Choice Zone, a dwelling house is self-assessable if:

- there are no other dwellings on the same lot;
- the lot has an area of 450m^2 or greater; and

[16] Queensland Planning Provisions, clause 1.6(1).

- the dwelling complies with all self-assessable acceptable outcomes in the Residential choice zone code, Residential uses code and Physical infrastructure code.

If the dwelling house does not comply with the above, then it is code assessable as long as it complies with all of the specified codes. These requirements and applicable codes may be different for a dwelling house in another zone.

Compliance assessment

This is a new category of development introduced in Queensland by the SPA. In 2010-11, only 2.9% of applications underwent compliance assessment.[17] Compliance assessable development is development that is assessed for compliance with the relevant criteria. Compliance assessment will result in the issuance of a compliance permit. A compliance permit can be issued by a local government, a local government nominated entity or a public sector entity.[18]

Development requiring compliance assessment can only be assessed against the matters prescribed in the regulations, a planning instrument, a master plan, a preliminary approval or a condition of a development approval requiring the compliance assessment.[19]

Development that requires compliance assessment may be specified in the Regulations, a State planning regulatory provision, a master plan or local planning scheme. To date, the only types of development requiring compliance assessment are the following specified in the *Sustainable Planning Regulation 2009*:

- Subdividing one lot into two lots on land in an industrial zone or residential zone, with a minimum lot size that complies with the local planning scheme, master plan or preliminary approval (subject to certain exceptions); and
- Operational works for the above type of subdivision.[20]

The Southern Downs Region Local Planning Scheme does not specify any development requiring compliance assessment.

In some instances a planning instrument (eg a structure plan, master plan, local planning scheme) may require an aspect of a development requiring compliance assessment to be referred to local government for assessment.[21] In such cases the council's jurisdiction is limited to assessing the aspect of development referred to the council. The council must assess that aspect within 10 business days and provide a response to the compliance assessor. The council's response can specify the conditions that must attach to the compliance permit, that the council is satisfied that the development does not achieve compliance, or that it has no requirements relating to the request. If no response is given within 10 days, the council is taken to have no requirements in relation to the request.

Assessable development

A development permit is required for assessable development. Assessable development may require:

- ***code assessment:*** the development is only assessed for compliance against applicable codes and other relevant instruments. The application can only be

[17] Queensland Government, *Growth Management Queensland: Development Assessment Monitoring and Performance Program Annual Report 2010-2011*, page 4.

[18] Sustainable Planning Act 2009 (Qld), section 399 and 407.

[19] Sustainable Planning Act 2009 (Qld), section 403.

[20] Sustainable Planning Regulation 2009 (Qld), Schedule 18.

[21] Sustainable Planning Act 2009, section 402.

refused if it does not comply with the applicable code and compliance with the code cannot be achieved by imposing conditions on the development. Applications do not have to be notified; or

- ***impact assessment:*** the development is assessed against the whole planning scheme and other relevant instruments. The public must be notified of the application.

The Queensland Planning Provisions provide that code assessable development must be assessed against all the identified codes listed in the table(s) of Assessment. Where code assessable development does not comply with the purpose and overall outcomes of any applicable code, it must be assessed having regard to the strategic framework of the instrument containing the code, including the strategic intent, strategic outcomes and specific outcomes. As mentioned above, a lot of development becomes code assessable if it does not comply with one or more 'self-assessable acceptable outcomes'.

Using the Southern Downs Region Local Planning Scheme as an example, it seems that development may be code assessable if it is the very type of development that is envisaged for a particular zone – for example, industry activity in the Industrial Zone and multiple dwellings in the Residential Choice zone (which is a medium density residential zone). This reflects the focus on strategic planning in Queensland where land use decisions have already been made upfront as part of the strategic planning process rather than as part of the DA process.

The *Sustainable Planning Regulation 2009* also prescribes a list of code assessable development. Code assessable development can also be prescribed by a State planning regulatory provision, structure plan, master plan, temporary local planning instrument, preliminary approval or a planning scheme. The list in the *Sustainable Planning Regulation 2009* includes certain low impact development and development that requires a permit under other legislation. For example, code assessable development includes:

- development on a Queensland heritage place (equivalent to a State heritage item in NSW);
- 'reconfiguring a lot' unless the reconfiguration requires compliance or impact assessment;
- 'operational work' including taking or interfering with water; dams; tidal works or work within a coastal management district; constructing or raising waterway barrier works; works in a declared fish habitat area; removal, destruction or damage of marine plants; and certain works in a wild river area or wetland protection area;
- 'material changes of use of premises' – including certain environmentally relevant activities, brothels in industrial areas, major hazard facilities, aquaculture, uses on strategic port land, airport land, certain contaminated land and land in a wild river area;
- 'building work'[22] that is assessed under the *Building Act 1975* that is not self-assessable or exempt development.

[22] 'Building work' is defined in section 10 of the *Sustainable Planning Act 2009* as:

(a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or

(b) work regulated under the building assessment provisions, other than IDAS; or

(c) excavating or filling— (i) for, or incidental to, the activities mentioned in paragraph (a); or (ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or

(d) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).

Some development on potentially environmentally sensitive land is code assessable if the Chief Executive of the relevant government department is the entity responsible for assessing and deciding the application (ie, the "assessment manager"). For example, building work in a declared fish habitat area is code assessable if the Chief Executive (Fisheries) is the assessment manager. Similarly, development on a Queensland heritage place may be code assessable if the chief executive administering the *Queensland Heritage Act 1992* is the assessment manager. The *Sustainable Planning Regulation 2009* prescribes who the assessment manager is for specified applications. However, on 13 September 2012 a new Bill was introduced into Parliament which means the Department of Planning will become the sole assessment manager and referral agency.

