

In reply please quote: 09/04653

Contact: Patrick Warren on 9725 0215

18 July 2018

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

Dear Sir/Madam,

SUBMISSION – HOUSEKEEPING AMENDMENTS SEPP (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

I refer to the exhibition of the above Housekeeping Amendments to the SEPP (Exempt and Complying Code) 2008 (Codes SEPP). The need for a general housekeeping amendment to the Code SEPP is acknowledged. However, below are a number of issues outlined for consideration and recommendations for improvement as part of the Housekeeping Amendments process.

Awnings Over Public Land

The draft amendments to the Codes SEPP, addresses the safety of existing awnings over public land. This requires that existing awnings over public land comply with Section B of Volume 1 of the Building Code of Australia. The following codes are affected by this:

- Exempt and Complying Development Codes;
- Housing Code;
- Rural Housing Code; and
- Commercial and Industrial Alterations Code.

The draft amendment detailed by the Explanation of Intended Effects (EIE) requires certification by a structural engineer for existing awnings that project over public lands. The awning must comply with Section B of Volume 1 of the BCA wherever exempt and complying development works are being undertaken regardless of whether the proposed works are to the awning or not. This amendment is to be placed in Subdivision 20A of the Codes SEPP.

Council officers are concerned with the above amendment in that:

- There is significant cost in obtaining the services of a structural engineer;
- The Codes SEPP does not make it clear which party is responsible for rectification works of a defective awning being the public authority involved or the owner of the property; and
- Council has an existing procedure in place for the carrying out and completion of structural rectification works on or over Council land.

Council officers acknowledge the need for an effective mechanism to be in place for structurally defective assets. However, the above stated concerns place a great cost on

the owner of the business and don't acknowledge established council processes that deal with this issue.

Outbuildings and garages

The draft amendment seeks to include a definition for "cabana" and clarify that a cabana cannot include shower, bathroom, a kitchenette or cooking facilities if undertaken as exempt. It is proposed that this also be expanded to also include complying development.

Fairfield City Council often comes across complying development certificates (CDC) determined by private certifiers which proposed garages, workshops or outbuildings that contain full bathrooms, in addition to other developments on site such as a secondary dwelling or studio. This then permits the owner to undertake works (whether certified or not) to fit out the outbuilding, garage or workshop as another dwelling or occupancy.

This results in, but not limited to, a poor outcome for the adjoining residents and future residents occupying the site, overall amenity of the area and other environmental impacts such as noise, privacy, decreased deep soil and open space areas, increased number of people on site, etc. See **Attachment A** of this letter for recent examples of applications determined by private certifiers.

As a result, it is also proposed that the following amendment (highlighted in bold) be made to the definition of 'outbuilding':

outbuilding means any of the following class 10a buildings under the *Building Code of Australia*:

- (a) balcony, deck, patio, pergola, terrace or verandah that is detached from a dwelling house,
- (b) cabana, cubby house, fernery, garden shed, gazebo or greenhouse,
- (c) carport that is detached from a dwelling house,
- (d) farm building,
- (e) garage that is detached from a dwelling house,
- (f) rainwater tank (above ground) that is detached from a dwelling house,
- (g) shade structure that is detached from a dwelling house,
- (h) shed.

Note: Outbuildings carried out as exempt or complying development cannot include a shower, bathroom facilities or a kitchenette or cooking facilities (other than a barbeque).

Compliance and Regulatory Issues resulting from Codes SEPP

As outlined above, Council consistently receives examples of CDCs determined by private certifiers under the Affordable Rental Housing SEPP and for the Exempt and Complying Development Codes SEPP where unsatisfactory outcomes are proposed.

In some of these examples Councils development standards and the land use zones permit full dual occupancy development or multi dwelling housing if the lots had been amalgamated. However, the applicant has been able to utilise the Codes SEPP pathway as a mechanism to get up to 4-5 "dwellings or occupancies" approved onsite through private certification, using clever up front design seemingly to initially comply allowing for modification post approval.

Council is limited in its control over this issue as approval takes place outside of its regulatory processes. It is only through neighbourhood complaints or by incidental inspections that Council officers are made directly aware of the issue.

This form of development creates (amongst many) the following issues:

- Poorly designed defacto medium density;
- Significant number of vehicles parking onsite/street rather than on-site;
- Impacts to Council's community infrastructure;
- Restriction on Councils ability to collect appropriate development contributions for the increase in residential density more people unaccounted in Council's Contributions Plans);
- Increase in runoff due to hard stand surfaces;
- Limited/poor on-site detention systems which would be required for more dense residential development through a development application process;
- Overload on approved / existing drainage systems;
- Reduced deep soil zones;
- Reduced private open space and landscaped area;
- BCA Non-compliance with fire safety ratings and building separation;
- Neighbourhood noise and general amenity issues;
- Residents living in substandard dwellings;
- Inadequate waste servicing, and;
- Poor egress and entry arrangements.

The latest round of housekeeping amendments does not address this issue.

Council officers believe that this issue could be mitigated by amending the Codes SEPP through a number of wording changes and amendments. This may be achieved by:

1. Inserting a clause in section 1.17A of the Code SEPP as follows:

1.17A Requirements for complying development for all environmental planning instruments

(1) To be complying development for the purposes of any environmental planning instrument, the development must not:

(f) Result in the creation of a structure that may be used for a separate domicile or occupancy for the purposes of residential accommodation, other than the main dwelling or a secondary dwelling.

2. Inserting a standard Complying Development Certificate condition in the relevant schedules of the Code SEPP. It would include inserting the condition outlined below:

Schedules 6, 6A, 6B, 7, 8, 9 and 10 of the Code SEPP

“A Private Certifier is not to issue a CDC for the purpose of this schedule if the proposed architectural plans facilitate the expansion (whether intended or not) of the proposed structure into one or more separate domiciles/occupancies/dwellings.”

Council officers believe that these amendments will give certifiers a mechanism by which to seek amended plans or refuse the approval of proposed structures which they expect will be modified to create separate dwellings post approval. This will also tackle the issue of private certifiers approving applicant's inventive designs which would allow for future retrofit of unauthorised works.

Council officers expect the imposition of such a condition will also reduce regulatory burden on its compliance section as Fairfield City receives a significant number of CDC's approved by private certifiers annually. It is recommended that the above condition or one similar be inserted into the affordable rental housing SEPP as a note under "Schedule 1 Development Standards".

Examples approved by private certifiers in Fairfield Local Government Area that have resulted in separate domiciles/occupancies/dwellings being constructed under the Codes SEPP can be seen in **Attachment B** of this letter.

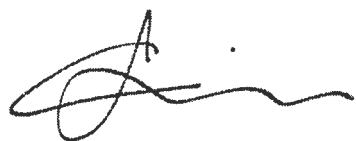
Need for increased resources

The increase in Code assessable development typologies that previously had been assessed by Council have placed a strain on Councils own regulatory resources. Often council officers are required to follow up on complaints and review CDCs. Council officer have then had to prepare material to forward to the Building Professionals Board for action.

In addition, the Medium Density Housing Code has now come into force with the expectation that more development will be Code assessable. As a result, it is an inevitable outcome that regulatory and compliance issues will occur. It is therefore more relevant than ever to ensure that local governments and the associated regulatory bodies are resourced and supported adequately to deal with the increase in demand for their services.

Accordingly, further resourcing should be provided to the NSW Building Professionals Board and greater support to local Councils who seek to ensure compliance with the Code SEPP.

Should you have any questions, please do not hesitate to contact Patrick Warren on 9725 0215



Chris Shinn
COORDINATOR STRATEGIC PLANNING