

# **Submission in response to the proposed NSW complying development reforms - Building Business Back Better Explanation of Intended Effect**

May 2021

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## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on proposed changes to complying development in employment zones, as outlined in the NSW Government's Building Business Back Better Explanation of Intended Effects (EIE). LGNSW consulted with councils to help inform the content of this submission.

This is a draft submission awaiting review by LGNSW's Board. Any amendments will be forwarded in due course.

At the outset, LGNSW wishes to emphasise the sector's full support for economic recovery, including planning for locally-led job creation, and actively looking at ways to improve the planning system. However, the overarching comment and foremost recommendation in this submission is that **the changes proposed in the EIE for complying development in employment zones are rushed and premature**, and pre-empt the broader employment zone review. The EIE changes **should be considered in the context of the complete package of reforms for employment lands**.

The EIE proposes expansion of complying development activities and provisions that extend well beyond what would be considered as low impact development. These changes derive from business and industry feedback ('market sounding'). There was no input from councils into the design of the proposals to provide expertise and local advice on their practicality, timeliness and consequences for local government.

The cumulative effect, if the EIE reforms are adopted in their entirety, amounts to considerable structural change to the planning system, which warrants far greater thought and consultation than the three-month timeframe from exhibition to gazettal.

Local government has supported temporary changes to the planning system to date in response to COVID-19 and recognises the importance of measures to assist economic recovery. But it is unacceptable to propose such extensive changes be introduced on a permanent basis within three months of their public exhibition and without full engagement with local government and communities. Such changes need to be fully considered and consulted on; more time is needed and these should be considered in the context of the other reforms to employment zones.

## Background to Codes SEPP and complying development

Complying development was introduced in 2008 as a combined planning and construction approval for development that can be determined through a fast-track assessment (tick the box) by a council or private registered certifier, without the need for a development application (DA) to be lodged and assessed by the council. The original intention of this newly developed process was for it to be used for low impact, small scale and relatively straight forward development (such as project home development) to be fast tracked by the certification process.

The NSW Government has progressively established a series of state-wide codes under the umbrella of the State Environmental Planning Policy (Exempt and Complying Codes) 2008 (known as the 'Codes SEPP'). These enable a registered certifier (council or private) to approve development without the need for development consent from council.

Since 2008 the NSW Government has progressively expanded the Codes SEPP to cover additional planning and building matters. LGNSW, councils and communities have regularly raised legitimate questions about the appropriateness of a certifier undertaking some of these forms of assessment and exercising regulatory power, particularly given the poor track record of regulation around the performance of private certifiers over many years.

### 2013 planning reforms and code complying development

In 2013, the NSW Government's Planning White Paper<sup>1</sup> proposed to make greater use of code complying development, proposing that a target of "80 per cent of all developments will be complying or code assessment within the next five years". In response to strong opposition in public submissions on the White Paper<sup>2</sup>, the Government removed the 80% target but retained code assessment in the Planning Bill that went to NSW Parliament in late 2013. The Legislative Council, responding to significant community concern, amended the Bill to remove the code assessable development planning approval track. With the removal of this key element and other amendments, the NSW Government's reforms which promised to overhaul the entire planning system did not proceed.

The public consultation for these reforms was extensive (from 2011-2013) and the public expressed the following strong concerns about code assessment<sup>3</sup>:

- communities should have the right to have a say on all developments affecting them
- the 80 per cent target for code and complying applications should not be applied across all areas
- code and complying development should be limited to genuinely low risk, low impact development
- it is not acceptable to remove the rights of the community to comment on development on a site-by-site basis
- complying and code assessable development is not supported in environmentally sensitive and heritage conservation areas and these areas should be given legislative protection
- applications considered as part code/ part merit pathway would be confusing.

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<sup>1</sup> <https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/a-new-planning-system-for-nsw-white-paper-2013-04.pdf>

<sup>2</sup> [https://www.parliament.nsw.gov.au/tp/files/63292/White\\_Paper\\_Feedback\\_Report.pdf](https://www.parliament.nsw.gov.au/tp/files/63292/White_Paper_Feedback_Report.pdf)

<sup>3</sup> [https://www.parliament.nsw.gov.au/tp/files/63292/White\\_Paper\\_Feedback\\_Report.pdf](https://www.parliament.nsw.gov.au/tp/files/63292/White_Paper_Feedback_Report.pdf) (p 22)

The above concerns are as applicable today as they were in 2013, yet councils and community members are concerned that the government's accelerated timeframe for these current reforms has not allowed for adequate public consultation and consideration and will result in poor planning outcomes and a potential public resistance.