Some code assessable applications benefit from a deemed approval period. If the assessment manager does not decide the application within decision-making period (which is 20 business days after the day the 'decision stage' starts, including any extension of the period)[23], the applicant may give written notice to the assessment manager that the application should be deemed to have been approved.[24] A deemed approval notice cannot be issued for a development application to the extent it is for building work, and certain other applications.[25]

In Queensland in 2010-11, **code assessable applications represented 80.08% of all 'compliance assessment' and 'assessable development' applications** (ie this figure does not include self-assessable development). Impact assessable applications represented 16.7% of applications and compliance assessable applications represented 2.9% of applications.[26] According to the Queensland Government:

> *"The high percentage of code assessable applications indicates a risk tolerant approach to development assessment in Queensland, as a large proportion of development applications are streamed into an assessment regime that corresponds with the lower level of complexity of a project and its impacts. This accords with the national leading practice standards for development assessment, the Development Assessment Forum – Ten Leading Practice Principles for Development Assessment."*[27]

[23] Section 318 of the *Sustainable Planning Act 2009* (Qld). For development applications subject to code assessment, the stages are application stage, information and referral stage and decision stage.

[24] Section 331 of the *Sustainable Planning Act 2009* (Qld).

[25] Under section 330 of the *Sustainable Planning Act 2009* (Qld), a deemed approval notice cannot be issued for the following types of applications:

- *an application for preliminary approval (which is required where the application proposes to override a local planning scheme);*
- *an application that a concurrence agency has directed the assessment manager to refuse or approve in part only;*
- *an application for development on certain environmentally sensitive land (eg wet tropics area, wild river area, Queensland heritage place, critical habitat);*
- *a vegetation clearing application;*
- *a building development application (meaning a development application to the extent it is for building work);*
- *an application for which chapter 9, part 7 applies (certain aquaculture development); or*
- *application relating to an iconic place under the Iconic Queensland Places Act 2008.*

[26] Queensland Government, *Growth Management Queensland: Development Assessment Monitoring and Performance Program Annual Report 2010-2011*, page 4.

[27] Queensland Government, *Growth Management Queensland: Development Assessment Monitoring and Performance Program Annual Report 2010-2011*, page 4.

RiskSMART

In addition to the above, Brisbane City Council has developed a system called 'RiskSMART' which is described by the Council as "a simple and fast way to get low-risk development proposals approved by Brisbane City Council." Applications must be prepared, lodged, and certified by a Council accredited RiskSMART consultant. In return, Council guarantees that the application will be decided on quickly. Once submitted to Brisbane City Council, RiskSMART development applications can usually be decided within 5 working days from the start of the decision making period. For impact assessable applications, this commences once public advertising requirements have been fulfilled.

The following types of applications are eligible for RiskSMART:

- Industry in an industry area – new buildings and extensions;
- Multi-dwelling units – 10 units or less;
- New houses and extensions in a Demolition Control Precinct;
- Single-unit dwellings – 10 units or less;
- Small extensions in a shopping centre;
- Subdivision of land – up to 10 lots;
- Extensions to established schools; and
- Prescribed tidal works.

5.3 Victoria

The *Planning and Environment Act 1987* sets the legal framework for the planning system in Victoria. The planning system in Victoria does not include a formal 'track' based development assessment model. Discussion papers about the planning system have described the system as taking a 'one size fits all' approach to planning permits regardless of the scale, complexity or significance of the proposal. Some steps in the permit process such as notification and referral may or may not apply to an application,[28] but most applications follow the same process.

However, Victoria has a quasi-code assess track for certain types of building work which require a building permit under the *Building Act 1993*. These include single dwellings. In Victoria, single dwellings on large lots (over 300m^2 or 500m^2, depending on the council area) do not require a planning permit. It is understood that this covers about 80% of new dwellings.[29]

Essentially, these types of applications only undergo merit assessment in relation to that part of the proposal that does not comply with specified criteria. This system is reflected in the NSW Government's Green Paper which recommends a partial code and partial merit assessment for some types of proposals. The Victorian system works as follows:

- A building permit must not be issued unless the proposal complies with the *Building Regulation 2006.*[30] These requirements include prescriptive siting

[28] *Planning and Environment Act 1987* (Vic), section 6(2).

Victorian Department of Planning and Community Development (2009), *Modernising Victoria's Planning Act: A discussion paper on opportunities to improve the Planning and Environment Act 1987*, page 20.

[29] Telephone discussions with the Victorian Department of Planning and Community Development, 25 June 2012.

[30] *Building Act 1993* (Vic), section 24.

standards in Part 4 (height, setbacks, site coverage, permeability, car parking, boundary walls, solar access, overshadowing, overlooking and private open space), buildings above or below a street, land liable to flooding, and building over easements.

- If the proposed development does not comply with a particular requirement, the 'report and consent' (dispensation) of the relevant reporting authority (usually the council) must be obtained before the building permit can be issued.[31] This requirement is specified in respect of each development standard, which means that the council's approval is only required in relation to the part of the design that does not comply. Either the applicant or the building surveyor can refer an application to the relevant reporting authority.

Interesting features of the report and consent process include:

- a deemed consent where the reporting authority is not the council and has not provided a report within the prescribed time (currently 15 days after receipt of the application);[32]
- a right of appeal to the Building Appeals Board where the reporting authority is the council and the council has not provided a report within 15 days;[33]
- a requirement to notify adjoining owners if the applicant proposes a non-compliance with setback requirements.[34]

Proposed reforms

The Victorian Government has recently announced that it intends to implement a new 'track' based model of development assessment loosely based on the DAF model. On 11 May 2012 the Minister released a response to the recommendations of the Victorian Planning System Ministerial Advisory Committee in its report dated December 2011. The Committee recommended introducing assessment streams for permit applications, including a 'code assess' stream for buildings and/or works applications but not land use applications. Specifically the Committee recommended establishing the following streams:

- **Code Assess - Class 1 Quantitative Assessment:** This would cover minor works. A proposal in this class must meet all of the quantitative criteria.
- **Merit Assess - No Notice - Classes 2 and 3:** There are two classes of applications within this merit assessment stream. These two classes would be exempt from notice and third party review rights. In many cases, this exemption already exists in the planning scheme.
  - **Class 2 Simple Assessment:** This class of application could encompass proposals for minor buildings and works such as shopfront alteration, vegetation removal, the construction of a fence in a Heritage Overlay and also permit triggers that arise under a single purpose overlay such as the Special Building Overlay or the Wildfire Management Overlay.
  - **Class 3 Impact Considered Assessment:** This class of application could encompass any use and/or development proposal that is already exempt from notice and review provisions of the planning scheme (eg. Development Plan Overlay, Urban Growth Zone or an Activity Centre Zone).

