INNER WEST COUNCIL

OUR REF: 3212

18 July 2018

Deborah Brill
Acting Executive Director, Planning Policy
NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Ms Brill,

Explanation of Intended Effect
Housekeeping Amendments to State Environmental Planning Policy
(Exempt and Complying Development Codes) 2008

The Inner West Council appreciates the opportunity to comment on the proposed housekeeping amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

The Explanation of Intended Effect (EIE) details the proposed amendments as follows:

> *"The proposed amendments:*
> - *Introduce new definitions to provide clarity and certainty as to the development permissible under the State Policy;*
> - *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."* (page 5)

The EIE includes a Table summarising the general amendments and provides examples of key proposed amendments and describes and explains "*the issue, aims, effects and rationale*" for each of the proposed amendments.

Council's comments in relation to the proposed housekeeping amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* are attached to this letter.

Council trusts the submission assists the Department in its deliberations.

On a separate matter, related to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, it is strongly recommended that the Department review (and amend) the information displayed on its website on "*The new Low Rise Medium Density Housing Code*" on the *Medium Density Housing* homepage.

The homepage lists Council areas deferred from the commencement of the *Low Rise Medium Density Housing Code* and states that "*In the deferred council areas, applicants cannot use the Code or lodge development applications for manor houses or terraces until 1 July 2019."* Whilst the statement is true that in the deferred areas applicants cannot use the Code for "*manor houses*" or "*multi dwelling housing (terraces)"* the same does not necessarily apply to the lodgement of development applications for those forms of development.

"*Manor houses*" and "*multi dwelling housing (terraces)"* are new types of *residential accommodation*. Unlike other types of *residential accommodation*, the definition of those terms is contained in Clause 1.5 of the Codes SEPP instead of being contained in the *Standard Instrument*.

Under the definition of those terms in the Codes SEPP "*manor houses*" are a type of *residential flat building* and "*multi dwelling housing (terraces)"* are a type of *multi dwelling housing.*

Consequently in those Council areas deferred from the commencement of the *Low Rise Medium Density Housing Code*:

i. "*Manor houses*" would be a type of development permitted with consent in any zone where *residential flat buildings* are permitted with consent under the local environmental plan applying to the land in that Council area. A development application would be required to be lodged for such development; and
ii. "*Multi dwelling housing (terraces)*" would be a type of development permitted with consent in any zone where *multi dwelling housing* are permitted with consent under the local environmental plan applying to the land in that Council area. A development application would be required to be lodged for such development.

The information on the Department's website states, under the heading "*Low Rise Medium Density Design Guide for Development Applications*", states (in part) that:

> "*An applicant can now also lodge a development application (DA) for manor houses and terraces where council's Local Environmental Plan (LEP) permits medium density housing."*

The above statement is misleading and is already causing confusion. The statement is incorrect, particularly in relation to development for the purposes of "*manor houses*" on land zoned R2 Low Density Residential in those Council areas (deferred from the application of the Low Rise Medium Density Housing Code) where *multi dwelling housing* is permitted with consent on such zoned land under the local environmental planning instrument applying to the land. The information on the website should be corrected.

On a separate note, the deferral granted to those Councils listed in *Clause 3B.63 Deferred application of Part to land in certain local government areas* of the Codes SEPP only applies to the deferral of *Part 3B Low Rise Medium Density Housing Code* of the Codes SEPP in those Council areas.

To provide clarity it is considered that it would be prudent to (defer), or make it clear, that the following provisions of *Part 6 Subdivisions Code* of the Codes SEPP do not apply in the deferred Council areas:

- *Division 1 Strata subdivision*
  Clauses 6.2 (b) and (c)
  Clauses 6.2 (b) and (c)

- *Division 2 Torrens subdivision* (entire Division)

Should you have any enquiries please contact Peter Wotton, Council's Strategic Planning Projects Coordinator on 9335 2260.

