



File Ref: 2018/311222

18 July 2018

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

RE: Submission on Codes SEPP Housekeeping Amendment 2018

Thank you for the opportunity to comment on the draft Codes SEPP Housekeeping Amendment 2018. Sutherland Shire Council generally supports the intent of the changes but can see some opportunities for further improvement and some instances where the intent of the change needs to be clarified.

Please note that the views expressed in the attached joint submission are those of Council Officers which have been provided to the elected Councillors for comment. Should any Councillors raise issues with this submission after it has been sent, an amended submission with the consent of the Councillors will be provided at the earliest opportunity.

If you require any further explanation of the issues raised, please contact Robert McKinlay, Environmental Planner on 9710 0187.

Yours sincerely,

Mark Carlon
Manager Strategic Planning

Submission: Draft 2018 Housekeeping Amendments to SEPP (Exempt and Complying Development Codes) 2008

Clarification of Intent on Landslide Risk

The Explanation of Intended Effect appears to be conflicted as to whether landslide risks identified in Development Control Plans and Council Policies will be sufficient to act as an exemption for Complying Development. The text description in the EIE refers only to EPIs which identify landslide risk, however the existing SEPP clauses also refer to risks identified by Council Policies and DCPs.

(f) land that is identified by an environmental planning instrument, a development control plan or a policy adopted by the council as being or affected by:

- (i) a coastline hazard, or*
- (ii) a coastal hazard, or*
- (iii) a coastal erosion hazard, or*

Council can quickly and simply amend policies and DCPs in response to new information, making them very efficient administrative tools. Council would prefer to be able continue to use Policies and DCPs to identify land affected by hazards like landslides.

Exemption of Contaminated Land Declared Land from All Complying Development Codes

The Explanation of Intended Effect appears to be conflicted as to whether the “significantly contaminated land under the CLM Act” exemption will apply to all codes or just be added to the codes affected by clause 1.19(1)(e) of the SEPP.

The text description of the EIE says: “*..It is proposed to expand this exclusion to prohibit complying development being carried out under all of the complying development Codes.*” Whereas the clause reference only mentions changes 1.19(1)(e) of the SEPP which so far will only add the exemption to the following codes:

- The Housing Code
- The Rural Housing Code
- The Low Rise Medium Density Housing Code
- The Greenfield Housing Code

Presumably the existing exemption for the Commercial and Industrial (New Buildings and Additions) Code will continue to apply.

If the intent of the Department is to prevent all Complying Development Codes from applying to “significantly contaminated land” then this would be better achieved by adding it to the definition of “environmentally sensitive area” in the SEPP. This would also have the effect of switching off or limiting some forms of exempt development which may be inappropriate on contaminated sites and could apply to Complying Development under other instruments such as the Education and Childcare SEPP.

Council Contaminated Land Registers and Complying Development

Council's Environmental Science team has noted that very few residential properties are identified as "significantly contaminated for the purposes of the CLM act" by the EPA. This may reflect a very cautious approach which tries to limit regulatory impacts on individual owners.

Sutherland Shire Council's Contaminated Lands Register tracks many land parcels which are known to be unsuitable for complying development because of contamination, but under the SEPP cannot be excluded from complying development because they have not been declared under the CLM Act.

Council maintains extensive records of land uses, environmental monitoring and local knowledge which have been sufficient for the elected Councillors to set local policies in relation to contamination. The Codes SEPP should take advantage of this local government expertise in this area by excluding complying development on land which is identified as contaminated or potentially contaminated in an LEP, DCP or a Council Policy (such as a contaminated lands register) that has been developed in accordance with SEPP 55 and its guidelines. A key advantage of placing control of this into a Sutherland Shire Council policy or DCP is that our policy has been implemented with delegations that allow staff to immediately update the contamination status of a property when the required remediation has been completed satisfactorily. This is a model for other Councils to consider and many are already going down this path.

Council has also previously suggested to the Department that provisions should be added to the Standard Instrument LEP to allow Councils to identify contaminated lands and limit the application of relevant complying development codes. This could take the form of a schedule of contaminated lands within the LEP with corresponding provisions in the Codes SEPP and the Contaminated Lands SEPP. This approach may be preferable to the community because changes to the schedule would require that consultation occur with affected land owners before changes are made.

Pool Fences should be Exempt Development in Zone E4

Other changes in the draft housekeeping amendment have recognised that the E4 zone tends to have a suburban residential character. Backyard pool fences are exempt development in residential zones (as per subdivision 17A of the SEPP), but require a DA in the E4 zone. There is no obvious reason why an E4 zone should require a DA for a pool fence given that more impactful development like boundary fences will be exempt under the proposed changes. Council has been considering a housekeeping amendment to our LEP to introduce an equivalent provision into Schedule 2 of the Sutherland Shire Local Environmental Plan 2015.

Request for Delay to Complying Development Changes Commencing after Notification

As noted above, the intent of the contaminated land provisions set out in the EIE requires clarification. Unless these are clarified, Council can't fully prepare for the impact of these changes until it sees the text of the amended SEPP. It is therefore requested that these SEPP amendments should not commence for at least 28 days after the final instrument is notified. This delay is required to give Council time to amend notations on planning certificates and update our mapping to ensure we provide the public with accurate advice in accordance with our legal obligations.

Proposed requirements for staircases as exempt development may be too restrictive

External steps and staircases are often prominent features of existing homes in the Sutherland Shire. Council has historically dealt with these features as pathways or landscape features within the exempt development provisions. The proposed requirements may exclude some staircases and stairways that have previously been exempt development, thus leaving a development application as the only viable consent pathway. A savings provision to cover replacement or repair of existing staircases should be considered.

Steeply sloping gardens often have stepped pathways which may well be excluded from the pathway definition and could also be excluded from the draft stairway requirements. The SEPP should continue to facilitate these hybrid step-paths as exempt development in most circumstances.

Council has also previously encountered problems with construction of steps as exempt development onto cliff faces with aboriginal significance and in other sensitive foreshore areas. It is therefore requested that there should be a clear statement to the effect that staircases should not be exempt development on land within the following areas:

- Foreshore areas as defined under an Environmental Planning Instrument such as an LEP
- Land identified as having aboriginal cultural significance or known aboriginal archaeology.