[31] Schedule 2, clause 4 of the *Building Regulation 2006* (Vic). Relevant reporting authorities include local councils,

[32] Schedule 2, clause 6 of the *Building Act 1993* (Vic); Schedule 3 of the *Building Regulation 2006* (Vic).

[33] Schedule 2, clause 6 of the *Building Act 1993* (Vic); Schedule 3 of the *Building Regulation 2006* (Vic).

[34] Schedule 2, clause 4A of the *Building Act 1993* (Vic) and Minister's Guideline 94/04.

- **Merit Assess - Notice - Classes 4 and 5:** There are two classes of applications in this Merit Assess stream. These two classes of applications would be subject to notice and third party review rights.
  - **Class 4 Limited Assessment:** This class of application may include noncomplying Code Assess applications or proposals where any potential impact relates to localised amenity consequences only.
  - **Class 5 General Assessment:** This class of application would encompass proposals with potential for wider geographic impact.[35]

The Minister for Planning recently introduced into Parliament the *Planning and Environment Amendment (VicSmart Planning Assessment) Bill 2012*, which is intended to implement the 'code assess' track described above. According to the Department of Planning and Community Development, the Bill will be debated in Parliament in August 2012 and that this new code assess track, called VicSmart, is expected to be in place later in 2012.

VicSmart will apply to straight forward, low impact permit applications which make up approximately 10% of all permit applications.[36] The types of applications being considered are:

- Realigning a common boundary between two lots or subdividing land into two lots in accordance with an approved development;
- Subdividing existing buildings to create separate titles for each building or unit;
- Building or extending a fence within 3 metres of a street;
- Constructing a service station on land in an Industrial 1 Zone;
- Carrying out development in a Heritage Overlay which is already exempt from public notice and review;
- Managing vegetation in urban areas;
- Building in the Land Subject to Inundation Overlay or Special Building Overlay;
- Altering road access where the road is or will be in a Road Zone Category 1;
- Erecting small advertising signs more than 30 metres from land in a residential zone where the sign is not lit, electronic or animated.[37]

Under the proposed VicSmart system, applications will be submitted to the council and assessed against pre-set assessment criteria. Currently a 10 day assessment process is being considered. If no decision is made within that time, the applicant can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review.

5.4 Western Australia

The *Planning and Development Act 2005* is the principal town planning legislation in Western Australia. The Western Australian system includes some aspects of a 'track' based assessment regime through zoning and land use tables in local planning schemes, but there is no State-wide assessment regime which

[35] Victorian Planning System Ministerial Advisory Committee (December 2011), *Initial Report*, page 135.

[36] Victorian Department of Planning and Community Development (####): *Fact Sheet: VicSmart – A Simpler Planning Permit Process*.

[37] Victorian Department of Planning and Community Development (####): *Fact Sheet: VicSmart – A Simpler Planning Permit Process*.

differentiates the way in which those developments which do require approval are to be assessed.[38]

Each local government area is covered by a local planning scheme which sets out, among other things, zoning and land use tables. To help local governments prepare planning schemes, the Western Australian Planning Commission has adopted the Model Scheme Text (published in the *Town Planning Regulations 1967*) which provides standard clauses, terms and provisions for greater consistency in planning schemes.[39]

The Model Scheme Text provides a de facto 'exempt' development category. Under clause 8.2, the following development does not require the approval of local government (which local councils can supplement in their planning schemes):

- the carrying out of any building or work which affects only the interior of a building and which does not materially affect the external appearance of the building (except on heritage land);
- the erection on a lot of a single house including any extension, ancillary outbuildings and swimming pools (except where the proposal seeks to vary the provisions of the Residential Development Codes, or on heritage land);
- the demolition of any building or structure except on heritage land;
- a home office;
- any works which are temporary and in existence for less than 48 hours or such longer time as the local government agrees; and
- exempted classes of advertisements except on heritage land.

In addition, each scheme includes the following categories of development for each zone:

- 'P' means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme;
- 'D' means that the use is not permitted unless the local government has exercised its discretion by granting planning approval;
- 'A' means that the use is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4 (ie public notification of proposals);
- 'X' means a use that is not permitted by the Scheme.

The application of these categories across local government areas is not consistent, which means one form of development (example a front boundary fence in the residential zone) might require planning approval in one local government area, but not in another.

The Department of Planning is in the process of reviewing the *Town Planning Regulations 1967* and the Model Scheme Text with a view to introducing some form of track-based assessment system in the future. However, the proposed amendments to the Regulations do not of themselves deliver a track-based assessment system. They do, however take the first steps towards a framework which will allow track-based assessment in the future by providing a standardised

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[38] Government of Western Australia Department of Planning (December 2009), *Review of the Town Planning Regulations 1967 and the Model Scheme Text - Report on Submissions*, page 4.

[39] Western Australian Planning Commission and Department for Planning and Infrastructure (October 2007), *An Introduction to the Western Australian Planning System*, page 8.

assessment process which can be amended to implement further assessment ‘tracks’. At the moment, the Western Australian Government is focusing on land release issues in the first instance and intends to move towards a track-based assessment system after a second round of reforms. Before these reforms can occur however, further discussion with local government is required in relation to prescribing a set of standardised zones and land use definitions to make a track-based system work best.

