
ORDINARY COUNCIL

ORD02

SUBJECT: DRAFT SUBMISSION - REVIEW OF COMPLYING DEVELOPMENT IN GREENFIELD AREAS

FROM: Acting Director Planning and Environmental Services

TRIM #: 17/176338

PURPOSE OF REPORT

The purpose of this report is to inform Council of the exhibition of the *Review of Complying Development in Greenfield Areas* undertaken by the Department of Planning and Environment (DPE) and to seek Council's endorsement of a draft submission to DPE in response to the review.

A copy of the draft submission has been provided as **Attachment 1 to this report**.

BACKGROUND

In the Camden Local Government Area (LGA), development consent may currently be granted via two different approvals processes.

The first process involves issuing a development consent following an assessment of a development application by Council against the applicable environmental planning instrument, whether this is the *Camden Local Environmental Plan 2010* (the Camden LEP), or the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (the Growth Centres SEPP).

The second process involves either Council or an accredited certifier issuing a Complying Development Certificate (CDC) following the assessment of a complying development against the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP). Complying development was introduced by the State Government in 2009 to provide a 'fast-tracked' approval process for development proposals that comply with all of the applicable development controls in the Codes SEPP.

The DPE has undertaken a review of complying development in greenfield areas with the aim of further streamlining the approvals process and reducing development assessment timeframes. The outcomes of the review process have been incorporated into the following documents:

- A **Background Paper (Attachment 2 to this report)** which discusses the issues and barriers to the take-up of complying development in greenfield areas; and
- An **Explanation of Intended Effects (EIE) (Attachment 3 to this report)** which outlines the proposed Greenfield Housing Code (the proposed Code), which is intended to address the issues and barriers raised in the Background Paper.

DPE has placed the Background Paper and EIE on public exhibition until 7 July 2017.

MAIN REPORT

The Background Paper and EIE include three key elements:

- 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 the registration of a subdivision plan;
 - easements and other instruments under the Conveyancing Act;
 - Roads Act Approvals;
 - Local Government Act Approvals; and
 - interpretation of development standards.
- C. *Subdivision and Masterplan Guidelines***, which discusses possible state-wide guidelines for greenfield subdivision and masterplans.

A. The Greenfield Housing Code

As part of the review of complying development, DPE are proposing to insert new Greenfield Housing Code provisions (the proposed Code) into the existing Codes SEPP. The proposed Code is intended 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 such as Elderslie and Spring Farm.

The following key concerns 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.

A detailed comparison table, which compares the controls under the existing Codes SEPP, Camden Growth Areas DCP and the proposed Code, is included as Attachment 4 to this report.

Side setbacks

The ground floor side setbacks under the current Camden Growth Areas DCP, Codes SEPP and proposed Code are generally consistent.

However, the proposed Code does not require the first floor to be stepped back from the side boundary, which will increase the bulk and scale of the dwellings, reduce solar access and privacy, increase overshadowing of adjoining properties and have a negative impact on amenity.

The proposed Code also intends to allow the approval of zero lot line dwellings (nil setback to one side boundary) 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 the zero lot line dwelling.

Comments/Recommendations:

- Request DPE to ensure that the proposed side setback control does not have an adverse impact upon visual bulk, 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

Table 2 – comparison of rear setback controls

Control	Camden Growth Areas DCP	Current Codes SEPP	Proposed Greenfield 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 rear setback control contained in the current Codes SEPP is delivering undesirable planning outcomes. 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 visual representation of the built form outcome achieved in some Growth Area precincts, including small rear yards with limited opportunities for landscaping and mature trees, is included in the draft submission which is included as **Attachment 1 to this report**.

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 uptake 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 (10-12.5m). The design criteria focus on design objectives and controls which require that:

- Dwellings on narrow lots that include double garages must be two storeys in height.
- There is no loss of on-street parking at the front of the property.
- Driveway locations and widths are appropriate.
- Passive surveillance of the street can be obtained.
- The building incorporates high quality urban design features to reduce the bulk and scale of the dwelling, and limit the visual dominance of garages.

