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ASSOCIATION OF ACCREDITED CERTIFIERS SUBMISSION
PROPOSED HOUSEKEEPING AMENDMENT to the STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT) 2008

Dear Lynne

Thank you for the opportunity to provide comment on the *Proposed housekeeping amendment to the State Environmental Planning Policy (Exempt and complying Development Codes) 2008*.

The Association of Accredited Certifiers (AAC) makes the following comments.

Deferred commencement

For each residential complying development code, 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 on which the CDC relates.

Recommendation: A condition on the deferred commencement CDC should in includes words to the affect that "*an Operational CDC needs to be issued prior to the commencement of works on site by an appropriately qualified accredited certifier after registration of the subject lot and consideration of a S10.7 Certificate issued by Council for the registered lot and any restrictions contained in an 88b instrument for the subdivided property which relate to the subject lot.*"

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.

Recommendation: The definition of cabana whilst well intentioned needs to be redefined so as not to exclude outdoor recreational buildings, which are associated with a swimming pool or entertaining area and may contain toilet and showers, or barbeque type cooking facilities (outdoor kitchen).

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

Recommendation: The S10.7 certificate form Council should provide information to identify properties near a rail or road corridor, which may require compliance with requirements for noise and vibration impact contained in the SEPP (Infrastructure) 2007.

Landslide hazard

Draft Policy Amendment: Amend clauses 1.19(1)(f) and 1.19(5)(g) to include 'a landslide hazard'.

This change should not apply to Part 5 of the Codes SEPP. For example, the LGA of Northern Beaches (Warringah Ward) is all classified as a Landslip Risk. Within the Warringah Ward is a large Westfield Shopping Centre.

This change would mean that a CDC could not be issued for a retail fitout or office fitout within this shopping centre as it is landslip, regardless of the fact there would be no risk as a fitout does not warrant any ground works. Any internal alterations or change of use should not be excluded as a result of the land being deemed landslip. There is no increased risk for such works and no benefit to Council of the government.

Recommendation: Remove 'a landslide hazard' from Part 5 of the Codes SEPP.

Safety of Existing Awnings Change

Draft Policy Amendment: Introduce development standards requiring compliance with Section B of Volume 1 of the Building Code of Australia for existing awnings over public land.

This change is not necessary. If a Council has a concern with an existing awning, it has the powers in place that can force a property owner to rectify the awning. It is an unworkable proposal to link this change to CDC for Commercial and Industrial Alterations.

To illustrate the issues, we provide these examples:

Example 1 - CDC for a small office fitout of a tenancy on Level 30 of an existing office tower, with multiple awnings on the ground floor over the street. Requiring Structural Certification of these is unrealistic and is an unreasonable expectation on the tenant. The awnings are so far remote from the works, it doesn't meet the reasonableness test.

Example 2 - Internal shop fitout to a small internal tenancy in a large shopping centre, with multiple awnings around the perimeter of the building. Requiring structural certification in this case is also unrealistic and unreasonable.

Example 3 – Large shopping centre with external awnings over public land, these types of buildings will have multiple CDC's lodged every month for internal fitouts, and as Structural confirmation to current BCA is required for each CDC, this will lead to multiple certifications from Structural engineers every month, not resulting in any additional safety but a lot of time and money for small business owners in paying for repeated structural engineering for the same awning over & over.

This change will potentially result in the reduction or stoppage the use of CDC for shop fitout in favour of a DA application, where the same conditions do not apply, or worse, with people avoiding the application process altogether and putting the public at risk. The avoidance of the approval process could have further implications that result in other non-compliances, such as travel distances or access to fire exits being missed because assessment and inspections are not being undertaken.

What evidence is there that this is a safety risk worthy of the imposition of this costly burden on development in this state, the cost benefit analysis of the deaths in the community from awning collapse over public areas to the cost of every CDC needing an expensive structural engineer to inspect and review should be clarified to the community. I would be surprised if this is a worthy spend of money to be passed onto the community

The assessment criteria proposed is also too onerous being the current NCC, structural standards, investigation and certification for an as built structure will be almost impossible for structural engineers. As fixing methods, bracing loads, support etc are all not able to be determined by a visual inspection. I would suggest that no structural engineer is able to confirm (without disclaimers) that an as built awning complies with the current NCC, leading to unnecessary upgrading as a result without any real benefit to the community.