## **Role of local government and complying development**

Through the planning system, councils have a responsibility for land use planning and development approval. They develop strategic plans (Local Strategic Planning Statements) for the future development of their local area, which guide the application of land use zones set down in councils' local environmental plan (LEP). Councils also coordinate and provide physical and community infrastructure as their communities grow and change. A fundamental role of local government is to determine the kinds and scale of development that is appropriate in each part of an LGA, and this is guided and managed through councils' local plans and policies.

Councils also have a regulatory role in managing land use and building activities, investigating complaints to verify compliance with development consents and following up through compliance action where necessary.

Councils do not necessarily have a line of sight to complying development that is approved by private certifiers but they are most often the first port of call for complaints or questions triggered by complying development.

## Current Proposals

The NSW Government has published an Explanation of Intended Effect (EIE) for proposed reforms to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) which proposes amendments to complying development in employment lands.

The EIE outlines proposed amendments to the Codes SEPP in relation to industrial (IN) zones and business (B) zones. The EIE includes the following:

Part A: Background to Policy Proposals - includes evidence base and policy rationale for complying development reforms.

Part B: Land use and business agility – outlines proposed policies that open the code to more land uses, streamline controls and remove outdated or restrictive provisions

Part C: Zone-based building controls - outlines new zone-based building controls such as height and floor area, including a new building allowance for commercial buildings up to five-storeys in some business zones and a new commercial design code.

Part D: Supporting neighbourhood and local centres - outlines a range of land use and business agility proposals in neighbourhood and local centres

Part E: Masterplan pathway - outlines a new council-led opt-in approach to specifying complying development in a masterplan, including a guideline for masterplan preparation.

Part F: Data centres - outlines a complying development pathway for data centres with the same built-form controls proposed for the industrial and business zones, with additional technical provisions for cooling and backup power systems for noise, emissions and hazards.

Part G: Circular economy - clarifies complying development pathways for emerging land uses that are referred to as supporting the 'circular economy' (including re-use and repair centres and council-run community recycling facilities).

Part H: Consequential amendments

The Codes SEPP currently allows certain commercial and industrial land uses to be carried out as complying development, described in the EIE as a 'fast-tracked planning pathway for straight forward development'. The EIE<sup>4</sup> proposes to:

- open the code to more land uses that may be carried out as complying development in business and industrial zones;
- change certain requirements such as opening hours and car parking; and
- increase building heights and gross floor area allowances for industrial and commercial development.

If adopted, the proposed amendments would introduce state-wide controls and be imposed on all local government areas.

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<sup>4</sup> EIE, p 18

## Employment zones review

The EIE is part of a broader reform package in relation to both employment zones and complying development.

As noted in the EIE (p 7) DPIE is undertaking two areas of reform in relation to employment land:

- Employment zone reform<sup>5</sup> - a 'simplified employment zone framework' that will apply consistently across NSW and involves amendments to the Standard Instrument Local Environmental Plan (SILEP) and require councils to translate their existing LEPs into the new framework. A key aim of this reform is "improving consistency in how the zones are applied and the land uses which are permissible within each zone". DPIE is "investigating opportunities to expand mandated permissible uses while ensuring strategic outcomes can still be achieved and land use conflicts managed".<sup>6</sup>
- Complying development reform – a range of immediate changes to the Codes SEPP (as proposed in the EIE) which will affect development in business and industrial zones, to be implemented within an 'accelerated timeframe' (by mid-2021) ahead of the employment zones reform.

DPIE is aware of LGNSW and councils' concerns these two closely related reform processes are running concurrently but separately. The proposal to implement the Codes SEPP changes ahead of the broader employment zone reform is premature. This risks unintended consequences if changes affecting particular zones are made to the Codes SEPP, and those zones are later simplified or consolidated under the broader employment zone reform process. It is difficult to assess how the changes proposed in these separate reform pieces will align and what the impact will be on local government strategic planning. Any changes to land use permissibility should not proceed ahead of the employment zone reforms.

For the complying development changes to have the best chance of success, it is prudent to extend the timeframe and undertake further consultation in parallel with the employment zones reforms, with the aim of aligning draft legislation on all the reforms, exhibiting this for further public comment and implementing them together.