5.5 Lessons learned for NSW

There are various features of other states’ complying / code assessable development systems which appear to work well and which appropriately tailor the level of environmental assessment undertaken to the complexity of a project and its impacts. These features should be adopted in NSW in the development of a new planning system.

First, Victoria’s ‘report and consent’ procedure allows a partial code and partial merit assessment, whereby:

- If a proposed dwelling house does not comply with a particular development standard, 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.
- There is a requirement to notify adjoining owners only if the applicant proposes a non-compliance with setback requirements.
- There is a deemed consent where the reporting authority is not the council and has not provided a report within the prescribed time (currently 15 days after receipt of the application).

A similar system should be adopted in NSW, so that if a proposed development does not comply with one or two development standards in the Codes SEPP, it could still be assessed as complying development subject to the certifier receiving the Council’s approval/dispensation in relation to the relevant non-compliance first. This system would avoid the need for a full and potentially lengthy merit assessment for a development which otherwise complies with the Codes SEPP.

Secondly, there are aspects of the track-based system in Queensland which should be adopted in NSW. In particular:

- A vast range of development is code assessable, which reflects the focus on strategic planning in Queensland where land use decisions have already been made upfront as part of the strategic planning process rather than as part of the DA process. Approximately 80% of assessable development in Queensland is code assessable. The NSW Government’s Green Paper states that development which complies with relevant strategic plans should be code assessable.
- Each land use zone has a table of permissible land uses which specifies, for each land use, the level of assessment required (self-assessment, compliance assessment, code assessment, impact assessment). For example, industry activity in the Industrial Zone and medium density residential in the Housing Choice Zone are code assessable and must be assessed against all the identified codes. Where code assessable development does not comply with the purpose and overall outcomes of any applicable code, it must be assessed having regard to the strategic framework of the instrument containing the code, including the strategic intent, strategic outcomes and specific outcomes. This again demonstrates the focus on strategic planning in Queensland. NSW should adopt a similar system where the Standard Instrument LEP contains

standardised zones and each zone specifies uses which are code assessable in that zone.

- There is a deemed approval period for code assessable applications (excluding applications for building work and certain others) which are not decided within the prescribed period.

6.0 Discussion and Recommendations

Summary

A realistic aspirational target for the NSW Government is for CDCs to comprise 30-40% of all development activity in NSW. This aspirational target could be achieved or even exceeded if the following recommendations are implemented:

- Introduce precinct-specific complying development codes;
- Allow commercial fit-outs and first use of commercial premises to be assessed as complying development;
- Reconsider the blanket exemptions for heritage items and heritage conservation areas subject to introducing a 'site compatibility certificate' process or similar;
- Expand the types of signage which qualify as complying development;
- Require Councils to promote the Codes SEPP to potential applicants;
- Recognise complying development 'near misses' - ie allow partial merit assessment of non-compliances;
- Reconsider the blanket land-based exemptions subject to introducing a concurrence process or similar from relevant government agencies;
- Prevent the use of section 88B instruments to 'turn off' the Codes SEPP

In addition, current CDC notification processes should be amended to remove the requirement for applicants to notify neighbours of planned construction, and instead require the council or certifier to erect a site notice to this effect. The site notice should also explain the reason for the approval of the development without notification (ie compliance with prescribed standards).

This chapter discusses some of the problems with the current complying development system in NSW and contains recommendations as to how it could be 'supercharged'. A realistic aspirational target is for CDCs to comprise 30-40% of all development activity in NSW. If all of the recommendations are implemented, including compulsory promotion of the Codes SEPP by local councils, this proportion could be even higher.

6.1 Precinct specific codes

Low impact development that does not comply with the Codes SEPP currently requires a full merit assessment, even if it is already envisaged and considered appropriate for a particular precinct. This unnecessarily delays the approval process for relatively simple applications, which should be assessed in a streamlined way.

This is particularly problematic for new housing estates in greenfield areas and employment precincts where detailed strategic planning has already been undertaken.[40] For example, the planning of a new housing estate usually involves

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[40] It is understood that there is a relatively low uptake of the Codes SEPP in greenfield areas. Possible reasons include:

- The General Housing Code only allows complying development to be carried out on a "lot" (clause 3.8), meaning that a CDC cannot be issued until a lot has been registered. A lot of house and land packages in new housing estates are sold off the plan prior to lot registration, and purchasers are lodging DAs rather than CDC applications because they

the preparation of a site-specific DCP or development control strategy. These documents set out siting and design requirements such as height, FSR, setbacks and so on. In some cases these siting and design requirements do not comply with the development standards set out in the General Housing Code, but they nevertheless comply with the site-specific DCP requirements (as approved by Council) and are appropriate for the specific site opportunities and constraints of a particular precinct and the target market. There is no need for these new dwellings to undergo a full merit assessment considering that the use and subdivision pattern have already been assessed and approved, and appropriate envelope controls have already been determined.

Case study – The New Rouse Hill

The New Rouse Hill project is a 122 hectare community including up to 1,800 new homes. The developer's building and siting requirements for the project comply with the Baulkham Hills DCP No. 33 – Rouse Hill Regional Centre. However, the developer is not aware of any dwellings within the new estate which have been approved as complying development. That is partly because many of the requirements of the Codes SEPP are more stringent than the site-specific, Council approved, DCP requirements. For example:

- Clause 3.9 - maximum site coverage requirements for lots 300-600m2 are tighter than the DCP and are not appropriate for the single storey product for this market;
- Clause 3.13 - maximum building height is 1m less than the DCP; and
- Clause 3.17 - minimum rear setback requirements are difficult to achieve while still complying with maximum site coverage.

