



18 July 2018

F00678 (18/166528)

Director, Codes and Approval Pathways
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001
(via on-line submission)

Director

SUBJECT Housekeeping amendments to the Codes SEPP

Blue Mountains City Council welcomes the opportunity to provide comment on the proposed Housekeeping Amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

As a general statement, Blue Mountains City Council supports the aim of the housekeeping amendment to simplify and improve the policy, clarify definitions and standards, and address other minor technical matters raised by stakeholders with the Department. In particular, Council supports the two matters (being rainwater tanks and fences in E4) raised in correspondence between Council and the Codes and Approval Pathway Team and which have been included in the proposed changes.

Commentary and observations on the exhibited 'Explanation of Intended Effects' are provided below according to policy issue, as identified in that document:

Calculating lot area

It is proposed to clarify that the relevant lot area is the area of the whole lot, including any land subject to the land-based exclusion. The example given is Acid Sulfate Soils. However, such a change would also include other land based exclusions, such as a protected area identified in an environmental planning instrument.

It is recommended that environmentally sensitive land be excluded from the calculation of the lot area. Council acknowledges that lot area controls often apply to a zone based consideration for the further application of a code. However, it is recommended that the avenue for complying development be only made available where the lot area can be met without the inclusion of environmentally sensitive land (particularly land zoned E2), given that complying development itself could not occur on that part of the lot covered by the land based exclusion.

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The inclusion of a definition for this use, particularly one that clarifies facilities and connections required, is supported by Council.

Fences in E4 zone

Council has raised this issue with the Codes Team previously. The reason for raising this issue with the Codes Team is that the demolition, erection or replacement of most typical side and rear dividing fences up to 1.8m high in residential zones is exempt development under subdivision 17. However the erection of a traditional

timber paling, or pre-painted metal fence along the side or rear boundaries on lots in zone E4 Environmental Living are not exempt. The only style or type of fence that is able to be erected as exempt development on land in the E4 zone is limited to fences of post and wire, or post and rail construction under subdivision 18. For the Blue Mountains this represents a significant departure from past practice and does not reflect community expectations or understanding.

The inclusion of the E4 land use zone to subdivision 17 of the Code, will reduce confusion for the community and remove unnecessary regulatory burden on both property owners and Council. This proposed amendment is supported by Council.

Rainwater Tanks (above ground) in E4 zones

As with fences in E4 land use zone, Council has also raised this issue with the Codes Team. In this instance it is the control around location of the above ground rainwater tank to be more than 10m from the lot boundary this is of concern.

In the Blue Mountains the E4 zone is applied to land that is suitable for residential development, which has a predominant bushland character, but may be subject to environmental constraints or limitations in servicing. The allotments are typically 1200m² and there is a community expectation that such land is used in a manner similar to residential land, albeit with larger lots. Permitting rainwater tanks as exempt development with restrictions similar to that in residential zones, aligns with both Council and the community's expectation and is supported by Council.

However, Council also asks that consideration be given to the matter of multiple tanks on residential lots. To avoid the proliferation of multiple tanks across a site, it is suggested a limit of 2 tanks per lot be included as a new development standard, with a clear acknowledgement that the cumulative capacity of all tanks be a maximum of 10,000L.

Temporary Use

The Explanation of Intended Effect states that the Code will be amended to clarify that the relevant temporary use (for which the installation of the structure is required) would also be exempt.

Clarification is requested as to how this works with Clause 2.8 – Temporary Use of Land in the Standard Instrument LEP. This clause has been tested in the Land and Environment Court (*Marshall Rural Pty Limited v Hawkesbury City Council and Ors* [2015] NSWLEC 197) with the judgement confirming the high bar set by the clause in terms of adverse impact.

Therefore, the logic behind allowing the use of the temporary structure to be exempt (for example for a public event) that could have impact concerns could appropriately be dealt with as exempt development.

Illuminated Real Estate advertising

Council is not supportive of any illuminated real estate advertising being permitted as exempt development, particularly in a residential land use zone. While the proposed development standards have merit, illuminated real estate advertising signs as exempt development should be limited to business zones.

Should you require further information please contact Kim Barrett, Manager
Development & Planning Services on 4780 5591 or kbarrett@bmcc.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'W. Langevad', with a stylized, cursive style.

WILL LANGEVAD
Director, Development and Customer Services