The additional time can then be invested in a measured and fully collaborative approach with local government to properly consider the merits of each and every reform proposal. It would also provide an opportunity for DPIE, local government to work together to consider whether a subset of the Codes SEPP changes - where it is agreed there is genuine low impact – could be implemented in advance of the broader reforms.

## Consultation and timeframe

The consultation program for these reforms is too rushed and the timeframe for introducing the changes unrealistic. The compressed process does not align with the underlying principles of DPIE's Community Participation Plan 2019<sup>7</sup> which includes 'timely' consultation among its key

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<sup>5</sup> <https://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Employment-Zones-Reform>

<sup>6</sup> Employment zones webinar transcript, December 2020 (<https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/Employment-Zones-Reform-webinar-transcript-2020-12.pdf?la=en>)

<sup>7</sup> <https://www.planningportal.nsw.gov.au/major-projects/sites/default/files/documents/2019/DPIE%20CPP.pdf>

objectives<sup>8</sup>. The consultation with councils also contravenes the spirit of the Intergovernmental Agreement between the NSW Government and LGNSW<sup>9</sup>.

The EIE notes that:

*Key stakeholders representing commercial and industrial builders and investors, private certifiers, small business and local business chambers participated and shared current experiences and challenges with the complying development process. Many of the issues raised were common across the stakeholder groups and their feedback has helped inform many of the proposed policy changes.<sup>10</sup>*

While the EIE refers to consultation with councils, this has been minimal to date, and it is clear that all the proposals derive from the market sounding feedback. DPIE's Complying Development Expert Panel (CDEP) should have been engaged throughout the formulation of the EIE to provide their expert knowledge and advice. Council feedback should also have been sought as to their practicality, timeliness and consequences for local government. Many of the proposals in the EIE are vague, and councils need to understand how they will be translated into legislation.

There are certain elements of these reforms that may have significant potential impacts on residents who live within and adjacent to business and industrial zones. Substantive changes to the current complying development rules as proposed in the EIE will undermine community trust and potentially generate community pushback as was seen historically with code assessable development in 2013. Councils and their communities deserve time to understand how these changes will affect them and have an opportunity to provide their comments as the reforms are further developed.

As such, the consultation process warrants far more than a six-week public exhibition of an EIE and rushed implementation of the legal instrument. Further, exhibition of an EIE alone is unacceptable given the extent of the broad-ranging proposals. Stakeholders deserve transparency as to how the EIE reforms are translated into the legal instrument. LGNSW requests public exhibition of the draft SEPP before any changes are implemented.

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<sup>8</sup> 'Timely' consultation includes: 'Start community participation as early as possible, and continue for an appropriate period'; 'Ensure the community has reasonable time to provide input'; 'Facilitate ongoing discourse with local community networks'

<sup>9</sup> [Intergovernmental Agreement](#)

<sup>10</sup> EIE, p 14



## General comments on process and proposed amendments

### LGNSW policy position

One of the twelve fundamental principles of LGNSW, the overarching values that guide advocacy on behalf of the local government sector, sets our position on economic development. It states:

*Local government promotes local and regional economic development and employment growth.*

Councils are keen to support investment and job-generating development and have a responsibility to balance this with other environmental and liveability objectives in accordance with their strategic plans.

LGNSW acknowledges the need for all levels of government to anticipate and respond to changing community and customer concerns, including helping to support economic development and recovery. Some aspects of what is proposed in the EIE are supported by the local government sector, as discussed in this submission, however, LGNSW **does not** support a blanket expansion of development that is permissible as complying development.

LGNSW's fourth fundamental principle sets our position on planning processes. It states:

*Local government is best placed to lead and influence local and regional planning processes according to the needs and expectations of local communities.*

Furthermore, position 9.6 of the LGNSW Policy Platform states:

*LGNSW advocates for complying development to be limited to low risk or low impact development, with clearly defined parameters.<sup>11</sup>*

LGNSW advocates for a planning system that ensures the voice of local communities is heard through local government retaining control over the determination of locally appropriate development. It is a long-held position of the local government sector that local planning powers must not be overridden by State plans and policies.

### Balancing local conditions with a blanket state-wide approach

The EIE is proposing a one-size-fits-all approach to complying development in employment zones across the state. While provisions in State Environmental Planning Policies may suit the specific needs of some parts of some LGAs, a one-size-fits-all approach fails to recognise or account for the specific needs and local context of diverse communities.

