



SUBJECT: Submission - State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2015

Meeting: Sustainable Towns & Villages Committee **Date:** 21 December 2015

COMMUNITY STRATEGIC PLAN STRATEGY: Land Use & Development

COMMUNITY STRATEGIC PLAN OBJECTIVE: To effectively respond to state and regional planning initiatives

DELIVERY PROGRAM ACTION: Monitor legislative and regulatory reforms relating to land use planning and respond and advocate on behalf of Council

1.0 EXECUTIVE SUMMARY

In 2008 the Department of Planning and Environment (The Department) introduced the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This legislation was introduced to give effect to two major changes. The first change was to introduce a state-wide policy covering works could be done without the need for Council approval as 'Exempt Development'. The second effect was to introduce 'Complying Development'. Complying Development is a code based assessment pathway for a range of development types including alterations and additions, new dwellings and granny flats that can be undertaken by Councils or licensed private certifiers.

On the 10th of October 2015 the Department announced it is preparing to amend the legislation to give effect to a number of changes. Some changes are considered minor involving the rewording or clauses of minor adjustments in definitions or clause ordering. However, there are number of other amendments that are considered a substantial shift away from the original premise of Complying Development as well as outstanding concerns over a number of issues. The proposed amendments will also impose changes to other legislation including the State Environmental Planning Policy (Affordable Rental Housing).

The proposed amendments were on exhibition from the 19th of October until the 16th of November. Council staff prepared a submission outlining specific area of concern and implications for the Pittwater Local Government Area. Given the limited exhibition period, Councils submission was not able to be reported to Council prior to being submitted to the Department of Planning and Environment.

2.0 RECOMMENDATION

That Council note, the submission made by staff in relation to the State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2015, (at Attachment 1).

3.0 BACKGROUND

3.1 PURPOSE

The purpose of this report is to:

- Inform Council of the proposed changes to the (Exempt and Complying Codes) announced by the Department of Planning & Environment (The Department), and
- Outline the issues and implications for Pittwater Local Government area as a consequence of the proposed amendments

3.2 HISTORY

In 2008 the Department of Planning and Environment (The Department) introduced the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to introduce two substantial changes to the NSW planning system. The first was to establish a state-wide policy on minor development that did not require development approval. The second was the introduction of state-wide Complying Development to provide a quick approval process for larger development with minor impacts.

Exempt Development covers minor development that is deemed not to need approval. This includes minor works such as balconies and decking, driveways, garden sheds and fencing. It also covers minor excavation, signage and carports. Before the introduction of the Exempt and Complying Development Codes, each Council established their own policy on what work was considered minor and exempt from approval.

Complying Development was introduced to provide a streamlined development approval process based on a state-wide code assessment of larger development types. Development under this assessment pathway is required to meet all of the predetermined requirements as stipulated in the Code. The approval issued under this system is referred to as a Complying Development Certificate (CDC) and acts as development consent and approval to commence works. Complying Development includes substantial alterations and additions to existing dwellings, new dwellings up to two storeys in height, or ancillary development such as pools and garages.

The Department is now seeking to make substantial amendments to the Exempt and Complying Development legislation and subsequent changes to other relevant legislation. The majority of changes are considered minor, providing further clarification, rewording or ordering of clauses. They relate to such things as clarifying areas of confusion in the legislation through rewording or ordering of clauses or the removal of clauses that are no longer relevant. However there are a number of changes that are considered to be either a major deviation from the principles of complying development or an expansion of complying development that will have a significant impact upon the Pittwater Local Government Area. These changes are discussed in detail in Section **4.0 Key Issues**.

3.3 POLICY IMPLICATIONS

There are direct policy implications associated with the Proposed Amendment Order as a consequence of permitted uses in certain zones, and building height limits

3.4 RELATED LEGISLATION

The proposed Amendment to the Exempt and Complying Development Codes will involve changes to legislation, including State Environmental Planning Policy (SEPP) Affordable Rental Housing and SEPP Infrastructure.

3.5 FINANCIAL ISSUES

3.5.1 Budget

The proposed amendments will have an impact upon the Strategic Planning budget, however the proposed work can be accommodated within current budgetary allocations

3.5.2 Resources Implications

The Review of the proposed Amendment Order will require the allocation of staff responding however this can be accommodated within current budgetary allocations.

4.0 KEY ISSUES

In reviewing the State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) staff have identified eight substantial changes in the application of the Code, or a change in established standards.

4.1 Site Coverage

The first change proposed in the amendment order relates to what constitutes site coverage. This change seeks to clarify the calculation of site coverage and confirms what is in and what is out. This is important as under the policy, site coverage is set on a sliding scale and complying development can only be used on lots that are 200sqm or greater in size. The proposed will no longer use the Standard Instrument (Local Environmental Plan) definition of site coverage and to introduce a new definition into the code.

