

**Submission to
Department of Planning and
Environment**

***Review of Complying Development in
Greenfield Areas***

JUNE 2017

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Executive Summary

Council has prepared this submission in response to a Review of Complying Development in Greenfield Areas undertaken by the Department of Planning and Environment (DPE).

DPE has released for feedback:

- Background Paper – A Review of Complying Development in Greenfield Areas; and
- Explanation of Intended Effect (EIE) for a proposed new Greenfield Housing Code

As a result of its investigation, DPE has reported three key initiatives to improve the complying development regime for greenfield areas. These have been raised in the Background Paper and consist of:

- A. *The Greenfield Housing Code***, which includes the introduction of a new section to the Codes SEPP;
- B. *Overcoming barriers to housing approvals***, which identifies five main barriers to housing approvals including:
 - the inability to building dwelling houses on lots prior to registration of a subdivision plan;
 - easements and other instruments under the Conveyancing Act;
 - Roads Act Approvals;
 - Local Government Act Approvals;
 - interpretation of development standards; and
- C. *Subdivision and Masterplan Guidelines***, which discusses possible state-wide guidelines for greenfield subdivision and masterplans.

Council welcomes the opportunity to comment on DPE's initiatives and has conducted an internal review of the proposed changes.

Camden Council is effectively planning and managing development in greenfield areas within the South West Priority Growth Area (SWPGA). In Council's experience with complying development in greenfield sites, the rigidity of complying development in hindering positive design-led outcomes has been a matter of concern. Council is therefore invested in ensuring good urban design outcomes and supports an overall review of greenfield complying development.

Council's submission suggests the changes proposed in DPE's review needs to be further refined and strengthened to secure good urban design outcomes in greenfield areas. Any opportunities to 'road test' proposed changes would also be welcome.

Introduction

This document forms Camden Council's formal submission on the *Background Paper – A Review of Complying Development in Greenfield Areas* and *Explanation of Intended Effect* for a proposed new Greenfield Housing Code. Camden Council endorsed this submission on 27 June 2017.

Extensive experience with greenfield complying development makes Council well-placed to suggest further reviews and improvement to the complying development standards and procedures.

Between 2014 to 2015, 1328 complying development certificates (CDCs) were issued in the Camden Local Government Area (LGA). This was the highest number determined for single dwellings in the state. In 2016, a total of 2026 CDCs (all types) were issued in the LGA, an increase from 1809 in 2015.

Council suggests an evidence-based approach to identifying the potential issues, constraints and solutions in greenfield complying development for the purposes of producing effective design-led outcomes.

Comments/Recommendations:

- Request a formal response from DPE regarding how the matters raised in this submission were addressed

Background

DPE Review

In response to stakeholders' feedback, DPE undertook a review of greenfield areas to identify the barriers for using the complying development pathway. As a result of their review, DPE proposes recommendations to overcome these barriers, with the intention of promoting good design principles in greenfield areas across NSW.

As part of the exhibition package, DPE released:

1. Background Paper – A Review of Complying Development in Greenfield Areas
2. Explanation of Intended Effect (EIE) for a proposed new Greenfield Housing Code

Public exhibition

The public exhibition period for this Background Paper and EIE concludes on 7 July 2017.

Key issues

A. The Greenfield Housing Code

The proposed Code intends to standardise and streamline the complying development standards that apply to the construction of dwellings on residential-zoned land within any urban release area, including released precincts under the Growth Centres SEPP, and urban release areas mapped under the Camden LEP.

The following elements of the proposed Code are discussed below:

- side boundary setbacks;
- rear boundary setbacks;
- double garages on narrow lots;
- landscaped area;
- principal private open space and solar access;
- tree planting requirements; and
- consistency of terminology.