Likewise, while some councils may welcome the opportunity to streamline approval pathways for certain activities in employment zones in parts of their LGA to encourage economic development, for others this might result in highly adverse impacts on environment, infrastructure, adjoining land uses and the local community.

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<sup>11</sup> Local Government NSW, *Policy Platform*, April 2021, available at: [https://www.lgnsw.org.au/Public/Policy/Policy\\_Platform.aspx](https://www.lgnsw.org.au/Public/Policy/Policy_Platform.aspx)

The one-size-fits all approach over-rides the ability of councils and communities to plan for, consider and permit what is best for their communities, and disregards councils' strategic land use plans that are developed in consultation with their communities as a mandatory and important part of the state's planning system.

There can be marked differences between regional and metropolitan areas, and even within metropolitan areas there are significant differences between inner and outer areas. For example, councils in western Sydney have important and specific planning provisions and considerations to manage urban heat which may not as important in other parts of greater Sydney.

LGNSW opposes blanket state-wide changes. An opt-in basis for councils or a trial in selected areas in partnership with councils would help to tailor the changes rather than a state-wide implementation.

Complying development precludes councils and communities determining important location and design considerations for development. The changes proposed in the EIE amount to an expansion and intensification of use and could create increased amenity and safety issues, compromise local character and override local planning provisions. By contrast councils can use the usual development assessment pathway to address these issues and any impacts can be managed with appropriate conditions of consent.

Without the ability to tailor to local conditions and align with local provisions, the new draft provisions could result in outcomes incompatible with the local conditions.

As an example, the proposals if adopted would:

- permit 24-hour operation in industrial zones, irrespective of existing consent requirements;
- waive requirements for a new land use in neighbourhood and local centres to be bound by the consent conditions of an earlier use, and instead provide blanket statewide development controls to manage impacts relating to parking, traffic, noise and hours of operation;
- allow buildings in heritage conservation areas to be upgraded as complying development (ie. by-passing the development assessment pathway and instead being approved by a certifier).

These are three examples of the nature of the proposals that may have considerable adverse impacts if local government does not retain the ability to consider the appropriateness of the development for its local context.

Councils want to be part of the conversation to design a system that can accommodate and enable local industrial and businesses to expand and adapt to the changed economic circumstances, but such changes must be made prudently and enable flexibility to accommodate important local conditions (for example, urban heat in western Sydney), to ensure that the ensuing development does not lead to poor planning and amenity outcomes.

## **Community input on complying development**

By its nature the complying development pathway does not allow for community input or feedback on new development. If all these changes were put in place, this would mean that from 1 July, communities and residents who live within and adjacent to business and industrial

zones will have no say in the type and scale of development that is proposed, and there will be no mechanism – as there is through a development assessment pathway - to manage local impacts on amenity, safety, traffic, and local character by placing conditions of consent on these developments. A related concern of councils in their regulatory role is that they do not have visibility of development that is approved under the Codes SEPP by a private certifier, yet they still have a statutory responsibility to enforce compliance with provisions in the Codes SEPP. This is a significant concern for local government because councils will be the first port of call for complaints or other questions from the community about these developments.

## **LGNSW Annual Conference Resolutions**

Relevantly, councillors from across NSW have raised concerns with the operation of Exempt and Complying Development Codes through resolutions of the LGNSW Annual Conference. The 2021 resolutions, which inform this submission, include:

### ***73 SEPP (Exempt and Complying Development Codes)***

*That Local Government NSW advocates to the NSW Government to amend the State Environmental Planning Policy (Exempt and Complying Development Codes) to provide more discretion for Councils to amend a SEPP when applying it in their Local Government Area.*

## **Infrastructure contributions**

A particular concern of local government associated with complying development is ensuring that section 7.11 and 7.12 contributions are paid before developments receive their final approval from certifiers. Councils report issues around having to follow up and chase significant sums of money owed for infrastructure contributions for some developments where private certifiers have issued occupation certificates (OCs) without referring to council to confirm contributions payments have been made. The time and administrative costs in pursuing these outstanding payments can be substantial. The new instrument and supporting information for proponents and certifiers must consider this important requirement. The planning portal offers an opportunity to create a system of gateways that can be used to ensure infrastructure contributions are paid prior to a private certifier issuing an OC.

