



Hawkesbury City Council

attachment 1
to
item 120

Draft Submission

NSW Department of
Planning Reforms

- Draft Discussion Paper,
NSW Housing Code for Exempt
and Complying Development

date of meeting: 24 June 2008

location: council chambers

time: 5:00 p.m.

DRAFT Hawkesbury City Council submission to NSW Department of Planning NSW Housing Code for Exempt and Complying Development, May 2008.

General comments

Over the past 15 years there have been considerable changes to the Environmental Planning Assessment Act 1979, particularly with the introduction of Exempt and Complying Development and the NSW Standard LEP Template. Overall reform of the planning system is supported on the provision that the rights of the community and Council are not eroded.

The following matters are raised for consideration by the Department.

1. Areas where exempt and complying development cannot be undertaken

The Code identifies a number of areas where exempt and complying development cannot be undertaken. Areas that are of particular relevance to the Hawkesbury LGA include:

1. Land reserved as a state conservation area under the *National Parks and Wildlife Act 1974*.
2. Land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, and geological formations or for other environmental protection purposes.
3. Heritage items and conservation area (complying development exclusion only).
4. Land at or below 1 in 100 year flood event level (complying development exclusion only).
5. Flame zone on bushfire prove land (complying development exclusion only).
6. Scenic protection areas (complying development exclusion only).
7. Subject to an acquisition clause (complying development exclusion only)

Areas 1 and 2 are not current exclusions within the Hawkesbury LEP 1989 however are proposed to be included in the new Hawkesbury LEP which is based on the Department of Planning's (DoP's) Standard LEP (template LEP), as such these are supported.

Area 3 has the same effect as HLEP 1989 in excluding complying development for these areas, however the Code would allow, in general, exempt development to be carried out in the areas. It is noted that in the Code's Exempt Table many of the development types cannot be undertaken on heritage items, therefore a Development Application would be required. Applicants however could then turn to Section 5.10(3)(a) of the DoP's template LEP to find that Development Approval may not be required if the applicant notifies Council in writing of the proposed development and Council confirms in writing that the works may proceed without the need for a development approval.

This is a similar approach adopted in HLEP 1989 and to be adopted in Council's template LEP offers a quick and efficient method of permitting minor development whilst still conserving the significance of conservation areas and heritage items.

However, there is concern regarding the Exempt Development provision that permits Demolition. Although the provisions list that the provisions do not apply to a "Heritage Item", there is no mention of land occupied by the Heritage Item, i.e, the allotment occupied by the Heritage Item, or "conservation areas". Whilst this matter should be resolved upon gazettal of the Template LEP for the Hawkesbury, in the interim, the provisions for exempt development should be clarified as it may result in confusion and the inadvertent demolition of a Heritage Item.

Area 4, is similar to the exclusions in HLEP 1989, however Council's exclusion is for land 1.2m below the 1 in 100 flood event level. The effect of this is that HLEP 1989 allows for more land to be available for complying development than the Code would if applied to the Hawkesbury LGA.

Area 5 is not included in the HLEP 1989 or in the proposed template LEP. In general terms it would be reasonable to exclude such land from complying development.

Area 6 would exclude complying development from current 7(d) Environmental Protection (Scenic), Environmental Protection - Mixed Agriculture (Scenic), Environmental Protection - Agricultural Protection (Scenic) zoned land. HLEP 1989 does not have such an exclusion and it is not proposed to include such an exclusion in the template LEP. The template LEP proposes to change these zones to Rural and Large Lot Residential zones hence the exclusion would have no effect with the new LEP.

Area 7 is appropriate given the proposed future use of the land to be acquired and the potential acquisition cost ramification of allowing development within land so affected.

The Code however does not exclude lands that are currently excluded in HLEP 1989 or proposed to be excluded in the temple LEP. These areas are:

1. Land identified as being an Aboriginal place or known to contain an Aboriginal object under the *National Parks and Wildlife Act 1974*.
2. Land zoned wetland or within 20 metres of a wetland.
3. Land within one metre of any public sewer main easement or land within one metre of the zone of influence of any public sewer main.
4. Land that is a remediation site within the meaning of the *Contaminated Land Management Act 1997* or land subject to an agreement with the Environment Protection Authority under section 26 of that Act for voluntary remediation (complying development exclusion only).
5. Land that is on a register maintained by the Council as land that is subject to landslip (complying development exclusion only).
6. Land that is identified on the Acid Sulphate Soils Planning Map as land containing potential acid sulphate soils of Class 1, 2 or 3 (complying development exclusion only).
7. Land that is identified as a scenic area of the riverine corridor or as a conservation area sub-catchment under *Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)* (complying development exclusion only).

These types of areas/matters are not peculiar to the Hawkesbury LGA and would be found in some form in many if not most Council areas. The effect of the non-exclusion is that complying development under the Code would be permitted in these relatively sensitive areas.

It is not known why such areas have not been excluded and the proposed complying development conditions of consent do not address these matters. It is recommended that the Department of Planning consider such exclusions or included appropriate complying development conditions to deal with these matters.

2. Exempt Development provisions

The draft code exemption provisions are in many instances similar to Council's current exempt development contained in HLEP 1989. In many instances Council's requirements are more generous than as proposed by the draft code. The following issues are raised for consideration.

Small Dams - The provisions limit the dam to a maximum size of 3ML. A dam of this size is likely to require an approval under the Water Management Act 2000 for an activity that intersects the watertable. This is essentially Integrated Development.

The Code should consider a smaller dam size, possibly 1 to 2ML, with an additional provision, which ensures that a dam may only be exempt if the works do not require an approval under another Act.

Dams larger than the above may be able to be considered as complying development, again subject to a provision that an approval under another Act is not required.

