



HOUSING INDUSTRY ASSOCIATION



# Housing Australians



## Reforming Building & Planning Laws

Submission to the Department of Planning and Environment

### Housekeeping Amendments to the Codes SEPP

19 July 2018



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## ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 40,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

*“promote policies and provide services which enhance our members’ business practices, products and profitability, consistent with the highest standards of professional and commercial conduct.”*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 23 centres around the nation providing a wide range of advocacy, business support including services and products to members, technical and compliance advice, training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

## 1.0 INTRODUCTION

The Housing Industry Association (HIA) welcomes the opportunity to comment on the proposed housekeeping amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

Our members heavily rely on the Codes SEPP to undertake building projects as either exempt or complying development. Initiatives which deliver improvements to the operation and useability of the Codes SEPP are welcomed. In particular, HIA urges the Department of Planning and Environment (the Department) to continuously review the Codes SEPP to ensure it helps to reduce red tape, save time and cuts development costs.

This submission is based on the Explanation of Intended Effect (EIE) prepared by the Department in accordance with section 3.30 of the *Environmental Planning and Assessment Act 1979* (the Act). On page 7 of the EIE it is states that the proposed amendments will:

- Clarify a number of existing defined terms and introducing new definitions;
- 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
- Correcting minor clause references and typographic errors.

The Codes SEPP must have clearly defined terms that where possible are consistent with those in use within other instruments (eg Standard Instrument LEP Order and the Act). Proposals to remove inconsistent and ambiguous definitions are supported. It is important that the clauses and requirements contained within the document are effective and achieve their policy intent. Where minor and typographic errors are discovered within the Codes SEPP, they should be corrected as soon as possible. The objectives behind the proposed housekeeping amendment are sound.

As more than 50 individual changes are proposed to the Codes SEPP, this submission responds to each individual basis. The order of our response is those affecting the policy as a whole, those affecting the exempt development codes and then those addressing the complying development codes.



## 2.0 PROPOSED HOUSEKEEPING AMENDMENTS

The following comments are provided in respect of the housekeeping amendments to the Codes SEPP:

### 2.1 WHOLE POLICY

#### 2.1.1 *Minor amendments and errors*

The EIE states the Amending SEPP will introduce minor amendments to improve the operation of the policy and improve the policy intent of certain provisions. Drafting errors will be corrected, existing diagrams updated and new diagrams incorporated. In the absence of detail regarding where the changes are to be made, it is difficult to provide specific feedback. In general terms this proposal is supported.

#### 2.1.2 *Gross Floor Area Definition*

The EIE proposes to amend the Codes SEPP to clarify when calculating Gross Floor Area (GFA) that the maximum size of one (1) car parking space to be excluded from each dwelling is 18sqm. This proposal will clarify the ambiguity regarding this definition and is supported.

#### 2.1.3 *Outbuildings*

The EIE proposes to amend the definition of *outbuilding* in clause 1.5 of the Codes SEPP by replacing 'class 10a building under the Building Code of Australia (BCA)' with 'non-habitable building'. The reason stated for the change is that not all buildings listed as outbuildings are Class 10a. This proposed change is appropriate and is supported.

#### 2.1.4 *Environmentally sensitive land*

The EIE proposes the insertion of a definition into clause 1.5 of the Codes SEPP for *Environmentally sensitive land*. The proposed definition reads as follows; "Environmentally sensitive land is land identified within an environmental planning instrument as environmentally sensitive land". The *Standard Instrument (Local Environmental Plan) Order 2006*, which is the template used for all local environmental plans in NSW, does not have a definition for Environmentally sensitive land. Instead it refers to 'Environmentally sensitive area'. It would make sense for the Codes SEPP definition to be consistent with the Standard Instrument LEP Order. Therefore it is recommended that the proposal be amended to reflect the definition used in the Standard Instrument LEP Order.