Yours sincerely,

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Encl

TRIM NO: 58473.18

Explanation of Intended Effect
Housekeeping Amendments to State Environmental Planning Policy
(Exempt and Complying Development Codes) 2008

Clause	Wording	Comment
	Table 1 - General amendments to the State Policy	
	Minor amendments and errors	The Explanation of Intended Effect explains that "*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."* The EIE includes comments about the new Housing Code noting that it "*includes easy to follow diagrams to make it easier for homeowners, certifiers and councils to understand the rules for complying development.*" (page 6) Firstly a number of diagrams included in the *Housing Code* (and some of the diagrams in the recently gazetted *Low Rise Medium Density Housing Code* and *Greenfields Housing Code*) lack "clarity" when viewed on the NSW Government Legislation website making them difficult to understand. The diagrams should have high resolution images to make them easier to follow when viewed on the Legislation website. As detailed in Council's recent request seeking a deferral of the commencement of the application of the *Low Rise Medium Density Housing Code* to the Inner West Council area, there are a number of errors in the *Low Rise Medium Density Housing Code* including inconsistent development standards, misleading diagrams and diagrams that do not reflect the development standard they are intended to show. Also as detailed in that submission the definition of Medium Density Design Guide in Clause 1.5 of the Codes SEPP needs to be amended to read as follows: "Medium Density Design Guide means the Low Rise Medium Density Design Guide published by the Department of Planning and Environment on the day on which State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density Housing) 2017 commences." to be consistent with the name of the document published by the Department.

Clause	Wording	Comment
		Hopefully those errors will be corrected as part of the housekeeping amendments to the SEPP. It is also noted that a number of references in the Notes in the *Low Rise Medium Density Housing Code* and the *Greenfield Housing Code* refer to the former Sections of the Environmental Planning and Assessment Act e.g. section 149 certificates.
	Deferred commencement	The Explanation of Intended Effect provided the following reason for this draft amendment: *"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."* The proposed amendment is problematic for the *Low Rise Medium Density Housing Code* as the *Division 2 Torrens subdivision* provisions in *Part 6 Subdivision Code* of the Codes SEPP permit a single complying development certificate application for both the erection of a dual occupancy or multi dwelling housing (terraces) and the Torrens title subdivision of that land (Clause 6.3 (3)).
	Table 2 – Examples of proposed amendments to the State Policy	
	Proposed changes to defined terms	
	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 18m2.*	The Low Rise Medium Density Housing Amendments to the Codes SEPP include a new definition of "*gross floor area*". Under those amendments the term *"gross floor area"* has the same meaning as it has in the Standard Instrument. However for the purposes of Part 3 and Part 3B of the Codes SEPP the term *"gross floor area"* has a different meaning. Having a different meaning of the term for the purposes of the *Housing Code* and the *Low Rise Medium Density Housing Code* creates confusion and makes little planning sense. It also creates an inconsistent approach in determining the floor space ratio of developments between the complying development standard under the Codes SEPP and the FSR development standard under the local environmental planning instrument applying to the land. If the Department's reason for the draft amendment is "*to make it clear how much floor space can be excluded from GFA for each car space*" it is