There is no reason why development in this precinct which complies with the precinct-specific DCP should undergo detailed merit assessment. The fact that a proposal does not comply with the Codes SEPP standards does not lessen its merits. In fact, a proposal that complies with DCP controls which were designed specifically for the precinct could potentially be more meritorious than general State-wide controls.

Case study – Erskine Park Employment Area

The Erskine Park Employment Area covers a gross area of about 540 hectares. It is included in the Western Sydney Employment Area, a large part of which was rezoned in 2008 to promote economic development and employment within Western Sydney.
Penrith City Council adopted a site-specific DCP for Erskine Park which came into force in 2003. It is now incorporated within the Penrith Development Control Plan 2006. The DCP contains building envelope

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do not want to wait for their "lot" to be registered so that building can commence immediately;

- Provisions in the General Housing Code which may knock out a lot of the housing product currently being delivered to the market;
- Low DA processing times for some growth area Councils, meaning there may be no significant timing advantage to lodging a CDC application over a DA;
- Landowners want flexibility in the design of their homes;
- Landowners may not know the Codes SEPP exists – they may assume that a Council DA approval is the only potential approval pathway;
- The Codes SEPP contains so many prescriptive standards that it is sometimes easier to lodge a DA;
- Councils may not be encouraging the use of the Codes SEPP.

controls including height, site coverage and setbacks.

There has been discussion within the DoPI that significant industrial development (up to 20,000 sq metres) will be permitted to be approved as complying development. There is no impediment to permitting development of even greater size in nominated and strategically determined industrial precincts such as Erskine Park.

The uptake of the Codes SEPP could be improved if site-specific, Council approved development controls for particular precincts (including new housing estates) can be certified as 'codes' for the purposes of the Codes SEPP. This would enable substantial numbers of new dwellings in particular to be approved as complying development instead of undergoing full merit assessment. This will assist in increasing the proportion of complying development given that housing comprises a substantial proportion of development activity in NSW.

This is consistent with the NSW Government's recently announced Urban Activation Precincts program and the recently released Green Paper, which place a focus on strategic planning and aim to streamline the approval process for strategy and code compliant development. The Green Paper states (page 52):

> *"Subregional Delivery Plans will be developed for an area with meaningful community consultation. Once the Plan is endorsed then it should be clear that any development proposal that conforms to the standards and requirements set out in the plan will go ahead.*
>
> ...
>
> *The assessment of development proposals identified in the Subregional Delivery Plan will be streamlined through a code assessment. Consistent with the DAF Leading Practice Model development which conforms to the standards and requirements set out in the Subregional Delivery Plan must be approved."*

The Green Paper also envisages the use of 'concept DAs' (currently known as Stage 1 DAs) when a Subregional Delivery Plan does not specify the necessary standards and requirements for code assessment. It is proposed to allow those standards and requirements to be developed through a concept DA in which the community will be involved. Once granted, subsequent stages of the development would also be approved through code assessment.

The Urban Activation Precincts program will seek to establish a code based assessment framework for the relevant area to provide greater certainty, enable more streamlined assessment of development within the precinct, and remove unnecessary delays in project approvals. These controls will be contained within a SEPP or LEP. It is submitted that precinct-specific codes should also be able to be developed for land that will not be declared an Urban Activation Precinct.

Recommendation

- Allow development which is appropriate in a particular precinct to proceed as complying development. This could be done by allowing precinct-specific DCPs, development control strategies, master plans or Stage 1 development consents to be certified as 'codes' under the Codes SEPP or another EPI. Development which complies with the 'code' can be assessed and approved as complying development, instead of requiring full merit assessment.
- In allowing certified site or area specific codes to be adopted, a fundamental proposition is that these specific codes are not made more restrictive than the equivalent provisions in the Codes SEPP. These site specific Codes would allow development above and beyond what the

Code SEPP provide for in areas that can accommodate such development (i.e. larger garages, varying setbacks etc).

6.2 Commercial/retail development fit-outs

There is a fundamental issue with the complying development provisions for fit outs of commercial (including retail), light industrial and warehouse premises. Under clause 5.2 of the Codes SEPP (General Commercial and Industrial Code), fit-outs of a commercial tenancy can be dealt with as complying development where the use is already lawfully commenced. However, because the use approved under a DA cannot be commenced (in many cases) without fit-out first, this means that many fit-outs automatically fall outside the complying development regime.

Case study – Darling Walk Commercial Fit-Out

In February 2010 a Part 3A application was lodged seeking approval for the fit-out of 64,235m2 of commercial floor space across two, nine storey buildings. The Minister for Planning had already granted a concept approval for the redevelopment of Darling Walk and a project approval for the construction of the buildings. Despite this, a Part 3A application providing detailed justification for the potential impacts of the development was required for the internal fitouts.

Clause 5.2 of the Codes SEPP should provide that fit out of a lawfully commenced **or** lawfully approved development is complying development, so that all approved commercial, light industrial and warehouse developments can proceed to fit out as complying development. From an environmental impact mitigation point of view, there is no benefit to requiring additional merit consideration to be given to the fitout of premises that have already obtained approval for construction and/or use. The use of the building has already been determined and the impacts have already been assessed. There are no other impacts to be assessed under section 79C(1) of the EP&A Act that were not already assessed as part of the base building DA.

While this is a small change to the Codes SEPP it would be of benefit to developers and would increase the proportion of developments subject to complying development assessment. In 2010-11, 13% of all development activity (DAs and CDCs) comprised commercial/retail/office development and 10.3% of all DAs determined were for commercial/retail/office development. It is unknown precisely what percentage of this was for commercial development fitouts, however even if the proportion is only one quarter, this would increase CDCs as a proportion of all development activity in NSW.

The DoPI's discussion papers about potential Codes SEPP amendments also support this change.