#### 2.1.5 *Pathways*

The EIE proposes the insertion of a definition of *pathway* into clause 1.5 of the Codes SEPP. The proposed definition is 'a path but does not include a stairway, stairs or the like'. The intention of this change is to make it clear that the construction of a pathway as exempt development does not include a stairway. The provision of a clearer interpretation of this term is supported.

#### 2.1.6 *Stairway*

The EIE proposes inserting a definition of *stairway* into clause 1.5 of the Codes SEPP. The proposed definition is 'a series or flight of stairs'. The purpose of this change is to introduce a definition distinct from a pathway. The definition will align with the BCA definition for a flight of stairs. It is appropriate that the Codes SEPP adopt same definitions found in the BCA where there is overlap. This measure is supported.



### **2.1.7 Calculating lot area**

The EIE proposes an amendment of the Codes SEPP by the inclusion of a provision clarifying the calculation of lot area. The proposal clarifies the way the area of a lot is determined by making it clear that the area of any land on the lot that may be subject to a land-based exclusion is included. It is appropriate that the whole area of a lot is included in the calculation of lot area despite the presence of a land-based exclusion. This proposal is supported.

### **2.1.8 Safety of existing awnings**

The EIE indicates this proposal will introduce development standards requiring compliance with Section B of Volume 1 of the BCA for any existing awning over public land. It is intended to require certification by a structural engineer that an existing awning projecting over a public road or footpath complies with the relevant part of the BCA whenever exempt or complying development works are being undertaken, regardless of whether the proposed works are to the awning or not.

Safety of existing awnings over public land (mostly shop awnings over footpaths) is an important issue and there have been a number of cases where falling awnings these resulted in serious injuries. This issue was subject of a Planning Circular issued by the Department of Planning and Infrastructure (BS 13-001) in March 2013. The circular required local councils to establish programs to educate building owners of their responsibilities to maintain and repair their awnings. The EIE does not explain whether local councils have satisfactorily implemented this program or if building owners have failed to maintain awnings erected over public land.

This proposal will involve a significant expense being incurred for relatively minor building works which may have no relevance to the building's awning over the footpath. Proceeding with this proposal may become a deterrent to the use of exempt and complying development. Other measures such as annual inspections independent of unrelated building work should be considered by the Department. This proposal is not supported and should not proceed.

## **2.2 EXEMPT DEVELOPMENT (PART 2 CODES)**

### **2.2.1 Cabanas**

The EIE proposes inserting a definition of Cabana into Part 2 of the Codes SEPP. It is also intended to clarify that a cabana carried out as exempt development cannot include either a shower/bathroom facilities or a kitchenette/cooking facilities. The complying development pathway is available for a cabana where a water/sewerage connection is required. This change is appropriate and is supported.

### **2.2.2 Floor space**

The EIE proposes amending clause 2.30AB of the Codes SEPP relating to emergency work and temporary repairs. The change will replace the undefined term Floor space with Floor area which is defined in the policy (in respect to complying development). As it is also proposed to insert a definition into the policy for Floor area applying to exempt development, this amendment is appropriate. The proposed change is supported.

### **2.2.3 Floor Area**

The EIE proposes the amendment of several provisions contained within Part 2 of the Codes SEPP to amend the definition of Floor area to extend to all development carried out under the exempt development codes.



At present there are 3 definitions of ‘Floor area’ in the Codes that apply to the complying development codes and no specific definition applying to exempt development. These definitions are reproduced in the following table:

