

Ref: RM-PD2018/1380

16 July 2018

Director, Codes and Approval Pathways
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

RE: Proposed Housekeeping Amendment to SEPP (Exempt and Complying Development Codes) 2008

Thank you for providing the opportunity to submit feedback in relation to the Housekeeping Amendment to SEPP (exempt and Complying Development Codes) 2008.

The following comments are provided in response to the proposed amendments:

- *Gross Floor Area (GFA) definition*

The amendment seeks to clarify the maximum size of a car parking space that can be excluded from the GFA calculation.

It is unclear why the definition of GFA in the SEPP remains different to the definition contained within the Standard Instrument. The definition for GFA is used consistently for all councils throughout New South Wales and it is recommended that the SEPP adopt the definition of 'gross floor area' from the Standard Instrument.

- *Acid Sulfate Soil*

The amendment seeks to permit complying development on those parts of a lot that are not Class 1 or 2.

This amendment will require a Certifier to estimate, or attempt to scale off an LEP map to determine the class of acid sulfate soils applicable to a particular location. This approach is unlikely to be sufficiently accurate to allow a development to proceed without further examination and soil testing.

It is unclear how it is proposed for Council's to report this information on a Planning Certificate as Council would be required to differentiate between those sites that are partially or wholly affected by acid sulfate soils.

In addition to the above, it is unclear why the Department is contemplating allowing complying development to be excluded from acid sulfate soils

requirements on certain sites whilst at the same time requiring development applications to undergo a different process where land is burdened by the same affectation. For example, Class 5 soils may require testing when a DA is submitted, whereas this is not required for a CDC. Acid sulfate soils should be treated the same way in the SEPP as they are in the Standard Instrument.

- *Safety of existing awnings*

The amendments seeks to require engineering certification of existing awnings that project over public roads and footpaths whenever exempt or complying development works are undertaken.

It is acknowledged that public safety and concerns over the structural integrity of awnings is an important issue. The amendment appears to capture an existing building with an awning, no matter what works are proposed to the building, which could potentially capture internal works to a shop top housing development that has an awning. Council questions whether this is the most appropriate mechanism to address this issue.

- *Non-structural decking*

The amendment seeks to allow replacement of non-structural decking as exempt development.

No objection is raised in relation to the inclusion of non-structural decking as exempt development. However, it is recommended that 'non-structural' be clearly defined and that a requirement be imposed to clearly state that the size or height of the deck is to remain unchanged.

- *Tennis court fences*

The amendment seeks to allow construction of tennis court fencing as exempt development.

Development standards should be provided to clearly articulate the requirements for tennis court fencing (i.e. height, distance from boundary, transparency etc).

- *Complying Development carried out on a single lot*

The amendment seeks to prevent complying development works to a dwelling that stretches over two or more lots.

Clarification should be provided as to whether this clause will just apply to the construction of a new single dwelling or it also includes alterations and additions.

- *Excavation in acid sulfate soil*

The amendment seeks to allow excavation (deeper than 1m) as complying development on land identified as Class 3 or 4 if an engineer has certified that the site of the development is not affected by Class 3 or 4.

As previously discussed, a development application may require testing for works below 1m where land affects Class 3 Acid Sulfate Soils and below 2m for Class 4 Acid Sulfate Soils. There is no apparent reason why the requirements in relation to acid sulfate soils should be different between the SEPP and the Standard Instrument. Ideally the SEPP and the model clause for Acid Sulfate Soils in the Standard Instrument should remain consistent.

- *Cut and fill*

The amendment seeks to restrict the height of fill by clarifying that 'fill' includes fill contained within a drop edge beam except where the fill is wholly contained within the footprint of the dwelling house.

It seems likely that the need for the proposed amendment has arisen from the misuse of the current requirements. Council recommends that the amendments go further and define what is meant by 'footprint' (such as the ground area contained within the external face of the external walls of the structure) to minimise further misinterpretation.

- *Contamination from demolition*

The amendment seeks to prevent demolition as complying development where there is a risk of contamination.

This proposed amendment is a positive change, however it is recommended that 'contamination' be defined to clarify what types/extent of contamination are expected to be identified.

This clause should not be left to the interpretation of a Certifier and must therefore be much clearer in its intent.

- *Wall on an adjoining lot*

The amendment requires a report from a professional engineer to be prepared to detail any necessary method of maintaining support for a wall on an adjoining lot.

The proposed amendment does not appear to require any of the works recommended in the report to be undertaken.

It is suggested that the recommendations of the report need to be implemented (likely with the consent of the adjoining owner), or alternatively the development must be redesigned so as to have no impact on the adjoining lot/wall.

- *Contamination discovered during works*

The amendment seeks to include a complying development condition to ensure all works stop immediately and Council notified if the land is found to be contaminated.

This is also a positive amendment to the SEPP, however as discussed previously under the heading of 'Contamination from demolition', it is recommended that 'contamination' be defined.

- *Demolition – Schedule 9*

The amendment seeks to include a complying development condition to ensure that fill brought to the site for the purposes of demolition must be virgin excavated natural material.

It is recommended that the proposed amendment to Demolition – Schedule 9 also incorporates a requirement that the fill be compacted to the relevant Australian Standard as is proposed for 'Demolition – Demolition Code'.

I trust that the above feedback is of assistance. Please contact Anthony Wynen on 9911 6453 should you have any questions in relation to this letter or require further information.

Yours sincerely



Tony Pavlovic
Acting Director, Planning and Environment