



18 July 2018

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

Our Ref: FP 85

Dear Sir / Madam

Housekeeping Amendments to the Codes SEPP

I refer to the Department of Planning's request for comments on the review of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the 'Codes SEPP'). Thank you for the opportunity to provide feedback on the proposed housekeeping amendments. The following comments are provided for your consideration.

1. Issuing of CDCs on Unregistered Lots

There is concern with the proposed issuing of deferred commencement Complying Development Certificates (CDCs) for dwellings on unregistered lots. The draft amendment states that the applicant must satisfy the council or certifier who issued the CDC that the lot legally created is identical to the lot on which the CDC relates. However, in practice this would mean that even a 100mm variation would then make the CDC approval unusable, thereby negating the advantage of receiving an earlier approval. It is possible that prior to registration the lot could change in dimension/area such that the dwelling design is no longer complying development.

In Council's experience, there are rarely instances where residential lots are registered without minor changes to the lot configuration and at best, this amendment saves homeowners only the usual 10-20 day CDC approval time. However, in the event that works start on the site under the deferral period, the application would be invalid and the matter would transfer to Council to resolve. A more balanced approach would be to enable a CDC to be issued once a subdivision certificate for the underlying subdivision is issued.

2. Demolition of Swimming Pools

There have been instances where certifiers have issued a CDC for the demolition of an inground swimming pool (rather than its removal), which involves the demolition of the coping, creation of drainage holes in the bottom of the pool and leaves the shell in the ground. It is recommended that the wording of Clause 7.2(4) be tightened to also refer to a pool that is partially demolished to ensure that clean fill or virgin excavated natural material is used as fill in all instances.

3. Fencing and Rainwater Tanks in E4 Environmental Living Zones

Concern is raised regarding the proposed amendments to fencing and above-ground rainwater tank standards for land in the E4 Environmental Living zone:

- The proposed changes will allow a greater extent of masonry fencing on land in the E4 Environmental Living zone as exempt development, and will remove the requirement for fencing to be predominantly of post-and-wire or post-and-rail construction.
- Fences will no longer be permitted as exempt development on land zoned E4 Environmental Living if the site is a flood control lot, which will affect a number of properties in The Hills Shire. The ability for landowners to erect electrical fences as exempt development in the E4 Environmental Living zone will also be lost.
- The changes will also significantly reduce the required setback for above – ground rainwater tanks in the E4 Environmental Living zone from 10 metres to 900mm from the lot boundary.

It is acknowledged that some E4 Environmental Living zoned land is more residential in character, and the abovementioned amendments may be appropriate in some circumstances. However, The Hills Shire has applied this zone in areas such as Glenhaven, Castle Hill (in the vicinity of the State-heritage listed Heritage Park) and West Pennant Hills that are characterised by typically larger lots that have special ecological characteristics. It is considered that a ‘one size fits all’ approach to exempt development for fencing and above-ground rainwater tanks in the E4 Environmental Living zone is not appropriate as it does not take into account the potential impacts on the visual amenity and the broad diversity of character that is found in such areas.

4. Awnings over Public Land

The State Government’s goal of improving the safety of awnings over public land is supported. However, the proposed requirement for all awnings to be certified by a structural engineer wherever exempt or complying works are being undertaken (regardless of whether the proposed works are to the awning or not) is likely to be difficult to police in practice.

5. Illuminated Real Estate Signs

The proposed amendments will introduce development standards for electronic or illuminated displays on private property, which is a significant change. Allowing a greater range of illuminated and electronic real estate displays in the local area as exempt development could adversely impact on the visual amenity and character of the local area. It is also noted the proposed exempt development standards do not include a requirement that electronic or illuminated signage be switched off late at night via a timer.

6. Retaining Walls

Development applications are being lodged for retaining walls on sites where an approval has been given for a dwelling as a CDC. The CDC approval may indicate retaining walls on the plans to adequately retain cut and/or fill, however, these structures do not form part of the CDC for the dwelling. As a consequence, CDCs are being issued for a dwelling or similar development that relies on retaining works, but those works do not form part of the CDC. For greater clarity, it is recommended that either the CDC should include these works, or the CDC plans should not detail such structures on the plans if they do not form part of the CDC approval.

Thank you for the opportunity to provide feedback on the proposed amendments. Please contact Bronwyn Inglis, Senior Town Planner on 9843 0531 if you require any additional information.

Yours faithfully



Stewart Seale
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