

FOREWORD

Willoughby City Council appreciates the opportunity to provide comments on the 'Explanation of Intended Effect' for the proposed Housekeeping Amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Debra Just
General Manager
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1. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

1.1 General

- i. The NSW Department of Planning and Environment receives ongoing feedback from stakeholders about the performance and implementation of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- ii. The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 is a particularly complex planning instrument, comprising as it does 8 numbered Parts, 34 Divisions and 123 Subdivisions which present a daunting prospect for any member of the community to use.
- iii. Feedback is received through consultation with stakeholders including the NSW Department of Planning and Environment's Complying Development Expert Panel (CDEP), which involves representatives from councils.
- iv. Feedback from stakeholders has led to the current exhibition of the proposed Housekeeping Amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The documentation 'Explanation of Intended Effect' provides an outline and additional information on what is proposed and invites a response.
- v. The NSW Department of Planning and Environment is encouraged to take every opportunity to reduce rather than add to complexity in the interests of improving usability.

1.2 Comment

- i. Willoughby Council supports reviews of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to improve implementation and performance of the policy.
- ii. While Council supports the improved outcomes that are intended under the Housekeeping Amendment, greater explanation should be provided on how these outcomes are to be monitored and resourced, and how the SEPP will be easier to use.
- iii. Concern is raised that greater responsibility will fall to local government to ensure compliance with exempt and complying provisions without appropriate resourcing (see in particular Point 2.7 Development near rail corridors below).
- iv. It should be noted that Willoughby Council supports the majority of the proposed amendments, subject to the comments raised in this submission.

2. Council Issues

2.1 Fences (certain residential zones and Zone RU5) (Subdivision 17)

Comment

- i. Changes are proposed to Subdivision 17 regarding fences under the General Exempt Development Code.
- ii. At present Subdivision 17, Clause 2.33 states:
"The construction or installation of a fence on land within Zone R1, R2, R3, R4 or RU5 is development specified for this code if it is not constructed or installed:
 - (a) on a lot, or along a common boundary of a lot, that contains a heritage item or a draft heritage item, or
 - (b) along the boundary of, or within the setback area of, a primary or secondary road within a heritage conservation area or draft heritage conservation area, or
 - (c) on a flood control lot, or
 - (d) on land that is identified as being in a foreshore area.*Note. If the fence is a dividing fence, the Dividing Fences Act 1991 also applies."*
- iii. The proposed amendment to Subdivision 17, Clause 2.33 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 park or walkway. This will apply to residential zones including the E4 Environmental Living zone.
- iv. Located within the City of Willoughby Council is Castlecrag, and within that the Griffin Heritage Conservation Area zoned E4 Environmental Living. This area has a number of public parks, bushland and walkways at the rear of residential dwellings. The purpose of the Willoughby Development Control Plan controls for the Griffin Heritage Conservation Area at Castlecrag is to conserve and promote the founding principles for the area the most significant example of which is the subordination of buildings in the landscape. The aim is to encourage development that upholds these principles by ensuring that new developments respect the predominant scale and form of the area and in particular, are sympathetic to any original houses designed by Walter Burley Griffin and his associates.
- v. Minimal fencing to these public spaces is an important part of the character of this unique area. Fencing to the rear of sites in this area is of as much importance as the fencing to a primary or secondary road.
- vi. The Griffin Heritage Conservation Area zoned E4 Environmental Living has Willoughby Development Control Plan provisions regarding fencing as follows:
"No fences or screens adjoining public reserves and pathways:
 - indigenous vegetation to be used to achieve privacy; and
 - where special security requirements can be demonstrated, fencing to a maximum of 1200mm may be permitted to be constructed of timber posts or metal frame posts with light weight open mesh infill. Acceptable styles include arris rail or piped rail and diagonal mesh, horse wire or childproof weldmesh in unpainted galvanised finish. Where bushfire prone land is identified non-combustible materials must be used."
- iv. Concern is raised with the proposed amendment and the openness of fencing to a public space of 20%. It is considered that greater fencing openness should be provided to ensure the expected fencing in this E4 zoned conservation area is indeed what is provided under the General Exempt Development Code.