| Definition 1  | Definition 2  | Definition 3  |
|---|---|---|
| <p><b>Floor area</b>, for a balcony, deck, patio, pergola, terrace or verandah referred to in Part 3, 3A, 3B, 3C or 4, means the area of the balcony, deck, patio, pergola, terrace or verandah, measured at the floor level, within the outer face of:</p> <p>(a) the external walls if the balcony, deck, patio, pergola, terrace or verandah is enclosed, or</p> <p>(b) the balustrade or other safety barrier if the balcony, deck, patio, pergola, terrace or verandah, is not enclosed.</p> | <p><b>Floor area</b>, for a dwelling house referred to in Part 3, 3A, 3C or 4, means the sum of the areas of each storey of the dwelling house and any carport, garage, balcony, deck, patio, pergola, terrace or verandah, measured at a height of 1.4m above each floor level, that is within the outer face of:</p> <p>(a) the external walls of the dwelling house, and</p> <p>(b) the walls of the carport, garage, balcony, deck, patio, pergola, terrace or verandah, but does not include any of the following:</p> <p>(c) any part of an awning, blind or canopy that is outside the outer wall of a building,</p> <p>(d) the eaves,</p> <p>(e) a lift shaft,</p> <p>(f) a stairway,</p> <p>(g) a void above a lower storey.</p> | <p><b>Floor area</b>, for an outbuilding referred to in Part 3, 3A, 3C or 4, means the sum of the areas of each storey of the outbuilding, measured at a height of 1.4m above each floor level, within the outer face of:</p> <p>(a) the external walls of the outbuilding if it is enclosed, or</p> <p>(b) the supporting columns or posts of the outbuilding if it is not enclosed, but does not include any of the following:</p> <p>(c) any part of an awning, blind or canopy that is outside the outer wall of a building,</p> <p>(d) the eaves,</p> <p>(e) a stairway.</p> |

It would be preferable that a single definition of Floor area is applied to all complying development codes rather than insert separate definitions for ancillary structures, dwelling houses and outbuildings.

#### 2.2.4 Street Libraries

The EIE proposes the amendment of Part 2 of the Codes SEPP to insert a new subdivision permitting Street libraries on private land as exempt development. These are small structures capable of holding a collection of books for neighbours to share. The change delivers a reasonable outcome for those wishing to erect a street library on their property. The amendment is supported.

#### 2.2.5 Stairway

The EIE proposes the amendment of Part 2 of the Codes SEPP by inserting a new subdivision to permit the construction of Stairs or a Stairway as an exempt development where they are constructed in association with a balcony, deck, patio, pergola, terrace or veranda. The new clause will provide a set of development standards to be met to reduce any impact on neighbour amenity and privacy.

It is important that any stairs constructed as exempt development comply with the relevant provisions of the BCA, particularly the requirement for landings. Although compliance with the BCA is a requirement of clause 1.19(1)(a) of the Codes SEPP, a note advising of this should be inserted into the subdivision.





The change delivers a reasonable outcome for those building balconies, decks, patios and verandas. The proposed measure is supported.

### **2.2.6 Carport height**

The EIE proposes amending clause 2.20(1) of the Codes SEPP to specify the maximum height of a carport attached to a dwelling permitted as exempt development. The clause will be altered to specify 3.0 metres or the roof gutter line of the dwelling. This proposal delivers a reasonable outcome. The change is supported.

### **2.2.7 Fences facing a public space**

The EIE proposes amending clause 2.34 of the Codes SEPP to require any front boundary fence facing a public space (park or walkway) must meet the requirements of clause 2.34(2). This is intended to apply the requirements for front fences to land facing public spaces such as walkways and public parks. This change delivers a reasonable outcome. The amendment is supported.

### **2.2.8 Fences in E4 zones**

The EIE proposes the amendment of Subdivision 17 of Part 2 of the Codes SEPP to include E4 zones and Subdivision 18 of Part 2 to exclude E4 zones. At present the only types of fences permitted as exempt development in environmental protection zones (E zones) are 1.8m high post & rail or post and wire construction. This change is being made to bring the standards for exempt fences into line with those for residential zones. Under the circumstances this proposal delivers a reasonable outcome. The amendment is supported.

### **2.2.9 Non-structural decking**

The EIE proposes the amendment of clauses 2.53 and 2.54 of the Codes SEPP to allow the replacement of non-structural decking as exempt development. The EIE does not state what is meant by non-structural decking. As it is possible to erect a deck/patio/balcony using complying development, including the necessary structural elements to support the structure, it is not clear why it is necessary to allow replacement of non-structural decking as exempt development. This makes it difficult for HIA to provide the Department with comments on this change to the Codes SEPP.

