

Your Ref:  
Our Ref:

18 July 2018

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

Dear Sir/Madam

**Proposed Housekeeping Amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

I refer to the abovementioned proposed housekeeping amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, which is on exhibition, and open for comment, until 18 July 2018.

Following a detailed review of the proposed amendments, Council Officers have identified a number of matters for consideration by the Department of Planning and Environment in finalising the proposed amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Council is formally considering these matters at its Ordinary Meeting on 31 July 2018 and should there be any changes based on Council's consideration of the matter then the Department of Planning and Environment will be notified.

This response provides Council's understanding of the purpose of the proposed Amendment, identifies potential issues arising from the changes and provides suggestions to resolve these identified issues.

Council's understanding of the purpose of the amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is to:

- Introduce new definitions to provide clarity and certainty as to development permissible under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;
- Clarify the policy intent in the case of minor inconsistencies and refine certain clauses and provisions to ensure they achieve the policy intent;
- Improve existing diagrams to ensure they adequately reflect the development standards; and
- Correct minor drafting errors including incorrect clause references.

Council understands that the proposed amendment applies to all local government areas, however in general the following comments are specific to the Hawkesbury Local Government Area.

Attachment No. 1 to this correspondence - *Summary of Proposed Housekeeping Amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides a summary of the proposed housekeeping amendments and Council Officer comments in general.

Following is a discussion on the specific matters identified as requiring comment to the Department of Planning and Environment.





### **Amend Definition of Outbuilding**

The amendment proposes to change the definition of outbuilding within clause 1.5 of the Policy by replacing “*class 10a building under the BCA*” with “*non-habitable building*”.

This new amendment is proposed as not all buildings listed as an ‘outbuilding’ are class 10a.

#### ***Officer Comment:***

Clause 1.5 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 defines ‘outbuilding’ to mean:

“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.

The Rural Housing Code requires ancillary development to be erected in conjunction with a dwelling house. ‘Ancillary development’ includes an ‘outbuilding’, and in turn ‘farm building’ is included in the definition of ‘outbuilding’. A shed used for agricultural purposes (ie a farm building) is not ancillary to a ‘dwelling house’, however farm building is included in the definition of ‘outbuilding’ and are itemised in the controls. It is noted that ‘farm building’ is separately defined within local environmental plans to mean:

*“a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.”*

This inconsistency of including a farm building as ancillary development to a dwelling house could be resolved by providing separate requirements for farm buildings in association with agricultural uses as complying development.

It has therefore requested that the Department remove ‘farm building’ from the definition of ‘outbuilding’.

### **New Definition of Environmentally Sensitive Land**

It is proposed to insert a new definition for ‘environmentally sensitive land’ within clause 1.5 of State Environmental Planning Policy ((Exempt and Complying Development Codes) 2008. ‘Environmentally sensitive land’ will mean “*land identified within an environmental planning instrument as environmentally sensitive land*”.

#### ***Officer Comment:***

Clauses 1.19(1)(e)(iv) and 1.19(5)(f)(iv) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 prevents complying development on land that is identified by an ***environmental planning instrument*** as being environmentally sensitive land. Clause 1.19(1)(e)(iv) applies to the Housing Code, the Rural Housing Code, the Low Rise Medium Density Code and the Greenfield Housing Code. Clause 1.19(5)(f)(iv) applies to the Commercial and Industrial (New Buildings and Additions) Code.



It is noted that the proposed new definition for 'environmentally sensitive land' is consistent with existing Clause 1.19(1)(e)(iv) and 1.19(5)(f)(iv) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

However, by way of comment, whilst a definition is proposed to be provided, the exhibition material does not indicate any other amendments to the Policy in relation to 'environmentally sensitive land', and therefore the necessity for this new definition is questioned.

In addition, the broad definition of 'environmentally sensitive land', that is, any land identified as environmentally sensitive land within any environmental planning instrument, results in many and varied circumstances that will prevent complying development from being carried out.

The following environmental planning instruments provide definitions/descriptions for environmentally sensitive land:

- Hawkesbury Local Environmental Plan 2012;
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004;
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River;
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007; and
- State Environmental Planning Policy (State and Regional Development) 2011.