## **Specific comments on proposals**

Specific comments on key reforms proposed in the EIE are included at Attachment 1. These comments underpin LGNSW's key recommendations in this submission that the government should extend the consultation timeframe to align the EIE reforms with the broader employment zone reforms and as an interim measure allow DPIE to work in partnership with councils to consider workable and agreeable policy changes for development that is genuinely low impact.

## Recommendations

Based on the issues discussed in this submission, LGNSW makes the following recommendations:

**Recommendation 1:** The NSW Government does not introduce the expansive changes to state-wide complying development pathways for employment lands that are proposed in the EIE, in recognition that a one-size-fits-all approach may have adverse impacts on local environment, amenity, infrastructure or adjoining land uses where the development is not appropriate for the local context.

**Recommendation 2:** The NSW Government agree to extend the timeframe for implementation of the complying development reforms and DPIE to undertake a program of further consultation with stakeholders in parallel with the employment zones reforms, with the aim of aligning all the reforms.

**Recommendation 3:** Further to recommendation 2, draft legislation on the Codes SEPP changes should be publicly exhibited in parallel with exhibition of the employment zone reforms.

**Recommendation 4:** As an interim measure, DPIE commit to work in partnership with local government to consider whether a subset of the Codes SEPP changes - where it is agreed there is genuine low impact – could be implemented in advance of the broader reforms.

**Recommendation 5:** Provisions in the Codes SEPP must include requirements for payment of local infrastructure contributions, and this should be also included in supporting information and on the NSW Planning Portal, for business and industry proponents who are considering using the complying development pathway.

\* \* \*

LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered.

To discuss this submission further, please contact LGNSW Strategy Manager, Planning at [jane.partridge@lgnsw.org.au](mailto:jane.partridge@lgnsw.org.au) or on 02 9242 4093.

## Attachment 1 Table of Specific Comments

LGNSW Preliminary comments on key proposals

Explanation of Intended Effects	LGNSW comment
<b>Part A: Background to Policy Proposals</b>	
<p><b>Case for change</b></p> <p>(p 12) “the Planning Reform Action ... outlines a series of initiatives to achieve long-term structural reform of the planning system. This includes cutting red tape, reducing time and costs associated with the planning system, and making the system more transparent and easier to use.”</p> <p>“the government has committed to improving and expanding complying development opportunities, with a focus on employment lands. The aim is to help fast-track ongoing economic recovery by facilitating a broader range of job-generating projects with a more timely, certain and simplified complying development framework.”</p> <p><b>Quality-control panel</b></p> <p>(p 18) “An independent quality-control panel consisting of two urban planning experts and an accredited certifier, provided high-level, independent oversight of the market sounding and ‘reimagining complying development’ findings.”</p>	<p>Planning reforms which are short term fixes aimed at delivering more job-generating projects quickly need to be evaluated for <i>all</i> their costs and benefits so they do not result in unintended environmental, social and other impacts if undertaken without appropriate consideration.</p> <p>DPIE’s Complying Development Expert Panel (CDEP) comprises a body of expertise well-placed to provide oversight, rather than engaging an independent quality control panel. CDEP comprises experts from peak bodies representing developers, builders, certifiers, designers and local government and has existed for many years, as a reference group for expert advice on the Codes SEPP. CDEP is well-placed to consider how the market sounding proposals should be translated into workable policy reforms.</p>
<b>Part B: Land use and business agility</b>	
<p><b>Changes to allowances for change of use</b></p> <p>(p 22 &amp; 23) “allowances ...to ...the current configuration of change of use, first use provisions, and separate listings for uses that are allowed to undertake additions, alterations or a new build.”</p> <p>(p23) “remove distinction between first use and change of use”</p> <p>(p 23) “allow CDC’s to permit a change of use to a permissible land use that is already listed in the Codes SEPP, irrespective of the existing use of premises”</p> <p>(p 23)</p>	<p>Proposal to remove the requirements to demonstrate current lawful use could have the effect of legitimising an illegal use by allowing a valid CDC to be issued because an applicant did not need to demonstrate that the current use was legal.</p> <p>Such changes to regularise unauthorised land uses using a CDC pathway could open up future compliance issues for councils and increase the compliance burden onto councils.</p> <p>Allowing a complying development consent to be issued based on the illegal use is not supported. LGNSW requests that DPIE works with councils to consider refining the change-of-use pathways that have been proposed to ensure that there is a more sensitive approach to change of use</p>