In order to be consistent with fencing envisioned under the Willoughby Development Control Plan, it is requested that in relation to the E4 Environmental Living zoned Castlecrag Griffin Heritage Conservation Area, fencing facing a public space be light weight open mesh infill for the entire fence above the 400mm above ground level.

- vii. To this end, it is suggested that the E4 zoned Castlecrag Griffin Conservation Area be excluded with regard to fences facing a public space under the General Exempt Development Code. It is considered that the importance of the Griffin Conservation Area is such that a 'one size fits all' approach to fencing facing a public space is inappropriate.

2.2 Fences (certain rural zones, environment protection zones and Zone R5) (Subdivision 18)

Comment

- i. At present Subdivision 18, Clause 2.35 states:
"The construction or installation of a fence on land within Zone RU1, RU2, RU3, RU4 or RU6, an environment protection zone or Zone R5 is development specified for this code if it is not constructed or installed:
(a) on a lot, or along a common boundary of a lot, that contains a heritage item or a draft heritage item, or
(b) along the boundary of, or within the setback area of, a primary or secondary road within a heritage conservation area or draft heritage conservation area.
Note. If the fence is a dividing fence, the Dividing Fences Act 1991 also applies."
- ii. No objection is raised from the removal of "an environment protection zone" (being the E4 Environmental Living zone) from Subdivision 18, Clause 2.35 – as the E4 zone is now covered in Clause 2.33 as discussed above.

2.3 Fences for swimming pools (certain residential zones and Zone RU5) Subdivision 17A

Comment

- i. At present Clause 2.34A states:
"The construction or installation of a fence on land within Zone R1, R2, R3, R4 or RU5 is development specified for this code if it forms a barrier to a swimming pool."
- ii. Clause 2.34A should include the E4 zone, which involves residential development and therefore potentially swimming pools.
- iii. The same concerns exist as discussed above in Subdivision 17, Clause 2.33. It is considered that the E4 zoned Castlecrag Griffin Conservation Area be excluded with regard to swimming pool fences under the General Exempt Development Code. It is considered that the importance of the Griffin Conservation Area is such that a 'one size fits all' approach to swimming pool fencing is inappropriate.

2.4 Minor building alterations (external) under the General Exempt Development Code (Subdivision 27)

Comment

- i. No change is proposed to Subdivision 27.
- ii. Council is concerned with potential impacts of replacement roof cladding under the General Exempt Development Code.
- iii. It is considered that Clause 2.54 'Development Standards' require replacement roof cladding to be similar to the existing colour and have minimal glare.

2.5 Rainwater tanks (above ground in E4 zones) under the General Exempt Development Code (Subdivision 32)

Comment

- i. Council supports the amendment of 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.
- ii. Concern is raised that there is no height control for rainwater tanks when they are located greater than 450mm from the boundary.
- iii. It is considered that a satisfactory height control should be included in any amendment.

2.6 Gas Flue Heaters Currently not specified under the General Exempt Development Code

Comment

- i. It is considered appropriate for gas flue heaters to be provided for in the General Exempt Development Code, with appropriate development standards.

2.7 Development near rail corridors Currently not specified under the Complying Development Code

Comment

- i. Council supports the inclusion of, in the words of the 'Explanation of Intended Effect':
*"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.”

- ii. It is considered that a similar condition is warranted for development near road corridors under the Complying Development Code. Increasingly residential development is being located near road corridors to facilitate maximum usage of infrastructure and services such as public transport. Improved quality of such residential accommodation should be encouraged, and in particular noise impacts on amenity minimised.

2.8 Drainage under the Housing Code

Division 5 Development standards for associated works including earthworks, retaining walls, drainage, protection of walls, protection of trees and conditions under complying development certificates

Comment

- i. Note 2 in Clause 3.31 states:
“All stormwater drainage systems and connections to public drainage systems or inter-allotment drainage systems must either be approved under section 68 of the Local Government Act 1993 or comply with the requirements for the disposal of stormwater contained in the development control plan that is applicable to the land.”
- ii. It is considered that Note 2 in Clause 3.31 should be elevated in status from a Note to a Clause.
- iii. It is considered that the content of this Note is important with regard to immediate and wider potential impacts, however its status is diminished as a Note.
- iv. The Housekeeping amendment provides an opportunity to address this matter to achieve a better outcome.