Clause	Wording	Comment
		considered that rather than further amending (and complicating) the definition it would be more preferable to include a note. (A number of other terms in Clause 1.5 include a Note). It is also questioned why "(*excluding secondary dwellings)"* is included in the Draft Policy Amendment as the complying development provisions relating to secondary dwellings are contained in *State Environmental Planning Policy (Affordable Rental Housing) 2009*. Words and expressions used in that Policy essentially have the same meaning as they have in the *Standard Instrument* (Clause 1.4 (2)). It is suggested that the following changes be made: That the definition of the term "*gross floor area*" in Clause 1.5 Interpretation – general of the Codes SEPP be deleted and be replaced with the following wording: ***gross floor area*** has the same meaning it has in the Standard Instrument. **Note**: For development under *Part 3 Housing Code*, *Part 3B Low Rise Medium Density Housing Code* and *Part 3C Greenfield Housing Code*, for the purposes of part (g) of the definition of ***gross floor area*** *"(g) car parking to meet any requirements of the consent authority (including access to that car parking)"* is deemed to mean a maximum of one car parking space for each dwelling. For the purpose of calculating gross floor area (GFA) the maximum area of a car parking space that can be excluded from GFA is 18m2.
	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 "*outbuilding*" relates to a number of different types of outbuildings. The replacement words "*non-habitable building*" should read "*non-habitable buildings*"
	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'.*	The Explanation of Intended Effect provides the following reason for the draft amendment: *"To clarify that 'environmentally sensitive land' is land identified as 'environmental sensitive' in an environmental planning instrument".* The inclusion of the proposed definition of "*environmentally sensitive land*" is problematic because the term *environmentally sensitive land* does not have a consistent meaning under environmental planning instruments. For example the meaning of the term in *Schedule 1 Environmentally sensitive land* of *State*

Clause	Wording	Comment
		Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The issue is further complicated because the term "*environmentally sensitive area*" is also not consistently defined in environmental planning instruments. For example the term "*environmentally sensitive area*" appears in a number of environmental planning instruments including *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Section 1.5 Interpretation – general), environmental planning instruments made under the Standard Instrument (*Clause 3.3 Environmentally sensitive areas excluded*) and *Environmental Planning and Assessment Regulation 2000* (Schedule 3 Designated Development Part 4 – What do terms in this Schedule mean? Clause 38 Definitions) and in *State Environmental Planning Policy No. 52 – Farm Dams and Other Works in Land and Water Management Plan Areas* – Clause 6 "*environmentally sensitive area has the same meaning as in Schedule 3 (Designated development) to the Environmental Planning and Assessment Regulation 1994.*" Some local environmental planning instruments also identify land as being "*environmentally sensitive land*". To avoid confusion it is suggested that: i. a definition of "*environmentally sensitive land*" be incorporated into the *Standard Instrument*; ii. an additional subclause be inserted in *Clause 3.3 Environmentally sensitive areas excluded* of the *Standard Instrument* reading as follows: "(k) land identified in this or any other environmental planning instrument as being environmentally sensitive land"; and iii. a new definition of "*environmentally sensitive areas*" be developed and incorporated into the *Environmental Planning and Assessment Act* and that definition be adopted in all environmental planning instruments. If a definition of "*environmentally sensitive land*" is to be included in the Codes SEPP that definition should also be incorporated into other SEPPs that include provisions relating to such land, for example *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.
	Proposed policy refinements and clarifications	
	Calculating lot area "*Amend the State Policy to include a provision clarifying that the lot*	The proposed amendment is problematic because lot area is not necessarily the same as site area.

Clause	Wording	Comment
	area is the whole area of the lot, and includes the area of any land on the lot that may be subject to a land-based exclusion."	Under the *Standard Instrument* the term *site area* is defined as follows: *"**site area** means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, more than one lot if contiguous to each other, but does not include the area of any land on which the development is not permitted to be carried out under this Plan."* Under Clause 4.4 (a) of the *Standard Instrument* the following land must be excluded from the site area: *(a) land on which the proposed development is prohibited, whether under this Plan or any other law"* It is considered that a similar provision should be incorporated into the Codes SEPP for calculating lot area.
	Acid Sulfate Soils *"Insert a Note to clarify that development is permitted on those parts of the lot that are not class 1 or 2."*	The reason given for the Draft Amendment in the Explanation of Intended Effect states: *"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 Soil, but is allowed on any other parts of the lot that are not class 1 or 2."* It is considered that the proposed draft amendment is not necessary as the issue is addressed by Clause 1.19 (6) of the Codes SEPP. That clause reads as follows: *"**(6) Specific land exemptions may apply only to part of a lot*** *Nothing in this clause prevents complying development being carried out on part of a lot that is not land referred to in this clause even if other parts of the lot are such land."*
Clause 1.19 (1) (e)	Contaminated Land inclusion of new subclause	Clause 1.19 (1) (e) relates to "*land identified by an environmental planning instrument*". The *Contaminated Land Management Act 1997* is not an *environmental planning instrument*. Rather than include a new subclause to Clause 1.19 (1) (e) it is suggested that a new clause be inserted reading: "(e1) land that is significantly contaminated land within the meaning of