In particular State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 and Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River provide definitions for environmentally sensitive land as follows:

State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 defines environmentally sensitive land to mean "*land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:*

- (a) Coastal protection
  - (b) Conservation (but not land identified as a heritage conservation area in another environmental planning instrument)
  - (c) Critical habitat
  - (d) Environmental protection
  - (e) Open space
  - (f) Escarpment
  - (g) Floodway
  - (h) High flooding hazard
  - (i) Natural hazard
  - (j) Repealed
  - (k) Scenic (but not land that is so identified if:
    - (i) The land is within a residential zone in which development of two storeys or more in height is permitted, or
    - (ii) An adjacent residential zone, also identified as scenic, permits development of two storeys or more in height)
  - (l) Water catchment
  - (m) Natural wetland
- Land shown cross-hatched on the bush fire evacuation risk map*

Given the above descriptors, a search of all relevant (to the Hawkesbury) environmental planning instruments identifies the following additional criteria as being environmentally sensitive land:

- a. Land zoned E2 Environmental Conservation;
- b. Vacant Crown Land;



- c. Land zoned RE1 Public Recreation;
- d. Land zoned E1 National Parks and Nature Reserves;
- e. Land zoned W1 Natural Waterways;
- f. Land zoned E3 Environmental Management;
- g. Land zoned E4 Environmental Living;
- h. Land within a mapped scenic area of riverine corridor under SREP No. 20 (SREP 20);

#### Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

Sydney Regional Environmental Plan No. 20 refers to environmentally sensitive areas as follows:

##### *Environmentally sensitive areas*

**Policy: The environmental quality of environmentally sensitive areas must be protected and enhanced through careful control of future land use changes and through management and (where necessary) remediation of existing uses.**

##### *Note.*

*Environmentally sensitive areas in the Hawkesbury-Nepean catchment are: the river, riparian land, escarpments and other scenic areas, conservation area subcatchments, national parks and nature reserves, wetlands, other significant floral and faunal habitats and corridors, and known and potential acid sulphate soils.*

##### *Note.*

*Conservation area subcatchments are those that are subject to relatively minimal human interference and are consequently in a reasonably pristine environmental condition.*

##### **Definition:**

*Development for the purpose of any building, work or land use, including clearing, in the sub-catchments of Glenbrook and Erskine Creek, Webbs Creek, the Colo River, the Grose River and the Macdonald River, as shown on the map, except for buildings, works or land uses that the consent authority considers to be minor and do not involve clearing or on-site effluent disposal.*

As a consequence, the following additional items are also identified as environmentally sensitive land:

- a. The river (The river is defined by Sydney Regional Environmental Plan No. 20 to mean 'the Hawkesbury-Nepean River');
- b. Riparian land;
- c. Escarpments and other scenic areas;
- d. Wetlands;
- e. Significant floral and faunal habitats and corridors;
- f. Known and potential acid sulphate soils (Potential sulphate soils would include all areas mapped by Hawkesbury Local Environmental Plan 2012 as acid sulphate soils, which would encompass the majority of the LGA); and
- g. Conservation sub catchment areas (mapped under Sydney Regional Environmental Plan No. 20).

A complication in the application of the items identified by Sydney Regional Environmental Plan No. 20 is how some of these items are defined or identified.

Regardless, with the inclusion of the above identified criteria for environmentally sensitive land, especially those identified within Sydney Regional Environmental Plan No. 20, a large proportion of land within the Hawkesbury would be unnecessarily excluded from being able to be developed as 'complying development'. It is considered that this is contrary to the purposes of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.



Given the above, it is requested that the Department of Planning and Environment re-consider the proposed definition for 'environmentally sensitive land' and provide a specific, rather than a broad, meaning. Alternatives may include:

- Listing the circumstances, such as:
  - Environment zones
  - Waterway zones
  - Scenic corridors mapped under SREP No. 20
  - Conservation sub catchment areas mapped under SREP No. 20
- Defining 'environmentally sensitive land' to mean any land mapped as 'environmentally sensitive land' under a local environmental plan.

