



NSW GOVERNMENT  
**Department of Planning**

**Office of the Director General**

Crs Miller and McCaffery  
 Local Government and Shires Association  
 GPO Box 7003  
 SYDNEY NSW 2001

Local Government Association of NSW	
Shires Association of NSW	Y09/1108
23 APR 2009	
SGU.....	CORP.....
POLICY .....	JB.....
WPLACE.....	NO ACTION.....
FILE No:	R09/0014.

Dear Cr Miller and Cr McCaffery

I refer to your March 2009 Report '*Council Feedback NSW Housing Code and Exempt Development Provisions*' and the accompanying media release '*Housing Code report card raises council concerns*' dated 1 April 2009.

Your media release states that because the department has received in excess of 1300 enquiries on the NSW Housing Code, that many issues still need to be clarified.

An analysis of the enquiries received by the department reveals that in most cases the majority of enquiries are positive in nature with only 1 or 2% negative. Typical responses received from the department include:

*"The workshops on the Code have been really helpful"*

*"Well done on meeting those tough time frames without comprising on the quality of the well thought through set of provisions and guidelines".*

The department has now responded to over 1800 enquiries on the NSW Housing Code and we believe our communication strategy with all stakeholders, including local councils, is working well. This is particularly so in relation to the significant changes that the NSW Housing Code is bringing to what has previously been a complex and lengthy approval process for relatively simple dwelling houses.

The key comments raised through your Housing Code Monitoring site are very similar to comments we have received directly from councils which we are addressing in the spirit of improving the Code.

You may be interested to note that we post continual updates and answers to frequently asked questions on the Department's website at [www.planning.nsw.gov.au/housingcode](http://www.planning.nsw.gov.au/housingcode)

Attached to this letter is a detailed response to the issues raised in your March 2009 Report. We appreciate your feedback and have taken on board many of the comments provided as part of the ongoing process of reviewing and refining the Code.

As you have stated in your media release, there is now a much closer working relationship developing between the two levels of Government and we believe this is very important to ensure that we get an appropriate level of uptake of the Housing Code and a simplification of the planning system for housing approvals.

This close working relationship is also demonstrated through the joint project we are undertaking with the Associations in developing an electronic version of the Housing Code. Joint initiatives like this can only lead to much better processes and systems that integrate across State and Local Government jurisdictions.

If you have any further queries, comments or inputs into the Housing Code please feel free to pass these on to Chris Johnson who is the Executive Director in the Department responsible for the Code. Thank you once again for your constructive feedback and to the operation of the Housing Code.

Yours sincerely

*S Haddad*

Sam Haddad  
**Director General**

16/4/2009.

## **Department of Planning's response to the LGSA March 2009 Report – Council Feedback NSW Housing Code and Exempt Development Provisions**

The following responses to the issues identified in the LGSA's report are listed numerically in the same order that the report lists the issues.

### **1. Last minute changes to zoning certificates**

The introduction of a stand alone Planning Certificate - s149(2) was a direct result of feedback from councils during the preparation of the NSW Housing Code. To enable this Certificate to have legal effect, an amendment to the Environmental Planning and Assessment Regulation 2000 was required. This amendment could not come into effect however until the Codes SEPP commenced. The concerns raised with the timing of the relevant planning circular are acknowledged.

A number of "outstanding discussion points" are identified in relation to planning certificates, in summary councils have been advised through direct responses and fact sheets that:

- Equivalent zones are not a matter for consideration under the planning certificate; equivalent zone tables should be utilised by the applicant in determining whether their site has an appropriate zone equivalent to those of the Standard Instrument.
- In generating a planning certificate the matters of Clause 1.19 of the SEPP are to be relied upon in determining whether a complying development certificate can be issued. Where the lot falls within an exclusion area under Clause 1.19 and the answer to the planning certificate question is therefore "no", then the specific land affectation should be noted i.e. "a flood control lot" and "within a protected area".
- Other matters outside of Clause 1.19 and Schedule 3 should not be covered by the planning certificate. If and when a local exclusion is gazetted under Schedule 3 for a lot then that should also be noted. Zone and lot size are not matters to be listed under the planning certificate.
- Contaminated land is not an exclusion under Clause 1.19 of the Codes SEPP, Acid Sulfate Soils (class 1 and 2) are an exclusion under the Codes SEPP, mine subsidence is not an exclusion under the Codes SEPP.
- Flood control lot has been used to ensure consistency with the current identification of a flood affected site under the existing s149(2) planning certificate and the Codes SEPP.
- A REP is an environmental planning instrument so where applicable and an exclusion identified, can be included as excluded land.
- Public land and any other affected land should be identified in the council's GIS data and should be relied upon in the generation of a planning certificate. Where council does not have the appropriate data it may at times need to rely on mapping data from State Agencies.

### **2. Excessive notification requirements**

During the development of the Code, neighbour notification of complying development was specifically requested by councils. The concerns now raised by councils in regard to the courtesy neighbour notice have been noted and clarification on how the form is to be issued will be circulated has been clarified in planning circular (PS 09-012) issued on 17 April 2009 (see [www.planning.nsw.gov.au/planningsystem](http://www.planning.nsw.gov.au/planningsystem)) Further work is underway to revise the form in which a notice is to be made.

### **3. Application for additions where the whole house must comply**

This point has been made by councils and practitioners alike. An amendment to the Code to restrict the controls to the new components of the home is being developed. This amendment is projected for a mid 2009 gazettal.

### **4. Need for broader range of local variations**

It is intended that the Codes SEPP be a flexible instrument that will respond to the housing market as well as ensuring local character is preserved. For the first call for local variations only three development standards can be sought to be varied. The intention is to maintain a consistent code with common standards across the State with a reasonable number of local variations. If councils believe other development standards should be varied we would be interested in receiving proposals.

### **5. Consideration of council water and sewer infrastructure**

A water, sewer or stormwater main is generally the property of the relevant authority under legislation (including the Water Management Act, Sydney Water Act, Hunter Water Act or Local Government Act). The relevant authority may specify any requirements applicable to the construction of building works on, over or within proximity of such a main. The Codes SEPP does not remove the requirements to obtain approval (and satisfy the relevant authorities requirements) where development will be carried out in, on or over any main. A person carrying out this type of development should ensure they hold the requisite approval and comply with the relevant authorities requirements prior to carrying out the work.

Easements and rights of way are created under the Conveyancing Act and registered on the title of the land under the Real Property Act. The Codes SEPP does not displace any requirements relating to an easement or right of way, nor does it expressly authorise the building of structures in, on or over that easement or right of way. A person whose land is encumbered by an easement or right of way is responsible for ensuring their proposed development complies with the terms of any existing easements or right of way.

### **6. Compliance with the Code**

The Codes SEPP has not changed the Act or Regulation rules in relation to compliance and how compliance with council or State requirements for exempt or complying development are to be dealt with. A Facts Sheet has been issued by the Department on Monitoring and Compliance (see [www.planning.nsw.gov.au/housingcode](http://www.planning.nsw.gov.au/housingcode))

### **7. Lessons from the first month**

The comments and suggestions raised are noted, and in parts agreed with. The Department is keen to continue an open discussion on policy development and implementation with the LGSA and councils.