A detailed schedule of design controls for dwellings that contain double garages on narrow lots is included in the draft submission. Council officers are supportive of double garages on narrow lots if specific development standards and design criteria are imposed to ensure there is no net loss of on-street parking and 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

Table 3 – comparison of minimum landscaped area controls

Camden Growth Areas DCP	Current Codes SEPP	Proposed Greenfield Code
15% for lots <9m width 25% for lots between 9m and 15m width 30% for lots >15m	10% for lots 200-300m 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

Table 4 – comparison of PPOS and solar access controls

Control	Camden Growth Areas DCP	Current Codes SEPP	Proposed Greenfield 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

Principle private open space (PPOS) is an area of contiguous open space of sufficient dimensions that is directly accessible from the living area of a dwelling. 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 to 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

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.

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.

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 not proceed with the proposed introduction of complying development on unregistered lots, for the reasons outlined in the current draft submission and Council's previous submission on this matter

Easements and other instruments under the Conveyancing Act

Clause 3.4(b) of the Codes SEPP 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 or 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 1993* as part of the subdivision approval process. No detail has been provided on the mechanism by which this will be implemented. Council officers have concerns that this may create future driveway conflicts with infrastructure.

The exhibition material acknowledges Camden Council's fast-track approval process which 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 in unsewered greenfield areas. As a result, DPE intends 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 is 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 LGA 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 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 a site-specific 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.

It is unclear how these guidelines are intended to apply to the Camden LGA and the Growth Area, and whether they will form part of the proposed Code or will be incorporated into a separate reference document.

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.

FINANCIAL IMPLICATIONS

There are no direct financial implications as a result of this report.

CONCLUSION

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 a draft submission to DPE for the consideration of Council. The draft 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 1993*, 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.

RECOMMENDED

That Council:

- endorse the attached draft submission to be forwarded to the Department of Planning and Environment;**
- request a formal response from the Department of Planning and Environment regarding how the matters raised in Council's submission were addressed;**
- forward a copy of the submission to Mr Chris Patterson MP, State Member for Camden; and**
- forward a copy of the submission to the Greater Sydney Commission and**

South West Sydney District Commissioner.

ATTACHMENTS

1. Draft submission to Greenfield SEPP Review
2. Background Paper- A Review of Complying Development in Greenfield Areas
3. Explanation of Intended Effect Proposed Greenfield Housing Code
4. Table Comparison

ORD02**DRAFT SUBMISSION - REVIEW OF COMPLYING DEVELOPMENT IN GREENFIELD AREAS**

Resolution: Moved Councillor Fedeli, Seconded Councillor Farrow that Council:

- i. endorse the attached draft submission to be forwarded to the Department of Planning and Environment;
- ii. request a formal response from the Department of Planning and Environment regarding how the matters raised in Council's submission were addressed;
- iii. forward a copy of the submission to Mr Chris Patterson MP, State Member for Camden; and
- iv. forward a copy of the submission to the Greater Sydney Commission and South West Sydney District Commissioner.

ORD127/17 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Sidgreaves, Symkowiak, Campbell, Fedeli, C Cagney, A Cagney, Farrow, Mills and Morrison voted in favour of the Motion. No Councillors voted against the Motion.)

ORD03 PROPOSAL BY MIRVAC TO INCLUDE LAND AT MENANGLE INTO THE GREATER MACARTHUR PRIORITY GROWTH AREA

Resolution: Moved Councillor C Cagney, Seconded Councillor Sidgreaves that Council:

- i. support the position of Campbelltown City Council and Wollondilly Shire Council in opposing the proposed inclusion of the Mirvac land (as identified in this report) at Menangle within the Greater Macarthur Priority Growth Area;
- ii. write to the Department of Planning and Environment outlining Council's position on this matter; and
- iii. forward a copy of the letter to Campbelltown City Council and Wollondilly Shire Council.

ORD128/17 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Sidgreaves, Symkowiak, Campbell, Fedeli, C Cagney, A Cagney, Farrow, Mills and Morrison voted in favour of the Motion. No Councillors voted against the Motion.)