Any changes in the definition will need to be reflected in Clauses 1.19(1)(e)(iv) and 1.19(5)(f)(iv) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

### **Landslide hazard**

It is proposed to amend Clauses 1.19(1)(f) and 1.19(5)(g) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to restrict complying development where land is identified by an environmental planning instrument as being affected by a landslide hazard.

#### ***Officer Comment:***

Whilst an exclusion from complying development being able to be carried out on land affected by a landslide hazard is supported, the stipulation that this has to be identified by an environmental planning instrument is not. Within the Hawkesbury Local Government Area, an area within the township of Kurrajong Heights has been identified as having a landslip hazard, to which Council has a Policy. However, this landslip affectation is not identified within the Hawkesbury Local Environmental Plan 2012.

It is requested that the Department of Planning and Environment consider including any landslip/slide areas identified, whether through local environmental plans, or Council policies etc.

### **Fences in E4 zones**

It is proposed to amend Subdivision 17 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to include the E4 Environmental Living zone and to amend Subdivision 18 to exclude the E4 Environmental Living zone to allow fences erected within the E4 Environmental Living zone to be consistent with those for residential zones.

#### ***Officer Comment:***

Subdivision 17 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides the requirements for fences in residential zones to be carried out as exempt development. Subdivision 18 provides the requirements for fences within the rural and environmental protection zones, including the E4 Environmental Living zone. Subdivision 18 requires fences to be of post and rail or post and wire construction. This is considered appropriate within the Hawkesbury Local Government Area where most properties zoned E4 Environmental Living are rural in nature and character, rather than residential.

It is understood that within other local government areas, the E4 Environmental Living zone has been used in a residential context, and therefore residential style fencing of these properties would be more appropriate. However, given the rural nature of the Hawkesbury and the use of the E4 Environmental Living zone in a rural context, residential style fencing, such as solid metal 'colorbond' fencing, is not in keeping with the rural character of the Environmental Living areas.

For these reasons, it is advised that this proposed amendment is not supported.



Thank you for the opportunity to provide comments.

Should you have any enquiries in relation to this matter please contact Colleen Haron, Senior Town Planner on (02) 4560 4564.

Yours faithfully



**Andrew Kearns**  
Manager Strategic Planning

### Attachment No. 1

#### Summary of Proposed Housekeeping Amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment
Minor Amendments and Errors	The Amending SEPP will introduce minor amendments to improve operation of the policy and to clarify the policy intent of certain provisions. It will also correct drafting errors, update existing diagrams and incorporate new diagrams.	These minor amendments are aimed at improving the implementation of the policy. They will clarify policy intent and ensure the efficient operation of the policy. Amendments will also correct errors such as grammatical mistakes, incorrect references and other drafting errors and fix/incorporate new diagrams to improve clarity based on stakeholder feedback.	No objections are raised to amendments that correct minor errors and seek to clarify the operation of the Policy.
Deferred Commencement	For each residential complying development code (CDC), insert a new condition for deferred commencement. Clarify that where a CDC is issued before a lot is legally created, the CDC will not operate until the lot is legally created. The applicant must satisfy the council or certifier who issued the certificate, that the lot legally created is identical to the lot in which the CDC relates.	Legislative changes to the <i>Environmental Planning &amp; Assessment Act 1979 (NSW)</i> which commenced on 1 March 2018, provide for deferred commencement conditions to be imposed on CDCs. This amendment will give effect to this legislative update to allow for a CDC to be granted before a lot is legally created. The CDC will remain inoperative until the condition is satisfied and the lot is legally created.	Proposed amendment supported.
Floor Area	Amend all definitions of "floor area" to apply to Part 2 of the State Policy.	The amendment will result in the application of the definition of "floor area" to the Exempt Development Codes (Part 2 of the State Policy). This amendment clarifies that the definition of "floor area" applies to development carried out under the Exempt Development Codes.	Proposed amendment supported.
Gross Floor Area Definition	Amend the SEPP to clarify when calculating GFA, that the maximum size of the "1 car parking space" that can be excluded for each dwelling (excluding secondary dwellings) is 18m <sup>2</sup> .	To make it clear how much floor space can be excluded from the GFA calculation for each car space. It is proposed to amend the State Policy to include an upper limit of 18m <sup>2</sup> for the "1 car parking space" in this definition.	Proposed amendment supported.
Outbuildings	Amend the definition of "outbuilding" in clause 1.5 by replacing "class 10a building under the BCA" with "non-habitable building".	The definition of 'outbuildings' will refer to 'non-habitable' buildings rather than to building classification as not all buildings listed as an 'outbuilding' are class 10a.	Proposed amendment supported, however request that 'farm building' not be included as 'outbuilding' as farm buildings are not an ancillary use to a dwelling house.
Environmentally Sensitive Land	Insert a definition into clause 1.5 that "environmentally sensitive land" is 'land identified within an environmental planning instrument as environmentally sensitive land'.	To clarify that 'environmentally sensitive land' is land identified as 'environmentally sensitive' in an environmental planning instrument.	Request that a specific definition be developed for 'environmentally sensitive land' to avoid ambiguities.
Pathways	Insert a definition into clause 1.5 for 'pathway' as 'a path but does not include a stairway, stairs or the like'.	This amendment will clarify that construction of a pathway as exempt development does not include a stairway.	Proposed amendment supported.
Stairway	Insert a definition into clause 1.5 for 'stairway' as "a series or flight of stairs".	This amendment will introduce a definition for a stairway as distinct from a pathway. The definition will align with the BCA definition for a flight of	Proposed amendment supported.

Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment
		stairs as being a constant series of risers including winders that is not interrupted by a landing.	
Cabanas	Include a definition for 'cabana' and clarify that a cabana carried out as exempt development cannot include shower or bathroom facilities or a kitchenette or cooking facilities.	The amendment will introduce a definition for 'cabana'. Where water or sewage connection is required, the amendment will require this 'cabana' to be carried out as complying development to ensure that a technical assessment of the proposal is undertaken.	Proposed amendment supported.
Floor Space	Amend cl 2.30AB(b) and (c) to replace the term 'floor space' with 'floor area'.	As 'floor space' is not a defined term in the State Policy, the amendment proposes to replace the term 'floor space' with the defined term 'floor area'.	Proposed amendment supported.
Calculating Lot Area	Amend the State Policy to include a provision clarifying that the lot area is the whole of the lot, and includes the area of any land on the lot that may be subject to a land-based exclusion.	This amendment seeks to clearly outline that the relevant lot area is the area of the whole lot including any land subject to a land-based exclusion (such as Class 1 or 2 Acid Sulfate Soil).	Proposed amendment supported.
Acid Sulfate Soil	Insert a Note to clarify that development is permitted on those parts of the lot that are not class 1 or 2.	Currently, complying development is prohibited from being carried out on land identified on an Acid Sulfate Soils Map as being class 1 or 2. This amendment proposes to clarify that complying development is not allowed on those parts of the lot which are class 1 or 2 Acid Sulfate Soils, but is allowed on any other parts of the lot that are not class 1 or 2.	Proposed amendment supported.
Contaminated Land	Amend subclause 1.19(1)(e) to include a new subclause for land that is significantly contaminated land within the meaning of the <i>Contaminated Land Management Act 1997</i> (CLM Act).	Currently, complying development on land defined as significantly contaminated land under the CLM Act is only prohibited where the development is proposed to be carried out under the Commercial and Industrial Code. It is proposed to expand that exclusion to prohibit complying development being carried out under all of the complying development Codes.	Proposed amendment supported.
Development near Rail Corridors	Insert a condition for complying development that where the development is in or adjacent to a rail corridor and is for the purposes of residential accommodation, appropriate measures should be taken to ensure that the following LAeq levels (noise levels) are not exceeded: <ul style="list-style-type: none"> <li>In any bedroom – 35dB(A) at any time between 10:00pm and 7:00am</li> <li>Anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) – 40dB(A) at any time.</li> </ul>	This amendment responds to stakeholder concerns regarding the impact of rail noise and vibration on development near rail corridors. It is proposed to replicate noise criteria contained in clause 87(3) of the <i>State Environmental Planning Policy (Infrastructure) 2007</i> which sets controls for residential development near rail corridors where development consent is required.	Proposed amendment supported.
Landslide Hazard	Amend clauses 1.19(1)(f) and 1.19(5)(g) to include 'a landslide hazard'.	This amendment responds to stakeholder feedback and restricts complying development where land is identified by an environmental planning instrument as being affected by a landslide hazard.	Request that landslip/slide hazard be included regardless of whether or not it is within an environmental planning



Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment
			instrument, including those identified within a council policy.
Street Libraries	<p>Amendment Part 2 (Exempt Development Codes) to insert a new Subdivision to permit street libraries as exempt development if:</p> <ul style="list-style-type: none"> <li>• It has a footprint of no more than 1.5m<sup>2</sup>, and</li> <li>• Is not higher than 1.5m above ground level (Existing), and</li> <li>• Is structurally adequate with adequate footings or attachments, and</li> <li>• Any footings area not more than 600mm below ground level (existing) and located clear of any underground utility services, and</li> <li>• Is not constructed or installed in or on an item listed as a heritage item or proposed for listing as a draft heritage item, and</li> <li>• It is not constructed or installed on a public road (including the nature strip and a footpath).</li> </ul> <p>A note will be inserted to clarify that a public road is defined in the <i>Roads Act 1993</i> and <i>Road Rules 2014</i> to include the road, the nature strip and any adjacent footpath.</p>	This amendment will permit street libraries to be carried out as exempt development provided all relevant development standards are met.	Proposed amendment supported.
Stairway	<p>Insert a new Subdivision into Part 2 Division 1 to permit the construction or installation of stairs or a stairway as exempt development if:</p> <ul style="list-style-type: none"> <li>• The stairs or stairway is construction in association with a balcony, deck, patio, pergola, terrace, veranda or be located directly adjacent to and serve an external access door to a dwelling</li> <li>• The height of the topmost step is not more than 1m above ground level (existing)</li> <li>• It is located at least 450mm from the side or rear boundaries</li> <li>• It does not interfere with the functioning of existing drainage fixtures or the natural surface flow of water</li> <li>• It is constructed of non-combustible material if located on bush fire prone land and is less than 5m from any dwelling</li> <li>• It is located in the rear yard if constructed or installed on or in a heritage item or draft heritage</li> </ul>	The amendment responds to stakeholder feedback and will permit construction of a stairway provided the relevant development standards are met. These development standards have been designed to reduce impact to neighbour amenity and privacy.	Proposed amendment supported.

Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment
	item or in a heritage conservation area or draft heritage conservation area		
Signage on Cranes	<p>Amend Part 2 Division 3 to insert a new subdivision which allows signage on cranes to be exempt development if:</p> <ul style="list-style-type: none"> <li>• The size of the sign is no greater than 600mm in height and 2m in width</li> <li>• The signage does not obstruct line of sight to traffic control signals, driveways or other critical road infrastructure</li> <li>• It does not contain reflective materials, colours and finishes</li> <li>• It does not incorporate sound, vibration, odour and other emissions</li> <li>• It does not contain or use flashing lights, electronically changeable messages, animated display, moving parts, simulated movements, complex displays that hold a drivers attention beyond 'glance appreciation', or displays resembling traffic signs or signals by use of colour, shape or words that can be construed as giving instruction to traffic</li> <li>• It is not illuminated</li> <li>• The signage shall contain only the name or logo of the construction company, builder, or developer, or crane operator and contact details. Third party advertising is not permitted.</li> </ul>	<p>In response to stakeholder concerns regarding the lack of controls regarding signage on cranes, this amendment will introduce development standards for the erection of signage on cranes as exempt development.</p>	Proposed amendment supported.
Carport Height	<p>Amend clause 2.34 to require that any front boundary fence which faces a public space or walkway must also meet the requirements in subclause (2).</p>	<p>The current controls assume that houses face a primary road, however this is not always the case. This amendment will extend front boundary controls (maximum 1.2m height and openness for at least 20% of the area above 400mm above ground level) to situations where a house faces a public space, such as a public path or walkway.</p>	Proposed amendment supported.
Fences in E4 zones	<p>Amend Subdivision 17 to include E4 zones and Subdivision 18 to exclude E4 zones.</p>	<p>Exempt fences in all environmental protection zones are required to have a maximum height of 1.8m and be of post and rail or post and wire construction. Stakeholder feedback has indicated that this is not appropriate for E4 Environmental Living zones which often accommodate residential development. This amendment will result in exempt development fence control in E4 zones which are consistent with those for residential zones.</p>	Proposed amendment not supported as land within E4 Environmental Living zone within the Hawkesbury Local Government Area is of a rural size, nature and character.
Safety of Existing	<p>Introduce development standards requiring compliance</p>	<p>To address safety concerns regarding awnings projecting over public</p>	Proposed amendment supported.

Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment
Awnings	with Section B of Volume 1 of the Building Code of Australia for existing awnings over public land.	space, this amendment will require certification by a structural engineer that existing awnings which project over public roads and footpaths comply with Section B of Volume 1 of the BCA wherever exempt or complying development works are being undertaken, regardless of whether the proposed works are to the awning or not.	
Non-Structural Decking	Amend clause 2.53 to allow the replacement of non-structural decking as exempt development.  Amend clause 2.54 to require the use of equivalent or improved quality materials when carrying out replacement of non-structural decking as exempt development.	This amendment identifies the replacement of non-structural decking, provided equivalent material are used, as exempt development.	Proposed amendment supported.
Playground Equipment	Insert a Note in clause 2.57 that clarifies that playground equipment on private land refers to children's play equipment such as swings, slides, trampolines and the like, but does not include a skateboard ramp.	This amendment clarifies the type of playground equipment capable of being carried out as exempt development on private land.	Proposed amendment supported.
Rainwater Tanks (above ground) in E4 Zones	Amend development standards in clause 2.64 to allow above ground rainwater tanks in E4 zones if they are located at least 900mm from each lot boundary.	Stakeholder feedback has indicated that a 10m setback from each lot boundary is inappropriate for E4 zones. This amendment will introduce a lesser setback.	Proposed amendment supported.
Tennis Court Fences	Change the title of Part 2 Division 1 Subdivision 39B from 'tennis courts' to 'tennis courts and tennis court fences'.	Tennis courts are currently permitted as exempt development, however this Subdivision is silent as to whether tennis court fences are allowed. This amendment will clarify that tennis court fences are allowed as exempt development on lots of at least 1 ha in a rural zone or a R5 zone provided they satisfy the relevant standards.	Proposed amendment supported.
Illuminated Real Estate Advertising	Amend Division 2, Subdivision 12 Real Estate Sign to require that illuminated and electronic displays on private property: <ul style="list-style-type: none"> <li>• do not exceed 200 candela/m<sup>2</sup> at night time, and 500 candela/m<sup>2</sup> at dawn or dusk; and</li> <li>• do not contain animated or video/movie style advertising or messages including live television, satellite, internet or similar broadcasts</li> <li>• dwell times for image display must not be less than 10 seconds for areas where the speed limit for passing vehicles is below 80km/hr and 25 seconds for areas where the speed limit is 80km/hr and over.</li> <li>• Any digital sign that is within 250m of a classified road and is visible from a school zone must be switched to a fixed display during school zone</li> </ul>	This amendment will introduce development standards for electronic or illuminated displays that are on private property in response to stakeholder feedback that such displays may pose a distraction to drivers and pedestrians.	Proposed amendment supported.

Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment								
	hours.										
Temporary Use	Amend clauses relating to temporary use in Part 2 Division 3 to clarify that a temporary use is exempt development where a temporary structure is constructed or installed as exempt development.	The construction or installation of temporary structures for a specified use are expressly permitted as exempt development. Stakeholder feedback has indicated that it is unclear if the specified temporary use itself is exempt or not. This amendment will clarify that the relevant temporary use is also exempt development.	Proposed amendment supported.								
Complying Development carried out on Single Lot	Insert a clause stating that a single dwelling cannot be built across multiple lots under complying development.	This amendment seeks to clarify that complying development may only take place on one lot. A dwelling that stretches across two or more lots cannot be carried out as complying development.	Proposed amendment supported.								
Exceptions to Setbacks	Amend clauses 3.10(14), 3.21(11) and 3A.19(a) to mitigate overshadowing and amenity impacts on public reserves from detached garages and detached studios.	Previously, the General Housing Code required detached garages and studios (previously defined as 'outbuildings') to be setback from public reserves. This was mistakenly omitted by the Department of Planning and Environment in the simplified Housing Code. To address this, an amendment is proposed to require detached garages and detached studios to also be setback 3m from public reserves.	Proposed amendment supported.								
Minimum Setbacks	Amend clauses relating to parallel road setbacks and public reserve setbacks (such as 3.10(12) and (14)) to clarify that they apply only to any "lesser" standard, rather than any "other" standard, for a setback.	This amendment will clarify that where there is a boundary to a parallel road or a public reserve, development specified must be setback at least 3m, despite any lesser setback standard. However, any larger setbacks, for example rear setbacks, will still apply.	Proposed amendment supported.								
Building Design	Amend clause 3.14(2) to clarify that only the window facing the primary or parallel road needs to be to a habitable room. The door facing the primary or parallel road does not need to be to a habitable room.	This minor amendment will clarify that a dwelling house must contain at least one window to a habitable room and one door at ground floor level facing the primary road or any parallel road. The door does not need to be to a habitable room and can be to a hallway or entryway. This amendment is in response to stakeholder feedback that the current provisions are unclear.	Proposed amendment supported.								
Carparking and Access	Amend the table in clause 3.16(5) to address off street parking where the dwelling is located exactly 4.5m from the primary road.	The clause currently only provides requirements where the dwelling is less than, or greater than 4.5m from the primary road. This is a minor amendment to clarify that where a dwelling house is located exactly 4.5m or more from the primary road, the off-street parking setback is at least 1m behind the building line.	Proposed amendment supported.								
Swimming Pool Setbacks from Secondary Roads	Amend clause 3.28 to require the pool to be setback from a secondary road according to the following table: <table border="1" data-bbox="439 1254 893 1382"> <thead> <tr> <th>Lot Size (m<sup>2</sup>)</th> <th>Secondary road setback</th> </tr> </thead> <tbody> <tr> <td>200 – 600m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>&gt;600 – 1500m<sup>2</sup></td> <td>3m</td> </tr> <tr> <td>&gt;1500m<sup>2</sup></td> <td>5m</td> </tr> </tbody> </table>	Lot Size (m <sup>2</sup> )	Secondary road setback	200 – 600m <sup>2</sup>	2m	>600 – 1500m <sup>2</sup>	3m	>1500m <sup>2</sup>	5m	This amendment will align the secondary road setbacks for swimming pools with the secondary road setbacks for the dwelling house under the current Housing Code.	Proposed amendment supported.
Lot Size (m <sup>2</sup> )	Secondary road setback										
200 – 600m <sup>2</sup>	2m										
>600 – 1500m <sup>2</sup>	3m										
>1500m <sup>2</sup>	5m										

Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment
Excavation in Acid Sulphate Soil	Amend clause 3.30 to permit excavation exceeding 1m on land identified as class 3 or class 4 on an Acid Sulfate Soils Map where a qualified geotechnical engineer has certified that the development proposed is not on land affected by acid sulphate soil.	Excavation as complying development cannot currently exceed 1m on land identified as class 3 or class 4 on an Acid Sulfate Soils Map. Stakeholder feedback has indicated that these Maps may be inaccurate. It is proposed to allow deeper excavation where a qualified geotechnical engineer has certified that the land where the development is proposed is not affected by acid sulphate soils class 3 or class 4.	Proposed amendment supported.
"Cut and Fill"	Amend clause 3.30(3) to clarify that "fill" includes fill contained within drop edge beam, except where the fill is wholly contained within the footprint of the dwelling house, any attached development or detached development.	This amendment clarifies that "fill" under complying development includes fill contained within a drop edge beam. However, fill within a drop edge beam that is contained within the footprint of the dwelling house, any attached development or detached development will continue to be unlimited.	Proposed amendment supported.
Protected Trees	Omit the words 'on the lot' from clause 3.33(2)	The proposed amendment is required to ensure that dwelling houses, attached development and detached development are adequately setback from any protected tree on the lot and on adjoining lot.	Proposed amendment supported.
Internal Alterations to Residential Flat Buildings	Amend clause 4.2 to include a new development standard that internal alterations must not result in a change to the number of bedrooms within a residential flat building.	This amendment clarifies that internal alterations carried out as complying development must not change the number of bedrooms in an apartment.	Proposed amendment supported.
Attic Dormers	Amend clause 4.6(2)(e) to ensure that the restrictions only apply if the dormer is facing the side or rear of the building.	This minor change will clarify that the restriction in clause 4.6(2)(e) only apply where the dormer faces the side or rear of the building. Dormers are permitted at the front of a home without restriction.	Proposed amendment supported.
Gym (Recreation Facility Indoor)	Insert a new subclause 5.5(1)(m) to apply to <i>Recreation Facility (Indoor)</i> .	Recreation facilities (indoor) are currently not allowed as a change of use under complying development, but are allowed as a first use. The proposed amendment will ensure that this type of development is also excluded from the operation of the complying development framework if it is a first use of premises. As a result, where the first use of a premises is intended to be a recreation facility (indoors), such as a gym, a DA is required. This responds to stakeholder concern that a recreation facility (indoors) may have sufficient noise and vibration impacts on neighbour amenity as to require a merit assessment.	Proposed amendment supported.
Projecting Wall Signs	Amend clause 5.14 to insert a minimum height of 2.6m above footways as an additional development standard that must be met.	At present there is no height limit for projecting wall signs above public roads (including footpaths). This amendment will impose a new standard that requires development to also comply with a height limit before it can be carried out as complying development. This is considered with development controls for exempt development, and will help to minimise safety and amenity impacts.	Proposed amendment supported.
Warehouse or Distribution Centres	Amend clause 5A.4 to apply subclauses (b) and (c) to a warehouse or distribution centre.	This amendment allows additions or external alterations to an existing building used for the purpose of a warehouse or distribution centre to be	Proposed amendment supported.

Policy Issue	Proposed Amendment	Reason for Amendment	Officer Comment
		carried out under the Commercial and Industrial Code.	
Contamination from Demolition	Amend clause 7.2(1) to clarify that demolition which poses a risk of contamination, it is not development for the purposes of this Code	This amendment will ensure that if demolition carries a risk of contamination, it cannot be carried out as complying development.	Proposed amendment supported.
Wall on an Adjoining Lot	Amend clause 7.2(2) to clarify that a professional engineer's report is required where the development involves the demolition or removal of a wall to a boundary that has a wall on an adjoining lot which is less than 900mm from the boundary.	This amendment will clarify that where demolition of a wall near a side or rear boundary is adjacent to a wall on an adjoining lot within 900mm of the boundary, a professional engineer's report is required that details any necessary method of maintaining support.	Proposed amendment supported.
Demolition	Amend clause 7.1(1)(a) from a 'dwelling' to a 'dwelling house or secondary dwelling'.	This amendment will clarify policy intent that the demolition code only allows for the demolition of dwelling houses and secondary dwellings.	Proposed amendment supported.
Demolition	Add a note to clause 7.2(4) that where a swimming pool has been removed, the fill used for the site must be: <ul style="list-style-type: none"> <li>• Clean fill or virgin excavated natural material as defined in Part 3 of Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i></li> <li>• Compacted consistent with the applicable guidelines for specification and testing of earthworks of the Australian Geomechanics Society (NSW) and Australian Standard AS 1289.0-2000.</li> </ul>	This amendment will ensure that where a pool is demolished, appropriate measures will be taken to ensure that the fill used for the site is not contaminated and properly compacted.	Proposed amendment supported.
Contamination Discovered During Works	Insert a contamination condition into Schedules 6, 8 and 9 that provides that all works must be stopped immediately and the Environment Protection Authority and Council notified if the land is found to be contaminated in the course of works.	This amendment will require works to stop where it is discovered that the land on which work is being carried out is contaminated. Notice of the contamination must also be given to the Environment Protection Authority and Council.	Proposed amendment supported.
Demolition	Amend Schedule 9, Part 2, Subclause 8 – Fill for the purposes of demolition must contain only virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> .	This amendment will clarify that fill brought to the site for the purposes of the Demolition Code must only contain VENM fill. This is consistent with conditions relating to fill for other Codes.	Proposed amendment supported.