### **2.2.10 Playground equipment**

The EIE proposes to insert a note into clause 2.57 of the Codes SEPP to clarify that playground equipment on private land refers to children's play equipment such as swings, slides, trampolines and the like, but does not include a skateboard ramp. Due to the impacts associated with skateboard ramps, they are not suitable as exempt development and more detailed planning assessments are required. On this basis the proposed amendment is supported.

### **2.2.11 Rainwater tanks (aboveground in E4 zones)**

The EIE proposes to amend clause 2.64 of the Codes SEPP to allow above ground rainwater tanks in E4 zones if they are located at least 900mm from each lot boundary. This is a reduction from the current 10m setback requirement. Unlike other environmental protection zones, the E4 zone is very similar in character to a low density residential zone. The proposal is reasonable under the circumstances. The amendment is supported.



### **2.2.12 Tennis court fences**

The EIE proposes to amend the title of Part 2 Division 1 subdivision 39B of the Codes SEPP from 'Tennis courts' to 'Tennis courts and tennis court fences'. This proposal will clarify that tennis court fences are allowed as exempt development on lots of at least 1ha in a rural zone or R5 zone provided they satisfy the relevant standards. This measure will clarify an existing provision within the policy and is an improvement. It will deliver an appropriate outcome for those undertaking this type of work as exempt development. Accordingly, the change is supported.

### **2.2.13 Temporary use**

The EIE proposes the amendment of several clauses of the Codes SEPP relating to temporary use (Part 2 Division 3) to clarify that a temporary use is exempt development where a temporary structure is constructed or installed as exempt development. This change will provide certainty regarding the status of certain temporary uses. This proposal delivers a reasonable outcome. The amendment is supported.

### **2.2.14 Illuminated real estate signs**

The EIE is proposing to amend Part 2 Subdivision 12 of the Codes SEPP relating to real estate signs. It will require illuminated and electronic displays on private property to meet certain standards to avoid them becoming a distraction to drivers and pedestrians. HIA does not have any comments to make regarding this change.

### **2.2.15 Signage on cranes**

The EIE is proposing to make an amendment to Part 2 Subdivision 3 of the Codes SEPP by the insertion a new subdivision which allows signage affixed onto cranes as exempt development provided certain conditions are satisfied. HIA is of the view that the erection and operation of any crane on a building site is approved under the primary development consent issued for the redevelopment of the site. Any signage on the sign should be regulated under the development consent by the local council. It is unclear why this needs to be regulated using exempt development codes.

## **2.3 COMPLYING DEVELOPMENT**

### **2.3.1 Acid Sulfate Soils**

The EIE proposes inserting a note to clarify that complying development is permitted on those parts of a site/lot that are not mapped as either Class 1 or Class 2 on an Acid Sulfate Soils (ASS) map. Clause 1.19(1)(c) of the Codes SEPP prevents the carrying out of complying development on land identified on an ASS map as being Class 1 or Class 2. The purpose of the amendment is to clarify that complying development is allowed on other parts of the site/lot that are not Class 1 or Class 2. This amendment delivers a reasonable outcome. The proposed measure is supported.



### **2.3.2 Contaminated land**

The EIE proposes to amend clause 1.19(1)(e) to include a new subclause that will extend the current restriction on complying development on significantly contaminated land beyond development under the Commercial and Industrial Codes to all complying development codes. This amendment delivers a reasonable outcome. The proposed amendment is supported.

### **2.3.3 Development near rail corridors**

The EIE proposes the insertion of a condition for complying development into the Codes SEPP where the development is proposed in or adjacent to a rail corridor and is for the purposes of residential accommodation. The new condition requires that appropriate measures be taken to ensure that acceptable maximum internal noise levels for bedrooms between 10pm and 7am (35dB(A)) and other habitable room (40dB(A)) are not exceeded. The condition will replicate the noise criteria found in clause 87(3) of State Environmental Planning Policy (Infrastructure) 2007. This amendment delivers an acceptable level of amenity for existing and future residents living near a railway line. The change is supported.