Clause	Wording	Comment
		Contaminated Land Management Act 1997 (CLM Act)"
	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 are not exceeded:* *- in any bedroom – 35dB(A) at any time between 10:00pm and 7:00am* *- anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) – 40dB(A) at any time.*	It is recommended that a clause relating to development near rail corridors be inserted after Clause 1.18 (2) reading: (2A) The erection of or an addition to residential accommodation on land in or adjacent to a rail corridor is complying development for this Policy, if appropriate measures will be taken to the development to ensure that the following LAeq levels are not exceeded: (a) in any bedroom – *35dB(A) at any time between 10:00pm and 7:00am,* (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) – 40dB(A) at any time.
Clause 1.19 (2) and Schedule 5 Land excluded from the Housing Code	Development *specified in the Housing Code is not complying development under that code if it is carried out on land described or otherwise identified on a map specified in Schedule 5.*	Schedule 5 of the SEPP lists a number of maps on which development specified in the *Housing Code* can't be carried out as complying development on land identified on those maps. Four of those maps, namely, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Marrickville Complying Development Land Map (SEPP_ECD_5200_LCD_001_20101022)* to *(SEPP_ECD_5200_LCD_004_20101022)* inclusive relate to land in the former Marrickville LGA. In April 2009 Marrickville Council submitted an application for a local exclusion from the Housing Code in accordance with Practice Note PS 09-04. The local exclusion sought related to land identified on Marrickville Local Environmental Plan No.111 (Amendment No. 1) to which the heritage provisions specified in Clause 55 of Marrickville Local Environmental Plan 2001 applied. At the time the former Marrickville Council was preparing a new comprehensive local environmental plan for the area under the *Standard Instrument* including the identification of heritage conservation areas. Council sought the local exclusion from the Housing Code to provide heritage protection to such land until new provisions concerning environmental heritage matters were finalised in the new comprehensive LEP. Marrickville Local Environmental Plan 2011 was gazetted on 12 December 2011.

Clause	Wording	Comment
		All the land "*described or otherwise identified on the maps specified in Schedule 5"* relating to the former Marrickville LGA is now identified as *heritage conservation areas* on the Heritage Maps under Marrickville Local Environmental Plan 2011. Under the specific land exemptions under Clause 1.19 for the *Housing Code* complying development must not be carried out on "*land within a heritage conservation area or a draft heritage conservation area, unless the development is a detached outbuilding, detached development (other than a detached studio) or swimming pool*" (Clause (1) (a)). The gazettal of Marrickville Local Environmental Plan 2011 negates the need for the land identified in Schedule 5 in the former Marrickville LGA to be excluded from the *Housing Code*. The subject land is excluded from the Housing Code by virtue of Clause 1.19 (1) (a). However it should be noted that Clause 1.19 (2) of the Codes SEPP is a blanket exclusion and as such it prevents complying development for "*a detached outbuilding, detached development (other than a detached studio) or swimming pool*". The retention of the *Land exclusion from the Housing Code* in Schedule 5 relating to land in the former Marrickville LGA creates unnecessary complications for the issuing of Section 10.7 Certificates for such land in relation to Question 2A "*Whether complying development may be carried out on such land under the Housing Code*". In view of the circumstances it is requested that *Schedule 5 Land excluded from the Housing Code* be amended to delete the maps *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Marrickville Complying Development Land Maps (SEPP_ECD_5200_LCD_001_20101022)* to *(SEPP_ECD_5200_LCD_004_20101022)* inclusive which relate to land in the former Marrickville LGA.
	Safety of existing awnings *Exempt Development Codes* *Housing Code* *Rural Housing Code* *Commercial and Industrial Alterations Code*	The Statement of Intended Effect includes the *Housing Code* and *Rural Housing Code* as two of the Affected Codes. The reason for the proposed amendment is "*to address safety concerns regarding awnings projecting over public space*". The *Housing Code* and *Rural Housing Code* complying development provisions do not permit *attached development* (awnings) that project over public spaces.