Side setbacks

A comparison of the minimum side setback controls included in the proposed Code, the current Codes SEPP and the Camden Growth Areas DCP is provided in Table 1 below:

Table 1 - comparison of side setback controls

Camden Growth Areas DCP	Codes SEPP	proposed Code
0m and on detached boundary 0.9m and 1.2m double >4.5m wide lots 7 to 9m - 0m both sides 9 to 15m - 0m and 0.9m >15m - 0.9m both sides	<u>Lots of 6-10m width:</u> - for any part of the building with a height of up to 5.5m—0.9m, and - for any part of the building with a height of more than 5.5m—0.9m plus one-quarter of the height of the building above 5.5m, <u>Lots of 10-18m width:</u> - for any part of the building with a height of more than 4.5m—0.9m plus one-quarter of the height of the building above 4.5m	6 to 7m – Side A 0m Side B 0m >7 to 10m – Side A 0m Side B 0.9m >10 to 15m – Side A 0m Side B 0.9m >15m – Side A 0.9 Side B 0.9m

The existing Codes SEPP requires the provision of a larger side setback to the first floor of a dwelling as the height of the proposed dwelling increases, which improves the articulation of the external walls of the dwelling, increases solar access and reduces overshadowing of adjoining properties, and provides additional privacy to the occupants of the dwelling. Notwithstanding the benefits of the current setback control in the Codes SEPP, the control is complex and difficult to interpret.

The proposed Code intends to simplify the side setback control by providing a minimum side setback which is based upon the width of the lot, and by deleting the requirement to step the first floor back from the boundary.

Whilst it is acknowledged that the side setback control in the proposed Code is easier to understand, concern is raised that the new control will have a negative impact upon amenity due to increased overshadowing, reduced solar access and reduced privacy.

The proposed Code also intends to allow the approval of zero lot line dwellings as complying development. Concern is raised that the proposed Code does not require an easement for access and maintenance to be obtained over the property which shares the boundary with the zero lot line dwelling wall. This will create future access and maintenance issues for the resident of

Comments/Recommendations:

- Request DPE to ensure that the proposed side setback control does not have an adverse impact upon overshadowing, solar access and privacy of adjoining properties.
- Request DPE to ensure that the proposed Code requires a maintenance and access easement to be obtained on the adjoining lot if it is proposed to construct a dwelling with nil side setback as a CDC.

Rear Setbacks

A comparison of the minimum rear setback controls included in the proposed Code, the current Codes SEPP and the Camden Growth Areas DCP is provided in Table 2 below:

Table 2 – comparison of rear setback controls

Control	Camden Growth Areas DCP	Codes SEPP	proposed Code
Ground floor rear setback	4m	3m	3m
First floor rear setback	6m	8m for lots >300m ² 10m for lots <300m ²	6m

The rear setback controls included in the proposed Code incorporate the existing 3m ground floor rear setback control from the Codes SEPP, along with the existing 6m first floor rear setback control from the Camden Growth Areas DCP.

The 3m ground floor setback control contained in the current Codes SEPP is delivering undesirable planning outcomes, as those dwellings that have been approved under the Codes SEPP within the Camden LGA and adjoining LGAs have rear yards which provide limited opportunity for landscaping, mature vegetation, solar access, ventilation and private open space. The increased ratio of hard surface area (dwellings, outbuildings, driveways) to soft surface area (lawns and landscaped areas) results in increased stormwater run-off and reduced opportunity for infiltration of rainwater into the soil. An increase in hard surface area may also have long-term sustainability impacts due to the increased heat retention of hard surfaces in summer.

An example of the built form outcome achieved in some Growth Area precincts, including small rear yards with limited opportunities for landscaping and mature trees, is shown at **Figure 1 below**.