Explanation of Intended Effects	LGNSW comment
<p>“reduce documentation requirements for previous land uses so there is no need to identify old development consents when changing to a use authorised by the Codes SEPP”</p>	<p>provisions that can better factor in the scale and nature of the development.</p> <p>CDC pathway does not allow for community input - legitimising an illegal use without the capacity for the community to comment on proposed developments would result in erosion of community confidence in the planning system.</p> <p>In principle, the proposed amendments are moving the complying development pathway away from a compliance assessment in relation to the building code to a merit assessment of both design elements and technical elements, which are outside of the certifier’s area of expertise.</p> <p>Particular issues of concern are assessment of: drainage, site works including excavation and cut and fill, access, retaining walls, bulk and scale, design quality and materials, character, direct and ancillary amenity impacts from traffic and noise to nearby residential properties, visual height impacts, view loss, car parking, truck turning and driveways, and sustainability.</p>
<p><b>Expanded list of land uses</b> (p 23) “add new land uses to the existing list of land use that may be complying development including:</p> <ul style="list-style-type: none"> <li>• data centres</li> <li>• recreational facilities (indoor)</li> <li>• local distribution premises</li> <li>• entertainment facility</li> <li>• artisan food and drink industry (subject to liquor licence requirements and any LEP floor area requirements)</li> <li>• veterinary hospitals</li> <li>• depots</li> <li>• health manufacturing facilities</li> <li>• heavy industry in heavy industry zones.”</li> </ul> <p>(p 23) “allow a wider range of land uses access to the building allowances in the Codes SEPP including:</p> <ul style="list-style-type: none"> <li>• the new land uses listed above</li> <li>• commercial premises in a B5–B7 zone</li> <li>• function centres</li> <li>• health consulting rooms</li> <li>• medical centres</li> <li>• community facilities</li> <li>• health manufacturing facilities</li> <li>• vehicle repair station</li> <li>• wholesale supplies</li> <li>• amusement centres</li> </ul>	<p>The broad expansion of land uses for complying development with blanket state-wide controls is not supported. State-wide controls do not consider the local context. To preserve certain key planning outcomes (eg policies to manage urban heat in western Sydney), the complying development provisions must allow certain key local provisions to prevail ie the complying development must be in accordance with the relevant LEP standard to ensure that new development is compatible with local conditions and consistent with community expectations.</p> <p>Uses such as supermarkets or medical centres could result in impacts requiring greater consideration (such as traffic generation and car parking) compared with other commercial uses.</p> <p>Councils may not agree that uses such as community facilities are straightforward development due to the complexity of issues that need to be considered. e.g.</p> <ul style="list-style-type: none"> <li>• Traffic &amp; parking</li> <li>• Potential for use as places of worship, educational establishments and centre based child care</li> <li>• Capacity considerations for special events</li> <li>• Potential of future expansion and its staging</li> <li>• proposed development in contaminated land</li> <li>• Capacity to result land use conflicts</li> <li>• Community interest</li> </ul>