Recommendation 2

Amend clause 5.2 of the Codes SEPP to provide that fit out of a lawfully commenced or lawfully approved premises is complying development.

6.3 First use of commercial premises

Under clause 5.4 of the Codes SEPP, a change of use from one type of commercial/light industrial/warehouse premises to another may be complying development if it involves a change of use from a 'current use' to a new use. This means that the use of new premises for the first time is not complying development and separate development consent must be obtained.

Case study

Usually councils will impose a condition of consent for new base buildings stipulating whether separate consent must be obtained for the use or fitout of a particular part of the development. For example, the City of Sydney's standard condition of consent requires a separate DA to be submitted and approved for the fitout and use of premises prior to that fitout or use commencing.

The development consent for the Westfield Sydney refurbishment, however, includes non-standard conditions enabling Westfield to commence the use of most tenancies and the office tower without obtaining any further approvals. However, additional consent was still required for the use of ground floor street front tenancies, food premises and child care centre, and the fitout of all tenancies.

The first use of new commercial premises should not require a separate DA. Without such a non-standard condition, it is likely that Westfield would have had to lodge 279 DAs for the use of individual tenancies.

First use should be complying development under the Codes SEPP. That is because the planning impacts associated with the use of these premises have already been considered by the consent authority in determining the DA for the base building. There are no other impacts to be assessed under section 79C(1) of the EP&A Act that were not already assessed as part of the base building DA.

The DoPI's discussion papers about potential Codes SEPP amendments also support this change.

Recommendation 3

Introduce a new provision into the Codes SEPP to allow the first use of approved commercial and light industrial premises to be complying development.

6.4 Heritage items

In NSW, development cannot be complying development if the development will be carried out on 'land' comprising a local or State heritage item (clause 1.17A of the Codes SEPP). This exemption applies to any environmental planning instrument, not just the Codes SEPP.

In most cases, development which directly affects a heritage item may require the consent authority to exercise discretion and make an informed decision about the impacts of the proposed development on that heritage item. In such cases, development consent should be required.

However, there are numerous situations where the proposed development required development consent because there was a heritage item on the same land, despite having absolutely no physical connection with or proximity to the heritage item.

Case study

- A land owner had to obtain development consent to refurbish Levels 1 to 31 of an office tower in the Sydney CBD (including otherwise complying office fitouts) due to the presence of the 'Tank Stream' in a culvert on Level 4 of the basement.
- A university had to obtain development consent for a change of use from a business premises to a retail premises due to the presence of a

local heritage item over 150 metres away on the 128 hectare campus. Because the subject premises and the heritage item were located on the same 'land', the proposal did not qualify as complying development.

- A hotel had to obtain development consent to undertake internal refurbishment works to hotel rooms in the Sydney CBD, because of the presence of State heritage items on the site. The hotel building itself is not a heritage item and the works were proposed outside of the curtilage of the heritage items.

Specific issues also arise in relation to State heritage items. In a number of instances – and specifically in relation to new release area planning – that because the entirety of the land is listed on the State Heritage Register, the Codes SEPP has no practical effect. This is the case even if a Conservation Management Plan for a State Heritage Item has been endorsed under the *Heritage Act 1977*, and/or DAs granted that protect the agreed significant heritage elements on a site. In some instances, this means that DAs are required for thousands of individual dwelling houses irrespective of the fact that heritage issues have been resolved i.e there is no longer any heritage conservation reason to exclude operation of the Codes SEPP.

For example, one project is likely to require 1,400 DAs to be lodged for individual dwelling houses, even though there will in fact be an exemption in place from the need to obtain approvals under the Heritage Act by virtue of the existence of an endorsed site CMP. The exclusion from the Codes SEPP in this instance does not serve a heritage conservation purpose.

Clearly, 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 4

Reconsider blanket exemptions relating to heritage items. Amend the Codes SEPP so that:

- Where land comprises a local heritage item (or draft heritage item), development may be complying development if the council certifies, on request by the landowner, which particular development categories are compatible with the heritage item and its significance. This could be done through a site compatibility certificate process or similar. This certificate if issued could be recorded in the section 149 certificate.
- Where land comprises a State heritage item, development may be complying development if it is carried out outside of the item's curtilage, as defined in the State Heritage Register or a CMP endorsed by the Heritage Council under the Heritage Act 1977. Where there is uncertainty as to what constitutes the curtilage of the item, the Codes SEPP should allow the Heritage Council to certify what particular development categories are compatible with the heritage item and its significance (similar to the power described above for local councils).

6.5 Heritage conservation areas

Clause 1.19(6) of the Codes SEPP provides that, to be complying development specified for the General Housing Code or the Rural Housing Code, the development must not be carried out on land within a heritage conservation area or a draft heritage conservation area, unless the development is a detached

outbuilding or swimming pool. There are also some specific exemptions relating to heritage conservation areas in other codes, for example:

- Clause 4.3 (Housing Alterations Code): external alterations to a dwelling-house (other than alterations to that part of the dwelling house that is a single storey);
- Clause 5.7 (General Commercial and Industrial Code) (as amended by draft SEPP amendment): the construction, installation or alteration of a mechanical ventilation system on a building that is used for any purpose (other than a dwelling); and
- Clause 5.9 (General Commercial and Industrial Code) (as amended by draft SEPP amendment): an external alteration to, or the repair or replacement of, an existing shop front or awning on a building used for any purpose other than for the purpose of a dwelling.

The above 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 5

Reconsider blanket exemptions relation to heritage conservation areas. Amend the Codes SEPP so that councils can certify that particular development categories 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.

6.6 Signage

The only signage that is currently covered by the Codes SEPP is the replacement of a building identification sign or business identification sign, which is exempt development (clause 2.72A). The DoPI's discussion papers about the Codes SEPP support the expansion of the Codes SEPP to cover additional signage. However, the following examples demonstrate that it should be expanded even further.