Recommendations

Recommendation 1: Remove this change from the housekeeping changes as this is not a housekeeping change but a major change to the CDC process under the SEPP. This community safety issue should be regulated like other safety matters, compliant based from the community, or via council local area awareness of problem awnings in the community, and be retained as a need based upgrading / review via the normal Notice and Order process with councils. This linking to CDC's is unrealistic and unreasonable imposing too large a cost on small business owners undertaking CDC works which are most often unrelated to external awnings over public areas.

If the Department decides that this change is going to be brought in and not removed from the Housekeeping amendment, then the following recommendations are proposed:

Recommendation 1: That confirmation from a structural engineer be sought that confirms the awning is "*structurally adequate*", rather than complying with Part B1 of the NCC; ***and***

Recommendation 2: This change should only apply when the applicant for the CDC is a sole tenant or owner of the building, similar to Disabled Upgrade triggers under the Access to Premises standard; ***and***.

Recommendation 3: Place a time-frame of 12 months or every three years (similar to NCC changes), on the structural engineer's assessment of the awning so that the awning is not being reassessed every time a CDC Application is lodged and as such this is similar to an AFSS in that it has an inherent validity time period able to be relied upon.

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.

Recommendation: A definition as to what constitutes "*non-structural decking*" in clause 2.53 must be included.

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 change will create a two-speed approval process. There must be a clear definition for "*risk of contamination*", as ambiguous interpretation will result in a reduction of Demolition CDCs. For example, asbestos removal, even if undertaken by a licenced asbestos contractor, has a 'risk' of contamination and therefore cannot be undertaken as a CDC.

If contamination is the concern, a better solution would be to have a Hazardous risk register, with the methodology of removal and disposal, instead of a blanket ban on CDC.

Align CDC and DA approvals with the same end i.e. that of checking and ensuring best practice, rather than stopping CDCs altogether.

No Clear definition of Risk and Contamination in the SEPP, these should both be defined terms

- Risk – is this the risk of the materials leaving the site, leaving the area of works, leaving the suburb, this should be clearly defined so that it can be measured and easily assessed. I would think that the risk should relate to contaminates leaving the site the subject of the CDC, and is something that can be given to demolition contractors to manage.
- Contamination – this should list materials or contaminates that this relates to, and then over time as new materials become identified as a risk to human health they can be added to, for example Asbestos was originally not viewed as a problem, and then later on it was found to be an issue to human health. Without clear criteria retrospective liability for Accredited Certifiers will occur as new health risks are found and so future knowledge and rear view mirror litigation is likely further destabilising the certification industry.
- As at the moment this proposed test is very open ended and so is open to very open interpretations, it should be a black and white assessment criteria to enable a black and white assessment by the engaged Accredited Certifier to be able to assess to.

This doesn't appear to be a "Housekeeping" change, but more of a dramatic change to the Demolition code that appears its intent is to force demolition down DA pathways, rather than actually addressing the issue of management of contamination during demolition.

Recommendations

Recommendation 1: Make it requirement to obtain/provide a Hazardous Materials Register and demolition/disposable methodology for any contamination found on site to be a mandatory condition of the CDC rather than move the approval process to a DA Application.

Recommendation 2: Provide a clear definition of what is meant by 'risk' and 'contamination' in the SEPP so that its clear as to what materials are deemed to be contaminated and how the risk is measured.

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:
- clean fill or virgin excavated natural material as defined in Part 3 of Schedule 1 of the Protection of the Environment Operations Act 1997
- 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*

Recommendation: The term "*clean fill*" must be defined under the amendment to clause 7.2(4) or otherwise removed.

Additional matters for consideration

Clause 3.2

Clause 3.2 should be amended to allow minor encroachment into easements for maintenance as complying development. Currently there cannot be complying development with any encroachment over easement.

Recommendation: Clause 3.2(d) of the Housing Code needs to be amended to read "*the erection of a building over a registered easement except where permitted by an Environmental Planning Instrument or Restriction contained within an 88b instrument for subdivision of land*."

If you would like to discuss any of these issues discussed further, please contact me on 1300 735 935 or email jbrookfield@accreditedcertifiers.com.au.

Yours sincerely

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Executive Officer