### **2.3.4 Landslide hazard**

The EIE proposes the exclusion of landslide hazard from complying development. This will be achieved by amending clause 1.19(1)(f) and 1.19(5)(g) of the Codes SEPP to include Landslide hazard that is identified by an environmental planning instrument. In most cases land affected by an environmental constraint is not suitable for complying development. Merit assessment is the more appropriate pathway for land affected by landslide hazards as it provides an opportunity to carry out a risk assessment. The proposed amendment is considered appropriate. The proposed change is supported.

### **2.3.5 Mosman temporary exclusion**

The EIE proposes an amendment of clause 1.19(3)(a) of the Codes SEPP that will extend for a further 2 years the time in which clause 1.19(2) applies to the local government area of Mosman. Currently this clause excludes part of the Mosman local government area from the operation of the Housing Code and the Low Rise Medium Density Housing Code until 30 November 2018. If the amendment is supported the exclusion will operate until 30 November 2020.

Based on the information provided in the EIE it is not clear why Mosman Council was initially granted an exemption from the State-wide complying development provisions or why a further extension is needed.

HIA is strongly opposed to the use of local exemptions from the State-wide exempt and complying development controls. This leads to uncertainty and confusion for users undertaking exempt and complying development. This measure is not supported.

### **2.4.1 Deferred Commencement**

The EIE proposes to include a new condition for deferred commencement into each residential complying development code. Following legislative changes that provided for deferred commencement complying development certificates (CDC), the standard conditions applying to the issue of a CDC required an update to reflect the changes in legislation and guide the deferred commencement process. The change will apply where a CDC is issued before a lot is legally created and require the applicant to satisfy the local council or certifier who issued the certificate that the lot legally created is identical to the lot on which the CDC relates. The proposed amendment delivers a reasonable outcome. The change is supported.



### **2.4.2 Complying development carried out on single lot**

The EIE proposes the insertion of a clause that a single dwelling cannot be built across multiple lots under complying development. It will prohibit a dwelling ‘stretching’ across two or more lots from being undertaken using a CDC.

It is presumed that this is will remain possible under the Development Application pathway. As the EIE does not state why this requirement is necessary, it is difficult to determine whether this is a good outcome or not. If there are valid planning grounds for a CDC to allow the development of a single dwelling house spanning across multiple lots, they are not identified in the EIE.

HIA can see no reason for preventing a single dwelling to be developed over multiple lots using complying development. Without a clear explanation for this amendment, it appears to be excessive regulation. This measure is opposed.

### **2.4.3 Exceptions to setbacks**

The EIE proposes the amendment of clauses 3.10(14), 3.21(11) and 3A.19(a) to mitigate overshadowing and amenity impacts on public reserves from detached garages and studios. It is stated in the EIE that this change will reinstate a requirement from the General Housing Code that was replaced by the Simplified Housing Code in July 2017. The amendment will propose detached garages and studios to be set back 3.0m from public reserves.

The Simplified Housing Code currently requires a 3.0m setback from a boundary with a public reserve for attached and detached development. It is unclear why this change is needed for clause 3.10(14) as this subdivision relates to dwellings and attached development and this clause has an existing requirement regarding a 3.0m setback from a boundary with a public reserve. The current Clause 3.21(11) provides a minimum 3.0m setback from a public reserve for detached development, including garages. The Rural Housing Code at clause 3A.19(a) also requires a minimum setback of 3.0m from a boundary with a public reserve for a new dwelling house or outbuilding. On this basis, the proposed measure is unnecessary and is opposed.

### **2.4.4 Minimum setbacks**

The EIE proposes the amendment of the clauses relating to parallel road setbacks and public road setbacks (eg. 3.10(12) and 3.10(14)) to clarify that they apply only to any ‘lesser’ standard, rather than any ‘other’ standard, for a setback. Any larger setbacks, such as rear setbacks, will still apply. This change ensures that dwellings are set back appropriate distances from parallel roads and public reserves and is supported.