Clause	Wording	Comment
Clause 2.64	Rainwater tanks (above ground) *"Amendment development standard in clause 2.64 to allow above ground rainwater tanks in E4 zones if they are located at least 900mm from each lot boundary."*	No objection is raised in principle to allow above ground rainwater tanks in E4 zones to be located closer than the current requirement of 10 metres. However without any size restriction on the capacity of such tanks it is considered a blanket approach of a minimum setback of 900mm regardless of the capacity of the tank is not appropriate. Some of the other comments in the Statement of Intended Effect note that the *E4 Environmental Living* zones often accommodate residential development. Rather than the blanket approach proposed, it is considered that it would make more sense to allow above ground tanks up to a certain capacity to be setback the proposed minimum 900mm, and retain the current setback requirement of 10 metres for tanks of any greater capacity.
Division 2 Subdivision 12 Real Estate Signs	Illuminated Real Estate advertising	The proposed amendment relates to *Subdivision 12 Real Estate Signs* "*will introduce development standards for the electronic or illuminated displays that are on private property*". It is considered that the proposed amendments should relate to all signs not just "*real estate signs*". It is recommended that the draft policy amendment relating to illuminated and electronic displays on private property be incorporated into *Clause 2.83 General requirements* of *Subdivision 1 General requirements for advertising and signage* of the Codes SEPP.
	Complying Development carried out on single lot	The Explanation of Intended Effect provides the following reason for the proposed amendment: *"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."* No objection is raised in principle to the proposed amendment. However to be consistent it is considered that the amendment should not be confined to only dwellings. It should also specify that all forms of development permitted under the Residential Codes cannot be carried out as complying development where that development "*stretches across two or more lots"*.
Clause 3.10 (14), 3.21 (11) and 3A.19 (a)	Exceptions to setbacks Setbacks from public reserves Detached garages and studios	The proposed amendment is to require detached garages and detached studios to be setback a minimum of 3m from public reserves. The EIE notes that "*previously the General Housing Code required detached garages and studios (previously defined as outbuildings) to be setback from public reserves. This was mistakenly omitted in the Simplified Housing Code.*" The amendment seeks

Clause	Wording	Comment
		to address that omission. Setback requirements from public reserves for detached garages are specified in Clause 3.21 (11). Under Clause 3.21 (11) (b) a "*setback from a boundary with a public reserve of at least 3m*" is required for a detached garage. Consequently amendments only need to be made to include setback requirements for *detached studios* from public reserves. It is noted that the proposed amendment to Clause 3A.19 (a) conflicts with the setback requirements under Clause 3A.33A (7) if the public reserve is adjacent to a side or rear boundary.
Clause 3.14 (2)	Building Design Housing Code Amendment "*to clarify that only the window facing the primary or parallel road needs to be to a habitable room*".	No objection is raised to the proposed amendment. The proposed amendment is used to highlight an issue with the *Low Rise Medium Density Housing Code*. Clause 3B.17 (4) of the Codes SEPP specifies that "*each habitable room that has a wall facing a road must have a window in that wall*". Whilst *Part E Public Domain Interface* of the *Low Rise Medium Density Design Guide* (LRMDDG) includes design guidance that "*windows should provide passive surveillance opportunities as well as visual interest to the streetscape*" (Design Guidance point 5 page 104) there is no specific requirement that a habitable room must face the street. It should also be noted that in relation to the LRMDDG, by virtue of Clauses 3B.19 (2), 3B.31(2) and 3B.44, the requirements of Part 3B "*prevail to the extent that the Guide is inconsistent*".
Clause 3.16 (5)	Car parking and access Housing Code	No objection is raised to the proposed amendment. Similar clarification should be provided in the *Low Rise Medium Density Housing Code* (Clause 3B.30 (5)) and the *Greenfield Housing Code* (Clause 3C.19 (5)).
	Protected trees *Omit the words "on the lot" from Clause 3.33 (2)*	No objection is raised to the proposed amendment. Controls relating to setbacks from protected trees need to be consistent throughout the Codes SEPP. The words "*on the lot*" also needs to be deleted from Clause 3C.36 (2) of the