Explanation of Intended Effects	LGNSW comment
<ul style="list-style-type: none"> <li>• boat building and repair facilities</li> <li>• vehicle body repair workshops</li> <li>• vehicle repair stations</li> <li>• information and education facilities</li> <li>• food and drink premises greater than 50 seats</li> <li>• neighbourhood supermarkets.”</li> </ul>	<p>Uses such as smash repairers, vehicle repair workshops and boat building also are not suitable as complying development. The potential environmental and human health considerations of these uses should be assessed as a DA.</p> <p>Many private certifiers are not qualified to determine whether proposals are appropriately engineered to comply with environmental legislation and industry best practice. Engagement of independent consultants (eg acoustic and environmental/contamination experts) will necessary, but this may result in inconsistent levels of competence and expertise, and the potential to reduce environmental standards.</p>
<p><b>Hours of operation</b> (p 24)</p> <ul style="list-style-type: none"> <li>• “permit hours of operation from 7am to 10pm irrespective of existing consent requirements”</li> </ul>	<p>Hours of operation can be contentious depending on the locality and type of use. Extended hours may be appropriate in individual centres but are best assessed through a DA which can consider mitigation of potential impacts and allow for community consultation.</p>
<p>(p 24)</p> <ul style="list-style-type: none"> <li>• “permit 24-hour operation in industrial zones irrespective of existing consent requirements”</li> </ul>	<p>Hours of operation can be contentious depending on the locality. Many councils have residential areas adjoining industrial zones and would not support 24-hour operation close to residential areas because this will generate increased compliance issues for councils (eg noise, truck movements).</p> <p>Broad expansion of exempt and complying development pathways such as this poses a risk for increased land use conflicts and disputes which councils are not resourced to investigate and regulate.</p> <p>Consider greater distance separation of industrial buildings from residential areas - should be increased to from 150m (as proposed) to potentially 500m. LGNSW requests that DPIE work with councils to refine these provisions to mitigate these concerns.</p>
<p><b>Reconfiguration of car parking etc</b> (p 24)</p> <p>“make it easier to reconfigure site facilities, such as parking, loading bays, and install drive through ‘click-and-collect’ bays and areas for no contact store pick up facilities (subject to the requirement that no parking, loading and collection occurs on a public road)”</p>	<p>Vehicle movements to, from and within a site involves consideration by appropriately qualified experts such as traffic engineers. If a development involves significant changes compared to the existing use then such a development is not appropriate for complying development and traffic and parking details should be assessed via a DA pathway.</p>
<p><b>Protecting amenity</b></p> <p>“Codes SEPP contain planning standards and conditions to manage on-site amenity impacts such as parking, waste on-site management, site maintenance, drainage, contamination and</p>	<p>The EIE should require complying development to consider sustainability controls and address key concerns such as urban heat island effect, tree</p>

Explanation of Intended Effects	LGNSW comment
<p>noise. These will continue to operate under the proposed changes.</p> <p>“In addition, propose to generally align the existing traffic impacts certification process for complying development with the ‘traffic generating development’ referral requirements in Schedule 3 to SEPP (Infrastructure) 2007”</p>	<p>canopy targets, water sensitive urban design and flood risk management.</p>
<p><b>Part C: Zone-based building controls</b></p>	
<p><b>Revised industrial zone building standards for zones IN1 to IN3</b></p> <p>(p 26)</p> <p>“propose to increase the building height in industrial zones to 18 metres (overriding any local industrial zones height control where it is less than 18m in an LEP)”</p> <p>“propose a larger allowable building footprint of up to 50,000msq and also consider heights up to 45m where no LEP height limit is in place”</p> <p>“Managing visual and amenity impacts to adjoining residential zones will be through separation distances as far as 150 metres and increased landscaping requirements.”</p>	<p>Proposed height limits will have different impact on local areas depending on how these new provisions depart from existing local controls.</p> <p>In certain locations, the proposed increased height limits of complying industrial buildings, may affect the amenity and character of councils’ industrial areas, particularly where councils’ industrial lands adjoin or have a strong relationship with lower density residential areas.</p> <p>For example, Penrith Council’s LEP contains Scenic Landscape Value (SLV) controls to protect views to the Blue Mountains.</p> <p>Blanket height provisions that override local policies are not supported - provisions must include allowance for local policies to be considered, where important urban design and visual amenity considerations are in place.</p>
<p><b>New business zone building for zones B5-B7</b></p> <p>(p 26)</p> <p>“We propose a new complying development pathway for new-build commercial development in business zones B5–B7. If local planning controls permit, new builds could be possible as high as five storeys and 10,000 m2. We are also seeking feedback on a new Business Zone Design Guide and design verification statement process to articulate good site planning, design and amenity in these zones.”</p>	<p>Allowing a CDC for buildings of this scale without any merit assessment is not sufficient for proper assessment of issues such as drainage, site works (including excavation and cut and fill), access, retaining walls, bulk and scale, design quality and materials, character, direct and ancillary amenity impacts from traffic and noise to nearby residential properties, visual height impacts, view loss, car parking, truck turning and driveways, and sustainability.</p> <p>Such large-scale developments should be assessed by council via a DA pathway. Certifiers do not have the expertise to make these assessments.</p> <p>EIE should clarify how the Business Zone Design Guide will relate to the new Design and Place SEPP.</p>
<p><b>Part D: Neighbourhood and local centres</b></p>	
<p><b>Key Proposals:</b></p> <p>(p 36)</p>	<p>This one-size-fits-all approach is not supported.</p>