## **2.5 COMPLYING DEVELOPMENT (PART 3 - HOUSING CODE)**

### **2.5.1 Building Design**

The EIE proposes the amendment of clause 3.14(2) of the Codes SEPP to clarify that only the window facing the primary or parallel road needs to be a habitable room. The door facing the primary or parallel road does not need to be to a habitable room. This amendment delivers a reasonable outcome. This change is supported.



### **2.5.2 Carparking and access**

The EIE proposes an amendment of the table to clause 3.16(5) of the Codes SEPP to address off-street parking where the dwelling is located exactly 4.5m from the primary road. This corrects an anomaly in the current clause which provides a required setback for dwellings that are less than and a setback for dwellings that are greater than 4.5m but no setback requirement for those exactly 4.5m from the road. This amendment delivers a reasonable outcome. The change is supported.

### **2.5.3 Swimming pool setbacks from secondary roads**

The EIE proposes an amendment to clause 3.38 of the Codes SEPP to align secondary road setbacks for swimming pools with the secondary road setbacks for the dwelling house under the current Housing Code (eg 2.0m for lots in area between 200sqm & 600sqm, 3.0m for lots in area between 600sqm to 1,500sqm and 5.0m for lots in area over 1,500sqm). This amendment delivers a reasonable outcome. The proposed measure is supported.

### **2.5.4 Excavation in acid sulfate soil**

The EIE proposes an amendment to clause 3.30 of the Codes SEPP to permit excavation exceeding 1m on land identified as Class 3 or Class 4 on an Acid Sulfate Soils map where a qualified geotechnical engineer has certified that the development proposed is not on land affected by acid sulfate soil. The proposed measure delivers a reasonable outcome and is supported.

### **2.5.5 Cut and fill**

The EIE proposes an amendment to clause 3.30(3) of the Codes SEPP to clarify that the term 'fill' includes fill contained within a drop edge beam, except where the fill is wholly contained within the footprint of the dwelling house, any attached development or detached development. Currently the amount of fill under a dwelling house is unlimited (refer to Clause 3.30(4)).

The proposal excludes any fill contained within a drop edge beam (wholly contained within the footprint of the dwelling house) from any calculation of height of fill material. The proposed measure addresses an issue raised by HIA members previously regarding fill placed on a building site above the Ground Level (Existing). This amendment is supported.

### **2.5.6 Protected trees**

The EIE proposes the omission of the words 'on the lot' from clause 3.33(2) of the Codes SEPP to ensure that dwelling houses, attached development and detached development are adequately setback from any protected tree on the lot and on any adjoining lot. This proposal delivers a reasonable outcome. The amendment is supported.

## **2.6 COMPLYING DEVELOPMENT (PART 4 - HOUSING ALTERATIONS CODE)**

### **2.6.1 Internal alterations to Residential Flat Buildings**

The EIE proposes an amendment to clause 4.2 of the Codes SEPP to include a new development standard that internal alterations must not result in a change to the number of bedrooms within a Residential Flat Building. This amendment delivers a reasonable outcome. The change is supported.



### **2.6.2 Attic dormers**

The EIE proposes an amendment to clause 4.6(2)(e) of the Codes SEPP applying to attic conversions. The proposed measure seeks to clarify that the restrictions only apply if the dormer is facing the side or the rear of the building. Dormer windows will continue to be permitted at the front of a home without restriction (except for heritage conservation areas). This amendment delivers a reasonable outcome. The change is supported.

## **2.7 COMPLYING DEVELOPMENT (PART 7 - DEMOLITION CODE)**

### **2.7.1 Contamination from demolition**

The EIE proposes an amendment to clause 7.2(1) of the Codes SEPP to clarify that demolition which poses a risk of contamination is not development for the purposes of the Code. This will avoid demolition which carries a risk of contamination, not being carried out as complying development. This amendment delivers a reasonable outcome. The proposal is supported.