Clause	Wording	Comment
		Greenfields Housing Code. It is noted that the controls relating to setbacks from protected trees in the *Low Rise Medium Density Housing Code* do not specify setbacks from protected trees for "*multi dwelling housing (terrace)*" developments. The following changes are recommended: i. The heading to Clause 3B.61 be amended to read: *3B.61 Setbacks of dual occupancies, manor houses, multi dwelling housing (terraces), attached development and detached development from protected trees;* ii. Clause 3B.61 (c) (i) be amended to read: *for development that is the erection of a new dual occupancy, ~~or~~ manor house or multi dwelling housing (terrace)—8m and is not required to be retained as a condition of consent, or* iii. **Note 1** to be clause be amended to read: ***Note 1**. Development consent, ~~dwelling house~~ dual occupancy, manor house, multi dwelling housing (terraces) and protected tree are defined in clause 1.5.*
Clause 4.2	Internal Alterations to Residential Flat Buildings Housing Alterations Code	The Explanation of Intended Effects provides the following reason for the Draft Amendment: *"This amendment clarifies that internal alterations carried out as complying development must not change the number of bedrooms in an apartment."* No objection is raised in principle to the proposed amendment. However it is suggested that the words "*must not change*" should be replaced with the words "must not increase". Notwithstanding the above comments, it should be noted that the complying development standards do not exclusively relate to internal alterations to *residential flat buildings*. *Clause 4.1 Specified Complying Development* relates to: *"Internal alterations to existing residential accommodation, including alterations to common property or existing ancillary development that is associated with residential accommodation (but not including development that is the erection or conversion of a basement to existing residential accommodation), is*

Clause	Wording	Comment
		development specified for this code." *"Residential accommodation"* is a parent term under the *Standard Instrument*. The term includes *"boarding houses", "dual occupancies", "dwelling houses", "group homes", "hostels", "multi dwelling housing", "residential flat buildings", "secondary dwellings", "seniors housing"* and *"shop top housing".* With the recent amendment to the Codes SEPP *residential accommodation* would also include "*manor houses*" and "multi *dwelling housing (terraces)".* Complying development provisions relating to *secondary dwellings* and *group homes* are contained in Schedule 1 and Schedule 2 respectively of *State Environmental Planning Policy (Affordable Rental Housing) 2009*. It is also noted that the provisions in *Part 3 Housing Code* (Clause 3.2 (c)), *Part 3B Low Rise Medium Density Housing Code* (Clause 3B.2 (d)) and *Part 3C Greenfield Housing Code* (Clause 3C.3 (c)) specify that "*development that is attached to a secondary dwelling or group home*" is "*Development that is not complying development under this Code*". Until such time as complying development provisions relating to *secondary dwellings* and *group homes* are incorporated into the Codes SEPP it is considered that all complying development related matters to those types of *residential accommodation* (including internal alterations to existing secondary dwellings and group homes) should be contained within the Affordable Rental Housing SEPP. The Codes SEPP *"does not apply to development to which Part 3 of State Environmental Planning Policy (Affordable Rental Housing) 2009 applies*" (Clause 1.4A). Consequently *Clause 4.1 Specified Complying Development* would not apply to *residential flat buildings* or *boarding houses* to which Part 3 of the Affordable Rental Housing SEPP applies. The Clause 4.2 development standards relating to internal alterations specify the following development standards that the development: *"(a) must not result in a change of classification of the building under the Act or the Building Code of Australia, and* *(b) must not result in any additional separate dwelling, and* *(c) must not result in the creation of an additional floor within a dwelling."* Whilst the specified complying development under Clause 4.1 relates to internal alterations to "*residential accommodation*" the development standards specified in Clause 4.2 essentially only relate to those types of *residential*