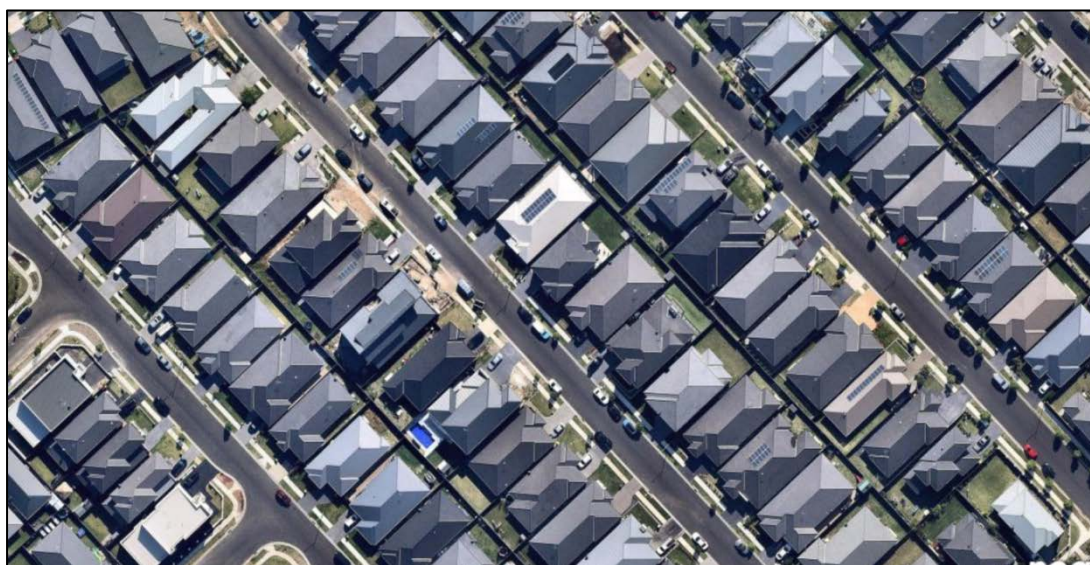


Figure 1 – Aerial image of new subdivision in Growth Areas

Concern is raised that retaining a 3m ground floor rear setback in the Codes SEPP, and adopting the same 3m ground floor rear setback in the proposed Code, will increase the cumulative negative impact of small rear yards in greenfield release areas, particularly if the proposed Code results in a larger up-take of complying development as is intended by DPE.

Comments/Recommendations:

- A minimum ground floor rear setback of 4m should be included in the proposed Code, and the current Codes SEPP should be amended to include a minimum ground floor rear setback of 4m to achieve consistency with the Camden Growth Areas DCP.

Double Garages on Narrow Lots

The proposed Code seeks to permit double garages as part of a two storey dwelling on 10m wide lots as complying development. Council's current controls do not currently permit single garages on lots between 10 and 12.5m in width. However, Council officers have undertaken investigations on

design criteria for dwellings with double garages on narrow lots. The design criteria focus on design objectives and controls which require that:

- a) no loss of on street parking at the front of the property;
- b) driveways are to be a minimum of 4m crossover width for double garages, set back a minimum of 0.5m from side boundaries, and demonstrate no conflict with services as per Council's Design and Construction Specification – Access driveways;
- c) the inclusion of a habitable room which overlooks the street and incorporates a balcony into the design of the front façade;
- d) the balcony must cover at least 50% of the width of the dwelling;
- e) the double garage must be recessed from the main building;
- f) the balcony element must be of a different finish to the main dwelling, to break up the bulk of the façade;
- g) the front entrance must be visible from the street; and
- h) non-habitable rooms are discouraged from being located at the front of the dwelling (apart from the front entrance).

Council officers are supportive of double garages on narrow lots if specific development standards and design criteria are imposed to ensure that appropriate built form and design outcomes are achieved.

Comments/Recommendations:

- Request DPE to incorporate specific design criteria for double garages on narrow lots in the proposed Code to ensure passive surveillance to the street is maintained, the visual impact of double garages on the streetscape is reduced, the availability of on street car parking is maintained, and the apparent bulk and scale of the dwelling is minimised.

Landscaped Area

A comparison of the minimum landscaped area control included in the proposed Code, the current Codes SEPP and the Camden Growth Areas DCP is provided in Table 3 below:

Table 3 – comparison of minimum landscaped area controls

Camden Growth Areas DCP	Codes SEPP	proposed Code
15% for lots <9m width 25% for lots between 9m and 15m width 30% for lots >15m	10% for lots 200-3000m ² 15% for lots between 300 and 450m ² 20% for lots between 450 and 600m ² 30% for lots 600-900m ²	15% for lots 200-300m² 50% for lots >300m² (subtract 100m² from the calculated total)

The minimum landscaped area control included in the proposed Code is generally consistent with the existing Camden Growth Areas DCP and requires a greater amount of landscaped area to be provided when compared to the current Codes SEPP, which is a positive outcome.