Concern is raised regarding the new definition of site coverage as it will remove driveways, swimming pools and any deck, balcony, pergola, terrace or verandah attached to a dwelling house and not enclosed by a wall higher than 1.4m from the purpose of calculation in site coverage. Exclusion of these works has the potential to lead to development covering entire lots.

4.2 Clause 2.75 Subdivision

The second change relates to clause 2.75 Subdivision for boundary adjustments. The amendment seeks to remove the requirement for undersized lots to become larger. This is not supported. Under the current requirements, boundary adjustments on lots smaller than the minimum lot size can only be undertaken where they will become larger. The proposed amendments open up the opportunity for existing undersized lots to become smaller, and reduce natural and landscaped areas.

4.3 Encroachment of certain building works into easements

The proposed amendments also include provisions for certain building works to encroach on registered easements, provided they do not violate the terms of the easement. This includes building works such as aerials, awnings, eaves, flues, chimneys and heating or cooling appliances. These works must be located 1 metre above the ground and not exceed the maximum height limit.

This clause is not supported as most easements when registered will not have provisions preventing specific works and would be relying on general prohibitions on development over them. This amendment may produce negative outcomes when access to easements is required resulting in the need for works to be removed.

4.4 Setbacks for garages, carport and parking spaces

The amendments propose changes to setbacks for existing carports, parking spots and garages.

The current setback requirements for such development are either 5.5m from a primary road or 1m behind the front building line for where a dwelling is setback from a primary road by 4.5m or more. The changes proposed seek to exempt existing developments from these provisions. This change is not supported. Due to the topography of Pittwater (many steep blocks), Council's current Development Control Plan (DCP) currently allows for some carports and parking spots on property boundary lines, where appropriate, to avoid significant cut and fill of land. Structures have been approved and conditioned as carports or open structures to ensure they do not dominate the streetscape or diminish sight lines. The proposed changes will potentially allow the existing car parking spaces and carports to be tuned into garages. This may impact upon the Pittwater locality significantly.

Fortunately most steeply sloping properties in Pittwater are protected through the E4 Living Zone which prevents complying development. However, those in the R2 zone are subject to the changes

4.5 Geotechnical Hazards

There is also an outstanding concern in relation to geotechnical risk hazards. While complying development considers trees, and fire and flooding hazards, it still does not take into account geotechnical hazards. The lack of regard for geotechnical hazards is a concern as Pittwater has many rocky outcrops and steeply sloping land. While current changes proposed to excavation are only minor rewording, it considered crucial for Complying Development to take geotechnical hazards into account when approving applications in areas subject to the hazard.

4.6 Subdivision Code

The Amendment Order also seeks to make two substantial changes to the Subdivision Code. The first change relates to removing the requirement for strata subdivision under the Code to take place within 5 years of the original consent. The proposed amendment removes the 5 year provision completely without nominating a new timeframe. The proposed amendment means that any development (other than a dual occupancy) could be subdivided regardless of a stipulated timeframe. This amendment is not supported in this current format as planning controls may have substantially changed since development consent was granted and works constructed no longer reflecting current requirements.

4.7 Subdivision Code Parking Standards

The proposal incorporates the inclusion of a significant amendment under the Subdivision Code relating to parking provisions. The new clause proposes that where parking cannot be provided as required in the subdivision, a contribution under a S94 Contributions Plan will be made to the relevant Council.

It is unclear how this would operate and Council seeks additional advice. Many Councils including Pittwater will not have a S94 plan in place for parking. If the amendment proceeds Council will need to prepare, review and adopt a new S94 plan to cater for the proposed change.

5.0 ATTACHMENTS

Attachment 1 – Pittwater Council's submission to the Department of Planning and Environment.

6.0 SUSTAINABILITY ASSESSMENT

6.1 GOVERNANCE & RISK

6.1.1 Community Engagement

The purpose of this report is to inform Council of the proposed changes to the Exempt and Complying Development Codes legislation. The amendments were formally exhibited by The Department and community comments sought.

6.1.2 Risk Management

Council submission clarified Council's position and concerns regarding the proposed changes

There is no risk to Council anticipated from the making of a submission

6.2 ENVIRONMENT

6.2.1 Environmental Impact

- The proposed changes are not considered to have an impact upon flora and fauna as they do not change or alter any of the existing environmental protection requirements.