Case studies

- A landowner had to obtain development consent to replace a window lifestyle graphic – essentially a sticker – in a shopfront window. The graphic depicted a sporting event and covered one window pane. Because the graphics were not strictly 'building identification signage' or 'business identification signage' under the Codes SEPP or Council's planning controls, a DA was required. This signage should have been exempt development, or at the very most, complying development. Even under the draft SEPP amendments, this sticker would require development consent.
- A builder had to obtain development consent to erect a temporary sign on a crane to display the builder's name/logo. The proposed signage was temporary, and although it was lit for some part of the night it would not generate any light spill. This signage should be complying development.
- The developer of a shopping centre had to obtain development consent for tenancy signage, even though the original DA for the base building also sought approval for the size and location of tenancy signs. This

signage should have been covered by the base building consent, or required a CDC at the very most. Under the proposed SEPP amendments, some of this signage would still require consent because it exceeds the maximum size. Signage that exceeds these thresholds should be complying development if it is consistent with the development consent for the base building.

Recommendation 6

Amend the Codes SEPP to accommodate the above types of signage.

6.7 Greater promotion of the Codes SEPP by Councils

As mentioned previously, in 2010-11 a staggering 90% of single new dwellings underwent full merit assessment, and only 10% underwent complying assessment. A lack of awareness or understanding of complying development among the general public is likely to account for this low uptake.

The Codes SEPP must be user friendly for non-professional developers (ie “mums and dads”). These groups are most likely to use the Codes SEPP for residential development which comprises the majority (69%) of all development activity. Therefore the operation of the Codes SEPP must be clearly explained and promoted by local councils on their websites and in information brochures and the like. The success of the Codes SEPP is, partly at least, contingent on this fact.

Many council websites lack detailed or up to date information on complying development and the Codes SEPP. For example, some council websites state that the Codes SEPP specifies exempt development, but that complying development is specified in Council’s LEP or DCP. Others refer to the potential to carry out complying development under the Codes SEPP but do not explain what this means. On the other hand, some council websites do contain detailed and helpful information about the potential to obtain an approval under the Codes SEPP. Consider the following example.

Case study – Port Macquarie-Hastings Council – best practice

Port Macquarie-Hastings Council’s website contains detailed and helpful information about the development approvals process, including exempt and complying development. The website explains that:

- Complying development is minor development which complies with pre-determined prescribed requirements, and can be carried out with a simplified version of application and approval;
- A section 149 certificate can be obtained to establish if any land-based restrictions apply;
- A CDC is issued by either council or an accredited certifier;
- Complying development is specified in a number of different planning instruments, and the appropriate instrument to use depends on the nature of the application and the land. The website then provides links to the relevant SEPPs and the Council's LEP (with clause references);
- There is a link to a separate page on Council's website which is solely about online lodgements and the Electronic Housing Code;
- Further information can be obtained from Council's Complying Development Officer who is available at the Customer Service Centre to answer questions during specified times, or through the Housing Code

website (link provided).

Not surprisingly, CDCs comprise 48% of all development approvals in Port-Macquarie Hastings, far above the NSW average of 18.5%. 70% of residential alterations and additions and 24% of single new dwellings are approved by CDC.

Table 10 provides a sample of Council websites and the information they contain about complying development.

Table 10 – Sample of Council websites and information relating to complying development

Council website	Information about complying development	Sufficient information?
Inner Sydney councils		
Council 1	– States that the Codes SEPP specifies exempt development (not complying development) – However it provides a link to the General Housing Code but does not explain what this is	No
Council 2	– One webpage states that the Codes SEPP specifies exempt and complying development, but does not explain what this means – For complying development the website directs you to the Council's DCPs – not the Codes SEPP	No
Council 3	– On a page explaining the development process, the website only states that the Codes SEPP specifies exempt development. For complying development the website provides a link to Council's LEP	No
Council 4	– Explains what complying development is – Explains that you can choose between Council's DCP and the Codes SEPP for complying development	Yes
Council 5	– Explains what complying development is – Explains that you can choose between Council's DCP and the Codes SEPP for complying development	Yes
Council 6	– Explains what complying development is – Explains that you can choose between Council's DCP and the Codes SEPP for complying development	Yes
Council 7	– States that the Codes SEPP identifies development that does not require a DA – Provides a link to the Department of Planning website (homepage) for further information	No
Outer Sydney councils		
Council 8	– Refers to the Codes SEPP but states that the minimum allotment size for new houses and housing alterations is 450m^2 – Also states that the Codes SEPP includes swimming pools as complying development. Does not refer to any other development.	No
Council 9	– Explains what complying development is – Explains that you can choose between Council's DCP and the Codes SEPP for complying development	Yes
Council 10	– Explains what complying development is – Explains that you can choose between Council's DCP and the Codes SEPP for complying development	Yes
Council 11	– Explains what complying development is	No

Council website	Information about complying development	Sufficient information?
	– Does not refer to the Codes SEPP or any of Council's complying development controls	
Council 12	– States that complying development is development that must comply with Council's pre-determined standards set out in its DCP – States that the NSW Housing Code provides additional types of development that may allow you to undertake your development as complying development	No

Recommendation 7

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

6.8 Accommodate complying development "near misses"

Under the current system, development which does not comply with a development standard in the Codes SEPP (or 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.

Case study – Victoria's 'report and consent' system

Victoria has a system known as 'report and consent'. If a proposed dwelling house does not comply with a particular development standard set out in the Building Regulations, 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 recommendations in the Green Paper in relation to partial code and partial merit assessment. The Green Paper states (page 53):

> *"Over time market conditions may change and the envelopes and land uses set out in a Subregional Delivery Plan may no longer provide for desired development outcomes. In that case a proponent may come forward with a proposal that seeks to vary some of the standards and requirements set out in the Plan. If so, the consent authority's merit assessment will extend over those areas where the proponent seeks to vary the standards as well as those areas where standards have not been developed."*

The Green Paper also states that the Council's merit assessment *"will not be an opportunity to re-open discussion on the standards and requirements set by the previous strategic planning exercise"*.