Despite the existing and proposed controls for minimum landscaped area being generally consistent, concern is raised that the minimum landscape area is insufficient to allow the infiltration of rainwater into the soil, which increases stormwater run-off and places additional stormwater load upon the existing and future water cycle management infrastructure during large storm events.

Comments/Recommendations:

- Request DPE to undertake further research to understand the cumulative impacts of increasing hard paved areas across greenfield release areas, and the potential cost impact if water cycle management infrastructure needs to be upsized or redesigned to cater for increased stormwater run-off.
- Request DPE to review the minimum landscaped area requirements in both the existing Codes SEPP and the proposed Code to determine the amount of landscaped area that is required to facilitate the infiltration of rainfall, maintain consistency with industry-standard impervious area assumptions used to design the water cycle management network for each release area, and to have regard for the role that landscaped areas play in sustainability.

Principal private open space and solar access

A comparison of the minimum principal private open space (PPOS) and solar access controls included in the proposed Code, the current Codes SEPP and the Camden Growth Areas DCP is provided in Table 4 below:

Table 4 – comparison of PPOS and solar access controls

Control	Camden Growth Areas DCP	Codes SEPP	proposed Code
PPOS	20m ²	16m ² for lots of 6-10m width 24m ² for lots >10m width	No minimum requirement
Solar access	50% of PPOS (including adjoining properties)	No minimum requirement	No minimum requirement

Concern is raised that the exclusion of minimum PPOS and minimum solar access controls from the proposed Code will have a negative impact upon the amenity of future residents, as there is no requirement for dwellings to be provided with an area which is of sufficient size and has reasonable solar access for the enjoyment of residents.

Comments/Recommendations:

- Request DPE to include the current Codes SEPP control for PPOS in the proposed Code, and should amend both the Codes SEPP and proposed Code to include minimum solar access requirements as per the current Camden Growth Areas DCP.

Tree planting requirement

The provision of one tree within the rear setback and one tree within the front setback is supported. However, concern is raised that the existing Codes SEPP allows CDCs to be issued for the removal of trees within 3m of a dwelling, which would enable trees planted under the proposed Code to be removed.

Given the limited space available within the front and rear yards under the proposed Code, the species of tree to be planted will require careful consideration with regards to height and width, growth rates, dropping of branches, and invasiveness of root systems to ensure their long-term compatibility within a modern urban environment.

Comments/Recommendations:

- The requirement to plant one tree within the rear setback and one tree within the front setback is supported.
- Request DPE to amend the Codes SEPP so that any trees planted in conjunction with a dwelling approved under the proposed Code cannot be removed via a CDC.

Consistency of Terminology

The EIE contains inconsistent terminology regarding the description of the first floor of dwellings which may cause confusion or misinterpretation of the proposed controls.

Comments/Recommendations:

- Request DPE to review the EIE and proposed Code to ensure that consistent terminology is used throughout.

B. Overcoming barriers to housing approvals

The inability to build dwelling houses on lots prior to the registration of a subdivision plan

Under the existing legislation, an accredited certifier cannot issue a CDC for development proposed on an unregistered lot, where a subdivision certificate has not been released and the deposited plan

has not been registered with Land and Property Information. The exhibition package identifies this as a barrier to the uptake of complying development in greenfield areas.

DPE proposes to amend the *Environmental Planning and Assessment Act 1979* (EP&A Act) to allow CDCs to be issued with a “deferred commencement condition” applied to certificates for the construction of dwelling houses on unregistered lots. A “deferred commencement condition” means that the consent is not operative (i.e. it cannot be used) until the deferred commencement condition has been satisfied, which in this instance, requires the land to be registered.

At the meeting of 14 March 2017, Council considered a report on proposed changes to the EP&A Act via the *Environmental Planning and Assessment Act Bill 2017*, which also proposed to introduce deferred commencement conditions for complying development certificates on unregistered lots. The report of 14 March 2017 (and the subsequent submission to DPE) raised concern with the proposal given the potential conflicts between dwelling design and siting, and the location of services and infrastructure such as drainage lintels, pram ramps, street trees, street lighting posts and residential driveways. Those concerns are reiterated in response to the current proposal.