6.2.2 Mitigation Measures

- The proposed changes may impact water use and
- The proposed changes will not be affected by climate change
- The proposed changes may impact energy use and greenhouse gases

6.3 SOCIAL

6.3.1 Address Community Need & Aspirations

- The changes will impact upon streetscapes and sight lines on steep streets due to changes in parking setbacks and excavation requirements
- The change may result in a reduction in parking spaces when buildings are converted to more intensive uses
- There will be impacts upon easements as encroachments will be permitted
- The proposed changes will not affect the quality of cultural, community or recreational services available to the community.
- The proposed changes will not affect the health, safety and well-being of residents.
- The proposed changes may affect the services of our community.
- The proposed changes will not affect the mobility of residents.

6.3.2 Strengthening local community

- The proposed changes will not affect the community feeling of connectedness.
- The proposed changes may affect the liveability of our villages.
- The proposed changes will not promote education and knowledge generation.

6.4 **ECONOMIC**

6.4.1 **Economic Development**

- The proposed changes may create or support opportunities for local economic growth.

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30th November 2015

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Dear Sir/Madam

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous Affordable Housing) 2025

Pittwater Council has reviewed the Amendment Order for Exempt and Complying Development Codes and the Affordable Housing SEPP. Council broadly welcomes the review and proposed amendments to the SEPPs as they provide greater clarity, readability and understanding in a number of different areas.

The principles of Exempt and Complying Development, as well as Affordable Housing, are laudable and are supported by Council. However some concerns have been identified regarding the following issues that will impact upon Council and the broader Pittwater community. These are identified and addressed below.

1. The change in the definition of site coverage is not supported. The exemption of driveways swimming pools and decking, terraces or patios from the site coverage requirement is considered an issue that will result in a loss of open undeveloped land upon a site.
2. Changes to clause 2.75 Specified Development for boundary adjustments are not supported. The change to remove the requirement for undersized lots to become larger is a concern and could potentially result in the creation of smaller lots without the basis of a merit assessment.
3. The encroachment of buildings into easements is also a concern. The code proposes that where the easement does not allow the specified development to occur above it, works will not be permitted. However many old easements were prepared on the basis of no building works permitted over them, thus they will not incorporate detailed prescriptions on permitted works and non-permitted works.
4. Council is concerned that changes to clause 3.27 Garages, carports and parking spaces could have a detrimental impact upon Pittwater. Council's Development Control Plan has allowed for carports and car parking spaces on property boundary lines where the property is particularly steep to avoid significant excavation or filling of land. They have been approved on the provision that they are not garages so as to not produce excessive bulk and scale of development on the street and not impact upon sight lines. The proposed changes seek to remove the requirement for existing spaces to meet the requirements for setbacks amongst other things. This raises an issue for Pittwater, as such development could be turned into garages through a Complying Development Certificate without a merit assessment and have profound negative outcomes. Council would like to ask that either this clause not apply to Pittwater or that an alternative solution be provided.

5. Earthworks – Council notes that the proposed changes relating to earthworks are mostly a reordering and rewording of clauses through all the relevant Codes. This is supported to increase clarity in the legislation. However concern is raised that geotechnical hazards are still not catered for in complying development. Concerns and hazards such as trees, flooding and bushfire risk are, but geotechnical hazards are not. Council has a number of rocky outcrops and steeply sloping land that are prone to landslips. Council considers it appropriate that complying development should also take these hazards into consideration when processing applications. Council also considers it appropriate that there should be consideration given to the amount of excavation and fill. Within Council there is a number or larger blocks and the open nature of the clauses does not prevent entire sites being levelled with no consideration given to the amount of soil or rock removed, and the impact it may have on neighbouring properties.
6. Concern is also raised in relation to Clause 5.2 Development Standards and car parking. The proposed amendments to the clause include the assessment of car parking standards as per a Council's LEP or DCP. Complying development was established as non-discretionary assessment against pre-determined criteria, such as a checklist. Council does support the discretionary merit assessment of development standards on any controls under complying development.
7. Concern is also raised over both changes proposed to the subdivision code under clause 6.1. The removal of the 5 year time period for which to act upon a consent is not supported.
8. The second proposed change under clause 6.2 of the subdivision code permitting a contribution instead of required parking raises major concerns. The introduction of the new paragraph (c) allowing for a contribution to a S94 Plan is questioned where paragraph (a) clearly states that a subdivision cannot violate a development standard. How these two clauses relate to each other is unclear. It is also noted that many Councils do not have a S94 Plan in relation to parking, including Pittwater Council. Therefore contributions outside the scope of S94 are not permitted. Furthermore this again represents a planning merit assessment which goes against the philosophy of complying development. Both changes to the Subdivision Code are unclear and contradictory. Council asks that the Department remove these two changes from the Amendment Order pending further consultation with local government.

In general, Council recognises that a number of the changes proposed in the Amendment Order have merit and will improve current legislation by reducing complexity and red tape, and these amendments are supported. In relation to the issues raised above, we look forward to working closely with the Department to resolve Council's concerns.

Yours sincerely

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