Clause	Wording	Comment
		accommodation that contain a dwelling(s). It is also noted that whilst subclause (c) specifies that the development "*must not result in the creation of an additional floor…*" that clause does not necessarily preclude the creation of additional gross floor area (e.g. extending an existing floor level over a void). To address the above issue it is recommended an additional development standard be included in Clause 4.2 reading: "must not result in an increase to the gross floor area of the existing residential accommodation or ancillary development". The proposed amendment only seeks to include a complying development standard for internal alterations to *residential flat buildings* that the alterations "*must not change the number of bedrooms in an apartment*". It is considered that complying development development standards relating to internal alterations to existing *residential accommodation* should also include standards that such development: a. must not increase the number of bedrooms in a dwelling contained within a dual occupancy development, manor house development, multi dwelling housing development or shop top housing development; b. must not increase the number of boarding rooms contained within a boarding house development; c. must not increase the number of dormitories contained within a hostel development. In light of the above comments it is recommended that the following changes be made to *Subdivision 1 Internal alterations* of *Division 1 Specified development and development standards under this code* of *Part 4 Housing Alteration Code*: That Clause 4.1 be amended to read as follows: *Clause 4.1 Specified Complying Development* relates to: Internal alterations to existing residential accommodation (other than group homes, secondary dwellings and seniors housing) including alterations to common property or existing ancillary development that is associated with residential accommodation (but not including development that is the erection or conversion of a basement to existing residential accommodation), is development specified for this code.

Clause	Wording	Comment
		That the following additional development standards be included in Clause 4.2: d. must not result in an increase to the gross floor area of the existing residential accommodation or ancillary development; e. must not relate to a *residential flat building* or *boarding house* to which Part 3 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* applies; f. must not increase the number of bedrooms in a dwelling contained within a dual occupancy development, manor house development, multi dwelling housing development, residential flat building development or shop top housing development; g. must not increase the number of boarding rooms contained within a boarding house development; h. must not increase the number of dormitories contained within a hostel development.
Clause 4.6 (2) (e)	Attic Dormers	The following reason for the draft amendment is stated in the EIE: *"This minor change will clarify that the restrictions 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."* The proposed amendment is unclear and the statement that "*Dormers are permitted at the front of a home without restriction*" is contrary to other development standards specified in Clause 4.6. In relation to the amendment to Clause 4.6(2)(e) it is presumed that the amendment is to change the clause to read as follows: (e) facing to the rear or side of the building, must not have a total area of more than $4m^2$. Clause 4.6 (2) (a) specifies that a dormer window referred to in subclause (1) "*must not have a width of more than 1.3m*". That restriction applies to all dormer windows regardless of whether the dormer window faces the rear, side or front of a building. The total area restriction for dormer windows of "$4m^2$" specified in Clause 4.6 (e) is somewhat at odds with the maximum width restriction of 1.3m in that to reach the total area restriction of "$4m^2$" permitted, the dormer window would need to be approximately 3m in height.

Clause	Wording	Comment
Clause 7.2 (1)	Contamination discovered during works Schedules 6, 8 and 9	A contamination condition should also be inserted into Schedule 6A Conditions applying to complying development certificates under the Low Rise Medium Density Housing Code.