Council has an existing process for development applications and/or construction certificates for dwellings on unregistered lots which facilitates timely development in these circumstances and is based on experience of the issues that arise for development on unregistered lots. The process sets out the matters that need to be resolved prior to consent being granted, including:

- a) site/civil works being substantially progressed, including road access and drainage construction;
- b) completion of final lot levels;
- c) ‘staking’ or setting out of the lot by a registered surveyor; and
- d) installation of essential services and infrastructure.

Council is able to effectively manage these issues where it is the consent authority for both the original subdivision DA and current dwelling DA on unregistered land, as it has access to the necessary information to inform the assessment of the application. However, this information would not be available to a private certifier who is assessing a CDC application on unregistered land.

Comments/Recommendations:

- Request DPE to proceed with the proposed introduction of complying development on unregistered lots, for the reasons outlined in this submission and Council’s previous submission on this matter

Easements and other instruments under the Conveyancing Act

Clause 3.4(b) of the General Housing Code currently states that a new dwelling house cannot be carried out as complying development if it is located over a registered easement.

DPE has identified that clause 3.4(b) acts as a barrier to complying development on narrower lots where zero lot lines are provided, and maintenance easements are provided over adjoining properties to enable access and maintenance to occur. DPE is exploring options to amend clause 3.4(b) to allow complying development over registered easements in certain circumstances.

Easements are only created over newly subdivided land in greenfield areas where the land is encumbered by infrastructure (water, drainage, sewerage, electricity assets) or where access is required across the land by a person other than the owner.

Access is often required over narrow lots where zero side boundary setbacks (zero lots lines) are proposed, to ensure that the owner can obtain access over the neighbouring lot to maintain their dwelling. This is supported by the subdivision approval process contained in the Growth Areas DCP, which requires easements to enable access for the maintenance of zero lot line boundary walls.

Concern is raised regarding any changes which allow registered easements to be overlooked when issuing CDCs. If these easements are no longer required, they should be extinguished before a CDC is sought.

Comments/Recommendations:

- Request DPE to not allow complying development to occur over registered easements.

Roads Act Approvals

Clause 1.18(1)(e) of the Code SEPP currently states that before a CDC is issued, written consent from the relevant Roads Authority must be obtained prior to constructing any works within the road reserve, including kerbs, crossovers or driveways. This is consistent with section 138(1) of the *Roads Act 1993* which states that a person must not carry out road works and structures, such as driveways, other than with the consent of the appropriate roads authority.

DPE suggests that CDC approvals may be streamlined by implementing 'in principle' concept approval of the location of a driveway or crossing under the Roads Act as part of the subdivision approval process.

The exhibition material acknowledges Camden Council's fast-track approval process that provides on-the-spot approval for driveways and road openings, provided Council's design requirements are met. In Council's experience, the fast-track approval process has allowed a large volume of applications to be processed in a timely manner, and has reduced the impact of these approvals on the development process.

Comments/Recommendations:

- Request DPE to not proceed with the suggested 'in principle' approval of driveways as this may introduce an unnecessary layer in the finalisation of CDCs.
- DPE's recommendation to encourage other Councils to adopt a similar fast track approval process to that implemented by Camden Council is supported.
- Request DPE to clarify how the 'in principle' concept approval envisioned by DPE would apply to unregistered land.

Local Government Act Approvals

Clause 1.18(1)(d) of the Codes SEPP requires that a CDC can only be issued where approval has been issued for an on-site effluent disposal system if the site is unsewered. Approval for on-site systems is obtained under Section 68 of the *Local Government Act 1993* (LG Act), and many Councils (including Camden Council) do not issue approvals for on-site systems on vacant lots – they are generally approved concurrently with a development application for a dwelling house.

DPE has identified that this approach restricts CDCs on vacant lots on unsewered greenfield areas. As a result, DPE intend to provide advice which clarifies the operation of clause 1.18(1)(d) of the Codes SEPP and section 68 of the LG Act, and advises that Councils can approve on-site effluent disposal systems on vacant lots. DPE are also investigating the introduction of a time limit for the determination of section 68 applications by Council. The exhibition material is unclear on whether this change would be limited to CDCs only, or applied to all section 68 applications.