Pigeon cages and lofts - Code provisions make no reference to a maximum size or height. A provision specifying a maximum floor area and maximum height above existing ground level should be included.

Retaining Walls - A 600mm retaining wall constructed adjacent to a boundary fence can have the potential to result in a loss of privacy to the adjoining property. In this sense, 600mm of fill on one side of a fence will essentially lower the fence height by 600mm on that side and has the potential for adverse privacy impact for the adjoining neighbour.

The code should provide a 1m setback distance from the property boundary to protect the privacy of the adjoining property.

Stockyards and associated shelters - The code should include a maximum area for the shelter, as there are currently no provisions for this in the Draft Code.

Tennis court for private or not commercial use on rural zoned land and associated with a dwelling house - The code requirements should also include a minimum boundary setback and requirements for the use of black-coated chain wire mesh to reduce any visual impact of the fence.

Water Tanks (above ground) - The code should include provisions in bushfire prone land for appropriate stortz fitting for bushfire fighting purpose.

Water Tanks (below ground) rural zone only - The code should include provisions in bushfire prone land for appropriate stortz fitting for bushfire fighting purposes.

Real Estate Signs - *The size of the sign for some of the larger developments i.e. subdivisions is excessive and should be reduced to a maximum of 10sqm.*

The maximum heights of 8m for a Real Estate sign is excessive and suggest it should be as per council's current requirements (max of 4m).

Pylon Signs - Code requirements are reasonable but should have some additional requirements such as:

A provision should be included that requires only one pylon sign for developments involving multiple occupancies (industrial unit complex or shopping centres). If this is not specified, in

the event the complex is strata titled, the requirement could be taken as each strata lot is an allotment and multiple signs could be erected on the property.

3. Complying Development

The following are raised for consideration and review:

Setbacks

One of the main differences between the code and Hawkesbury DCP is in relation to the new residential release area of Pitt Town where all lots created are likely to be over 600sqm. The current Council DCP (Pitt Town Chapter) clearly articulates the desired future character of Pitt Town and was adopted by Council in December 2003. It seeks to ensure that development is sympathetic with the existing village and set an appropriate standard of urban design for future development. The amendments proposed in the Housing Code will permit Complying Development applications to vary some of these provisions, particularly in relation to front and some side setbacks.

For example, the front setbacks in the Draft Code are 4.5 metres as opposed to Council's 8 metres minimum for North/South oriented lots and 7 metres minimum for East/West oriented lots under Pitt Town DCP. In other areas of the City the setback will be determined by the existing setback of adjacent dwellings as provided in the Draft Code. However, the land at Pitt Town is predominately vacant and therefore the minimum standard of 4.5m is likely to become the default in most cases.

Consideration should be given to this matter in areas where there are no dwellings (to determine the setback) within the street and where Development Control Plans have been prepared in consultation with the community. In these cases the setbacks in the Development Control Plans should apply.

Existing buildings facing the street on one side of the land immediately adjoining the site and no existing building facing the street (rear road) -

The rear setback should consider existing dwellings only and not other outbuildings such as garages, which can be located on the property boundary or with a much-reduced setback.

Private Open Space - It is considered that any width below 4m is unlikely to adequately function as Private Open space with 2m being too small. The code, as proposed, could permit a Principle Private open space area with a width of 2m, which is not adequate to function properly for private open space.

The Private Open Space area should also contain an area of at least 4 x 4 metres. This would ensure that the Private Open Space is usable and functional for the occupants of the dwelling.

Car parking, Garages and driveways - The provision of only one space is not adequate as a larger dwelling could involve a family with more than one car and provisions should be made on the site. The requirement for a covered space is not considered to be critical.

Sloping Sites - The code requirements have potential for a batter to become a problem with the adjoining property and a maintenance problem if the side setback is 1m or less. A more appropriate solution would be to have the fill contained within the slab/foundations and not extend to the boundaries. This is a standard requirement for Council where cut and fill is used and is located within 1m of the property boundary.

Environmentally Sustainable Design - In some residential areas there is a need to provide on site detention and the code does not specify the need to clarify this requirement with Council.

4. Standard Conditions

Clause 136A of the Environmental Planning and Assessment Regulation requires that a complying development certificate must be issued subject to a condition that requires there to be a contract of insurance in force in accordance with Part 6 of the Home Building Act 1989 (i.e. Builders Home Owners Warranty Insurance or and Owner-Builders Permit issued by the Department of Fair Trading). It should be noted that the specified standard conditions identified in the Draft Housing Code do not contain this condition as required by the Regulation. The Department should address this matter by including this as a condition in the Complying Development provisions.

Further, the Department of Planning has not addressed the impost of a Section 94A Contribution condition and it is requested that this matter be rectified by including the appropriate condition if required.

5. Dictionary

There appears to be some inconsistency between the Floodplain Development Manual April 2005 and the NSW Housing Code. For example, the definition in the NSW Housing Code for Flood Prone Land means *land that has been identified as being below the 1:100 flood event in a local environmental plan*. In the NSW Government Floodplain Development Manual April 2005, the definition is *land susceptible to flooding by the PMF event*.

It is considered that the most appropriate definition is *flood liable land* as contained within the Floodplain Development Manual April 2005.

6. Formatting

The government is seeking to outline a simple system to gain planning approvals and as such the document should be interactive in the electronic format. For example, there should be an ability to "click" into table of contents to access various sections. Further, to make the electronic versions easier to read and scroll or navigate on screen, the formatting should not be based on columns.

The Department's Codes and documents should follow a system as per the instructions given to Councils in regards to the preparation of a single DCP, ie, the Department's Codes should, upon completion, form one single Code that applies to Exempt and Complying Development rather than multiple Codes applying to different development types.