

**DRAFT**

**Submission to the Department of Planning and  
Environment's 2016 Background Paper entitled  
*A Review of Complying Development for Inland  
NSW***

May 2016

## 1. Opening

Local Government NSW (LGNSW) is the peak body for councils in NSW, representing general-purpose councils and associate members including 12 special-purpose county councils and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community-based system of local government in NSW.

This submission is a response to the Department of Planning and Environment's 2016 Background Paper entitled *A Review of Complying Development for Inland NSW* (Background Paper). The Background Paper proposes a separate complying development code for single dwelling development in rural areas west of the Great Dividing Range. The purpose of the new code is to simplify the planning controls with the intention of encouraging applicants to use the state wide complying development code for single dwellings.

LGNSW appreciates the opportunity to comment on the Background Paper.

Please note this submission is considered a draft until formally approved by the LGNSW Board. LGNSW will forward the final submission to the Department.

## 2. The proposal

The proposal is to introduce a separate complying code called the Inland Code for low density residential development that will apply (at the time of writing) to 83 Local Government Areas, west of the Great Dividing Range<sup>1</sup>.

The new Inland Code will be a composite of the General Housing Code and the Rural Housing Code with the purpose of tailoring complying development controls for regional NSW. These changes are intended to simplify the current controls and make them more applicable to rural/regional forms of development. Hence the code will cover all residential and rural zones – comprising R1, R2, R3, R4 to larger R5 and R6 zones, as well as RU1, RU2, RU3, RU4 and RU5 zones.

Many of the changes to the code are intended to make the code more user-friendly by simplifying the language, definitions and adding diagrams. The changes also aim to clarify some of the current inconsistencies with the definitions under the Standard LEP Template and the Codes SEPP. LGNSW supports these changes.

However, **LGNSW opposes some of the detail that unnecessarily overrides councils' planning controls, such as minimum lot sizes.** This issue is discussed later in this submission.

Many of the more substantive changes enable certain types of agricultural activities to be classified as exempt from approval. Therefore the proposal allows farm sheds, private stockyards, silos and grain storage bunkers, to be reclassified as exempt development. LGNSW supports the underlying principle of enabling low impact agricultural development on rural zoned land to be undertaken without planning or building approval, however these provisions are not appropriate in areas which may be flood-affected or subject to bushfire hazard.

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<sup>1</sup> See Figure 1 – Area of Proposed Application of Inland Code p 8 of the Background Paper.

LGNSW also supports the exclusion of heritage items and heritage conservation areas from the Inland Code.

### 3. Background

The purpose of complying development is to enable development to be fast tracked by a private or council certifier, bypassing the development assessment process and applying general state wide planning codes over local planning controls. This process also removes the current right of neighbours 'to have a say on development next door', where required under councils' development control plans (DCPs).

LGNSW supports the use of complying development for low risk development that is suitable for a 'tick the box' assessment process. This is considered to be appropriate for development that primarily requires a building assessment process with few planning issues to be addressed.

The proposed Inland Code generally covers development that is suitable to be approved as complying development by a certifier.

The Department of Planning and Environment set up a regional forum and reference group that has enabled councils and other stakeholders to provide feedback on the existing controls and how they might be adjusted for a rural context. The primary reason for development of a separate Inland Code was an acknowledgement that the General Housing Code did not recognise the needs of the rural and regional context. It is therefore a significant improvement on the General Housing Code.

### 4. The Inland Code

The proposed changes under the Inland Code will generally be beneficial for councils and communities in rural/regional NSW.

Feedback from councils and other stakeholders during the preparation of the Inland Code indicated broad agreement that the General Housing Code is unnecessarily complex and hard to navigate.

LGNSW supports the proposed changes to the General Housing Code to be incorporated into the Inland Code, which will:

- simplify the format and language;
- introduce diagrams; and
- provide better consistency of definitions between the Codes SEPP and the Standard Instrument LEP.

Many of the amendments to the code will be beneficial in delivering a clearer and more concise code that will be easier to use. However to what extent this results in more complying development applications (CDAs) being approved by certifiers in rural/regional NSW remains to be seen. In non-metropolitan areas the DA process is often a relatively fast process especially for the simple development that will be covered in the complying code, with applicants also favouring the flexibility allowed under the DCP and ongoing advice that is provided by council staff during the DA process.

While the changes to the content are also generally reasonable, LGNSW will leave councils to comment on the details, except in relation to minimum lot sizes.

## 5. Minimum Lot Sizes

LGNSW opposes the current proposal to enshrine the current minimum lot size of 200m<sup>2</sup> under the General Housing Code in the Inland Code. This is both inappropriate for rural /regional areas and is well below the minimum lot sizes set by rural and regional councils under their LEPs. Given that the average lot size for residential development in non-metropolitan areas (according to the Background Paper) is about 970m<sup>2</sup> compared with 550m<sup>2</sup> in the Sydney Region<sup>2</sup>, it is unreasonable to adopt the 200m<sup>2</sup> minimum for rural areas.

Many councils will find 200m<sup>2</sup> too small and inconsistent with their LEP provisions, which are set to accommodate circumstances unique to rural areas, such as having a suitable land area on which to dispose of sewage effluent (if the area is unsewered). Any minimum lot size requirements should be in accordance with the LEP provisions for lot sizes.

In addition, it is unnecessary for a complying code to override a primary planning standard of a council LEP which has been updated in recent years. Councils should have the power to set local minimum standards as these controls inform the density of an area and its local character.

Interestingly, the Inland Code acknowledged that the minimum lots size for development on Rural zones ( RU1 to RU5) be allowed to match the standards of the LEP on the basis of maintaining the integrity of council strategic planning and desired residential character of larger lots on the urban fringe and rural areas<sup>3</sup>.

This policy position needs also to be applied to the R1 to R5 zones in the rural villages and regional towns for the same reason.

## 6. Conclusion

The Inland Code has merit and will improve the clarity of the planning rules for complying development that can be approved by a certifier for rural and regional NSW. Nevertheless, it is unclear whether it will achieve the take-up anticipated by the Department given that the DA process provides a service to local rural and regional communities that is valued by applicants.

Only one important change needs to be made to the content from LGNSW's perspective.

LGNSW recommends that the minimum lot size for the approval of development by a certifier should align with the minimum lot size specified under the LEP. There is no justification to override council's planning powers and the proposed standard of 200m<sup>2</sup> is clearly too small for regional /rural NSW and will allow sites to be developed that are well below standard.

LGNSW is aware that the Department intends to further review, develop and expand complying development to other forms of development. Given this position we suggest that the Department continue to consult with LGNSW and councils about developing effective ways of fast tracking the approval of development without undermining the local strategic planning process.

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<sup>2</sup> P17, Background Paper

<sup>3</sup> Explanation of Intended Effects, p 4

It is also recommended that a common structure for Development Control Plans be explored with LGNSW and councils, on the basis that state and local planning controls would be an integral part of these codes. This would be a way of delivering greater standardisation across the sector without overriding councils' consent and planning powers.

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