The subdivision of land in the Growth Area, and other urban release areas within Camden local government area, is tied to the provision of essential services including reticulated sewer, as it is not feasible to incorporate on-site effluent disposal into modern subdivisions given the trend towards smaller lot sizes. It is therefore unlikely that any modern greenfield subdivisions in the Camden LGA will occur without the provision of reticulated sewer.

Comments/Recommendations:

- Request DPE to clarify the circumstances where it believes a greenfield subdivision will need to be serviced by on-site effluent disposal, rather than connection to a reticulated sewerage system, prior to undertaking any changes.
- Request DPE to clarify whether it is intended to impose a time limit on the determination of section 68 applications for complying development only, or for all section 68 applications. Council requests further consultation from DPE on this matter prior to proceeding.

Interpretation of development standards

It has been identified by the DPE that the current Code SEPP is too complex and presents a barrier to the uptake of CDCs as an approval pathway. Council officers acknowledge that the Code SEPP is difficult to understand. The proposed Code is intended to address this issue. However Council officers have identified that there is further scope to simplify the Code SEPP to improve the ability to interpret the development standards.

Comment/Recommendations

- Council requests that DPE further consult with Council and the Development Industry before finalising the development standards.

C. Subdivision and Masterplan Guidelines

The background paper identifies that there is no state-wide guidance on the design of subdivisions and masterplans, and seeks to introduce subdivision and masterplan guidelines to assist Councils, developers and consultants when undertaking planning and subdivision in greenfield areas.

The background paper describes a potential structure for subdivision guidelines as follows:

1. *Identify the Context* (including community, place, natural resources, connections and vision);
2. *Shaping the Natural and Urban Structure* (the movement framework, street hierarchy, density, landscape, open spaces, blocks and parcels and plots and building size and scale);
3. *Creating Connections;*
4. *Providing Amenity; and*
5. *Detailing the Place.*

The precinct planning process which releases and rezones land in the Growth Area and urban release areas under the Camden LEP currently focuses on achieving sustainable urban development outcomes and well-designed subdivisions via the preparation of an Indicative Layout Plan (ILP) and supporting DCP controls.

The ILP is derived from the specialist studies undertaken during the precinct planning process and establishes an agreed framework for development within the greenfield release area. From this framework, detailed subdivision design is based upon the comprehensive neighbourhood and subdivision design requirements within the relevant DCPs, including the Growth Centres DCPs.

Strategic context

If compliance with the proposed subdivision and masterplan guidelines becomes mandatory, this would appear to be inconsistent with the aims and objectives of the draft South West District Plan as

it would inhibit the planning and delivery of productive, liveable and sustainable urban environments which reflect best-practice and innovative design outcomes. The guidelines may also affect Council's ability to deliver upon its Community Strategic Plan and effectively manage urban growth.

Comments/Recommendations:

- Request DPE to clarify the role and relationship of the proposed subdivision and masterplan guidelines to the proposed Code, the Codes SEPP, Growth Areas DCP, Camden DCP 2011, the Growth Area precinct planning process, and the draft District Plan, and seek input from Council officers before finalising the proposed subdivision and masterplan guidelines.

Conclusion and Summary

DPE has undertaken *A Review of Complying Development in Greenfields Areas* and has exhibited a Background Paper which identifies issues and barriers to the take-up of complying development, and an Explanation of Intended Effect (EIE) which outlines the proposed Greenfield Housing Code.

Council officers have reviewed the Background Paper and EIE and have prepared this submission to DPE. Whilst Council officers generally support the intent of the review, this submission raises concerns regarding the inconsistencies between the controls in Camden's current DCPs and the proposed Greenfield Housing Code.

It is also questioned whether the proposed Greenfield Housing Code is inconsistent with the draft South West District Plan, as many of the proposed complying development controls prioritise the supply of housing over the delivery of high quality urban design, amenity and sustainability outcomes.

Concerns are also raised regarding the proposed measures to address the 'barriers' to complying development which include amendments to approvals under the Roads Act, imposing deferred commencement conditions for CDCs on unregistered lots, amending Local Government Act approval regulations, and allowing CDCs to be lodged and approved over registered easements.

Clarification is also sought from DPE regarding the application of the proposed subdivision and masterplan guidelines on existing and future greenfield developments in the Camden LGA.