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.

6.9 Reconsider blanket land-based exemptions

Clauses 1.17A and 1.19 of the Codes SEPP contain land-based exemptions. For example, a proposed dwelling house might satisfy all of the design requirements of the Codes SEPP but be located on land that is critical habitat, and therefore not qualify as complying development.

In some cases the proposed development might not have a substantial impact on the particular land-based exemption. For example, land that is registered as containing critical habitat might already be disturbed in parts in which case the proposed development might not have any impact on the critical habitat. Accordingly, the applicant/certifier should be able to obtain a dispensation from the relevant government agency in relation to the relevant land-based exemption. For example, NSW Environment and Heritage in relation to land that is critical habitat.

Recommendation 9

Implement procedures to allow development that is affected by a land-based exemption to be assessed as complying development with the concurrence/dispensation of the relevant government agency. This could be done through the site compatibility process or similar.

6.10 Prevent the use of section 88B instruments to "turn off" the Codes SEPP

In the past councils have required restrictive covenants to be registered on title at the time of subdivision requiring compliance with certain planning controls such as development control plans. This has the effect of requiring a DA to be lodged and precluding complying development from being carried out under the Codes SEPP.

A 'section 28' provision should be inserted into the Codes SEPP suspending the operation of restrictive covenants, including council imposed covenants.

Recommendation 10

A 'section 28' provision should be inserted into the Codes SEPP suspending the operation of restrictive covenants that affect the ability to carry out complying development. This provision should not exclude covenants imposed by councils or that councils require to be imposed.

6.11 Amend current CDC notification practices

Currently, the General Housing Code requires the person having the benefit of a CDC to give at least 2 days' written notice of the intention to commence works, to the owner or occupier of each dwelling that is situated within 20 metres of the lot on which the works will be carried out (clause 3.39A of the Codes SEPP).

Prior to these current arrangements, private certifiers were responsible for notifying the neighbours. Certifiers described the previous system as a "nightmare". The main issues were:

- The difficulty in obtaining property information from councils such as the name of the dwelling owner or occupier or, in the case of residential flat buildings, unit numbers and how many units;
- To overcome the lack of property information, the certifiers sometimes resorted to a letterbox drop which put a strain on resources;
- Certifiers would often receive many queries and complaints from neighbours about the development and would issue responses as a matter of courtesy, but again this put a strain on resources.

Feedback from private certifiers about the current system is that applicants do not always notify the neighbours as required, and there is no active enforcement to ensure that this occurs. When the neighbours are notified, some complain about not being able to view the plans. Applicants are not required to provide a copy of the plans and councils cannot provide copies for copyright reasons. A notice should be erected on the subject property rather than notifying adjoining owners. This would be easier to enforce (because it is more visible) and would serve the purpose of putting residents on notice of planned construction works.

Recommendation 11

Reconsider the current requirement for applicants to notify adjoining owners 2 days before construction commences. Instead, require a council or private certifier to erect a notice on the site which explains the proposal and the reason why it was approved and states that construction is planned to commence.

There has been discussion about introducing a requirement for certifiers to notify neighbours *before* a CDC is issued. This is problematic. First, there is no point in notifying neighbours about an application that they have no statutory right to object to. Secondly, it could slow down the approval process. Thirdly, it could put a strain on certifiers' resources in receiving and possibly responding to queries and complaints. Finally, it would revive the previous difficulties experienced by certifiers in issuing notification letters to neighbours.

The only time neighbours should be notified about a CDC application before it is issued, is if the planning system recognises "near misses" and the proposal involves a non-compliance with setback requirements. This is consistent with the system in Victoria.

7.0 Conclusions

The introduction of the Codes SEPP saw a fairly substantial increase in complying development activity compared with previous years. In the three years preceding the Codes SEPP, CDCs comprised 11.7 or 11.8% of total development consents and CDCs, and following the commencement of the Codes SEPP this jumped up to 17%. Clearly, the Codes SEPP has had a positive impact by better tailoring the level of environmental assessment undertaken to the complexity of a project and its impacts on the built and natural environments, and by providing certainty to landowners and the community.

However, the rate of complying development approvals increased to only 18.5% the following year. It is acknowledged that recent (2011) amendments to the Codes SEPP may have further increased this percentage; however the rate is not likely to have increased significantly. Complying development should be used far more often, particularly considering that 97% of approvals are for development with a value below $1 million.

A realistic aspirational target for the NSW Government is 30-40%. This target could be even higher if all recommendations in this report are implemented, particularly compulsory promotion of the Codes SEPP by local councils resulting in increased public awareness.

In summary, the recommendations in this report are as follows:

- Introduce precinct-specific complying development codes;
- Allow commercial fit-outs and first use of commercial premises to be assessed as complying development;
- Reconsider the blanket exemptions for heritage items and heritage conservation areas subject to introducing a 'site compatibility certificate' process or similar;
- Expand the types of signage which qualify as complying development;
- Require Councils to promote the Codes SEPP to potential applicants;
- Recognise complying development 'near misses' – ie allow partial merit assessment of non-compliances;
- Reconsider the blanket land-based exemptions subject to introducing a concurrence process or similar from relevant government agencies;
- Prevent the use of section 88B instruments to 'turn off' the Codes SEPP.

In addition, current CDC notification processes be amended to remove the requirement for applicants to notify neighbours of planned construction, and instead require the council or certifier to erect a site notice to this effect. The site notice should also explain the reason for the approval of the development without notification (ie compliance with prescribed standards).

Finally, proposals to expand the Codes SEPP to cover substantial new industrial premises, substantial commercial additions and expanded change of use provisions are supported.