Explanation of Intended Effects	LGNSW comment
<ul style="list-style-type: none"> <li>• Allowing a wider range of land uses to be complying development in B1 &amp; B2 zones with development standards for these new land uses to mitigate amenity impacts”</li> <li>• Introducing standard hours of operation from 7am to 10pm irrespective of existing consent conditions</li> <li>• Increasing seating allowances for food and drink premises from 50 to 100 seats (subject to maximum floor area occupancy rates set by the Building Code of Australia)</li> <li>• Removing additional parking and loading bay requirements for existing premises that are less than 500msq</li> <li>• Allowing minor external alterations to existing buildings in a heritage conservation area</li> <li>• Making new allowances for neighbourhood circular economy land uses (repair shop cafés, swap-and-re-use centres, etc see Part G)</li> <li>• Allow ancillary complying development for lots that adjoin a lane or secondary or parallel road</li> </ul>	<p>Provisions should be revised in consultation with councils and their scale reduced to allow certain <i>low impact</i> activities as complying development.</p> <p>Councils and communities must retain control over when and where activities are appropriate to occur. The benefit of a DA process is that council can consider the potential for land use conflict and amenity issues, and manage them with appropriate conditions of consent.</p> <p>Consider allowing councils to opt-in to complying approval pathways for all or parts of their LGAs.</p> <p>Removal of car parking requirements for existing premises places the burden of provision for shortfalls on councils and could impact on parking availability for other existing businesses in the area.</p> <p>Allowing works on buildings in heritage conservation areas as complying development could have unintended consequences and is not supported. Private certifiers are not qualified to determine the appropriateness of maintenance and repairs, for example, in relation to original shopfronts. Significant and/or original fabric may be unknowingly removed which can erode the heritage values and character of a building.</p>
<b>Part E: Masterplan pathway</b>	
<p><b>Masterplan Pathway</b> (p 38) “Under a masterplan pathway, local councils would undertake up-front planning for the purposes of specifying development in a masterplan.”</p> <p>Key features:</p> <ul style="list-style-type: none"> <li>• A guideline that specifies the land use and technical studies necessary to support the complying development requirements in the masterplan</li> <li>• Council endorsement &amp; government approval processes</li> <li>• A public notification of a masterplan</li> <li>• A sunset period with an option to review and extend the operation of the masterplan</li> <li>• Publication of the endorsed and approved plan on the Planning Portal</li> </ul>	<p>This proposed council-led (opt in) pathway has merit in areas undergoing significant change and where councils want to proactively support their local businesses in a targeted way.</p> <p>Commence detailed consultation with councils on the Draft Guideline for Complying Development Master Plans (provided as an attachment to the EIE) before the amendments are implemented, to ensure they are effective and to give councils adequate time to integrate these processes into local strategic planning.</p>
<b>Part F: Data Centres</b>	
<p><b>Data Centres</b> (p 40) “We are consulting on a complying development pathway for data centres in the Codes SEPP, as well as a range of technical standards to govern</p>	<p>Recognition of data centres as a use through a new definition in the standard instrument is supported in principle. However, it is not clear if it is proposed to be a subset of an existing use, or a new proposed use. The lack of details as to where it sits within the hierarchy of land use terms is of</p>

Explanation of Intended Effects	LGNSW comment
<p>their impacts. Complying development for data centres would need to be designed so that they do not trigger the threshold criteria for: 'potentially hazardous development', designated development and an environmental protection licence in the Protection of the Environment Operations Act 1997."</p>	<p>concern. Until resolution of this issue is achieved proposals to permit data centres as a CD with zone-based controls is not supported.</p> <p>Some councils may object to data centres as complying development given their characteristic bulk and scale. In addition associated site works for such large scale buildings (eg drainage, access, and changes in site levels) may be significant and should be managed through council.</p>
<b>Part G: Circular economy</b>	
<p><b>Circular economy</b> (p 45) Proposed in any industrial zone and retail premises permitted under LEP "These facilities would be a building or place that is for the collection, repair, refurbishment, dismantling, sharing and redistribution (by swap, sale or lease) of household goods. They may also include collection, repackaging and redistribution of food items (excluding cooking) and have ancillary uses, such as a cafés (where permissible), office space, loading areas, refrigeration and storage. The facilities would not be permitted to process or remanufacture waste."  "as complying development, these facilities would only receive a limited range of items and materials such as textiles, clothing, shoes, household and office furniture, domestic appliance, household electrical and batteries, tools, books, toys, soft plastics and edible food."</p>	<p>Supported in principle in line with LGNSW's broader commitment to the circular economy.</p>