### **2.7.2 Wall on adjoining lot**

The EIE proposes an amendment to clause 7.2(2) of the Codes SEPP to clarify that a professional engineer's report is required where complying development involves the demolition or removal of a wall to a boundary that has a wall on an adjoining lot which is less than 900mm from the boundary. The report shall detail any necessary method of maintaining support for the adjoining wall.

HIA has concerns with what is currently proposed and requests the Department give the measure further consideration.

In some cases, this requirement may be a necessary requirement before allowing demolition under the code and in other cases, it may be an excessive and expensive burden.

A scenario where it may be valid is where there is a poorly constructed wall on the neighbouring land which is about 200mm from the boundary and that wall relies on the wall to be demolished for support. In this case, a professional engineer's report would aid to maintain support for the neighbouring wall.

Another scenario could be where there is a well-constructed wall on the adjoining lot about 800mm from the boundary. In this case, the neighbouring wall should not be the responsibility of the neighbour undertaking the demolition work.

Because the implementation of the proposed measure will involve a significant additional cost to undertaking complying development, we request the Department to review the proposed setback distance to better reflect the risk involved with this type of demolition work.

The change is not supported.

### **2.7.3 Demolition – Issue 1**

The EIE proposes an amendment to clause 7.1(1)(a) of the Codes SEPP to replace 'dwelling' with 'dwelling house or secondary dwelling'. This change is proposed to clarify the policy intent that the demolition code only allows for the demolition of dwelling houses and secondary dwellings. This amendment delivers a reasonable outcome. The proposed measure is supported.



### **2.7.4 Demolition – Issue 2**

The EIE proposes an amendment to clause 7.2(4) of the Codes SEPP to impose additional development standards where a swimming pool has been removed and fill is required to be imported onto the site. This change imposes appropriate measures to ensure that the fill brought onto the site is not contaminated and properly compacted. This amendment delivers a reasonable outcome. The change is supported.

## **2.8 COMPLYING DEVELOPMENT (PART 5 - COMMERCIAL AND INDUSTRIAL ALTERATIONS CODE)**

### **2.8.1 Gym (recreation facility indoor)**

The EIE proposes an amendment to clause 5.5(1) of the Codes SEPP to insert a new clause to apply to Recreation Facility (indoor) to exclude these land uses from complying development for the first use of a premises. HIA has no comment in respect to this proposed measure.

### **2.8.2 Projecting wall signs**

The EIE proposes an amendment to clause 5.14 of the Codes SEPP to insert a minimum height of 2.6m above footways as an additional development standard that must be met. HIA has no comment in respect to this proposed measure.

## **2.9 COMPLYING DEVELOPMENT (PART 5A COMMERCIAL AND INDUSTRIAL (NEW BUILDINGS AND ADDITIONS) CODE)**

### **2.9.1 Warehouse or distribution centres**

The EIE proposes amending clause 5A.4 of the Codes SEPP to apply subclauses (b) and (c) to a warehouse or distribution centre. The purpose of the amendment is to allow additions and external alterations to an existing building used as a warehouse or distribution centre to be carried out under the Commercial and Industrial Code. HIA has no comment in respect to this proposed measure.

### 3.0 CONCLUSION

The proposed housekeeping amendments outlined in the EIE are generally positive and will improve the take up and operation of the Codes SEPP.

A number of the changes under consideration have not been fully explained in the EIE and we request the Department to either provide more detail or review the proposed measures. Particularly in respect of the changes to safety of existing awnings, demolition of adjoin walls, setback from public reserves and homes spanning more than one lot. The proposed granting of an extension to Mosman Council's exemption from the Housing Code is not supported.

It is important that the exempt and complying development provisions in the Codes SEPP are clear and well understood to ensure that they are used correctly and mistakes are avoided. As many users of exempt development such as land owners and builders have little or no planning expertise, the definitions and requirements need to be in plain English and avoid ambiguity. In most cases, the proposed measures seek to provide improved clarity. There are several measures proposed where minor changes to the proposed amendments have been recommended.

HIA would be happy to meet with the Department to discuss our concerns with the measures not supported.

