




Property Council of Australia  
ABN 13 00847 4422

Level 1, 11 Barrack Street  
Sydney NSW 2000

T. +61 2 9033 1900  
E. [nsw@propertycouncil.com.au](mailto:nsw@propertycouncil.com.au)

[propertycouncil.com.au](http://propertycouncil.com.au)  
 [@propertycouncil](https://twitter.com/propertycouncil)

Australia's property industry

## Creating for Generations

13 May 2021

Mr Marcus Ray  
Deputy Secretary  
Department of Planning, Industry and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Mr Ray

### Explanation of Intended Effect - Building Business Back Better

The Property Council of Australia welcomes the opportunity to provide comments on the Explanation of Intended Effects (EIE) for proposed changes to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. The following comments are provided for your consideration.

We have reviewed the measures set out in the EIE that are intended to boost the volume of development that can take advantage of the complying development pathway. These measures, should they proceed as proposed, provide a significant economic benefit to commercial and industrial landowners and tenants across NSW.

We agree that there is considerable pipeline of new development that will be held up in the development application pathway that could be redirected into a complying development approval pathway without any significant reduction in environmental protection and residential amenity.

Should you have any questions regarding the content of this submission, please contact Troy Loveday, NSW Policy Manager, on 0414 265 152 or [tloveday@propertycouncil.com.au](mailto:tloveday@propertycouncil.com.au)

Yours sincerely

  
**Jane Fitzgerald**  
NSW Executive Director  
Property Council of Australia

# **Submission to the Department of Planning, Industry and Environment**

## **Building Business Back Better**

**13 May 2021**

## 1.0 Introduction

The Property Council welcomes the opportunity to provide feedback on the Explanation of Intended Effect titled “*Building Business Back Better*” that is expected to accelerate the delivery of up to \$4.8 billion annually in economic benefits. As the NSW economy moves out from the disruption caused by the COVID-19 pandemic, it is vital that business is provided with the tools it needs to make adjustment and proceed with new investment.

The NSW economy suffered a significant disruption during 2020 and many businesses were affected by lock downs, the loss of international and domestic visitors, and changes to consumer behaviour. As the economy starts the important process of rebuilding, post-COVID, unnecessary regulatory barriers should be removed to reduce delay and costs associated with obtaining the required planning approvals. Complying development offers the most appropriate avenue to repurpose existing buildings that have been impacted by the economic shock caused by COVID.

The *Building Business Back Better* reforms are one part of the Government’s Planning Reform Action Plan that was announced by the Premier in August 2020. The aim of that plan is to attract investment, ensure ongoing job growth, reduce time and cost associated with the planning system and to make it more transparent and easier to use. We support the proposed reforms on the basis that they will deliver on the aims of the Action Plan.

We note that the development of the *Building Business Back Better* package was informed by a market sounding and insights exercise that provided very useful guidance on the types of changes that needed to be made to the existing complying development rules. The market sounding proposed solutions to streamline the current complying development codes for commercial and industrial development. It also modelled the economic impact of the solutions to show where the benefits, such as time savings, would be delivered. The process of identifying the problem and developing a policy response to address it is very appropriate.

This submission has been developed following engagement with members of the Property Council to identify opportunities and issues arising from improvements to the complying development pathway aimed at the commercial and industrial sectors.

## 2.0 Land use and business agility

### 2.1 Expanding land-use opportunities

It is widely acknowledged that COVID-19 caused significant disruption to many businesses during 2020. We support the use of complying development to provide for a rapid planning assessment, against a set of planning criteria, to allow for new businesses to establish and existing businesses to transform and pivot in new directions.

The EIE released by the Department for consultation proposes a number of actions to increase business agility by expanding access to the faster complying development pathway for commercial and industrial development.

Our response to each proposal is provided in the following table:

Proposals	Property Council Response
Remove the distinction between the first use and change of use, add new land uses to the existing list of land use that may be complying development, including data centres, recreational facilities (indoor), local distribution premises, entertaining facility, artisan food and drink industry, veterinary hospitals, depots, health manufacturing facilities and heavy industry in heavy industrial zones.	These amendments to the existing complying development rules are appropriate and supported.
Allow CDCs 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 a premises.	Given this change only involves other land uses that are currently permissible under the relevant LEP, this change is appropriate and supported.
Allow a wider range of land uses access to the building allowances in the Codes SEPP including: the new land uses listed above, commercial premises in a B5 to B7 zone, function centres, health consulting rooms, medical centres, community facilities, health manufacturing facilities, vehicle repair station, wholesale supplies, amusement centres, boat building and repair facilities, vehicle body repair stations, information and education facilities, food and drink premises greater than 50 seats, neighbourhood supermarkets.	Many properties located within these LEP zones have suffered disruption during COVID.  We support the proposal to allow alternative land uses to be able to rely upon the complying development pathway to change to new uses.

## 2.2 Meeting the needs of business

The Property Council supports the concept of exempt and complying development and we support the Department exploring opportunities to widen its scope beyond the current provisions where impacts can be minimised and where economic benefits can be derived. To this point, we encourage the Department to consider the potential for greater use of complying development for commercial and industrial development.

We agree with the information contained within the market sounding carried out by the Department. COVID-19 has forced many existing businesses to respond to changing economic circumstances. More people are choosing to adopt more flexible work arrangements, which has had positive impacts on many of Greater Sydney's suburban centres. Restrictions that have prevented inbound international travel and foreign students have led to many hospitality businesses reviewing how they operate. Government restrictions intended to protect the community have also had significant impacts to the way many retail businesses operate. For this reason, it is appropriate to allow these changes to be streamlined using the complying development pathway.

The table below considers a range of business agility proposals that have been designed to allow business to respond to changing economic circumstances.

Proposal	Property Council Response
Permit hours of operation from 7:00am to 10:00pm, irrespective of existing consent requirements (such as the intrusiveness and amenity criteria from the Noise Policy for Industry).	This is an appropriate measure to encourage greater flexibility in hospitality, tourism, consumer-focused service industries.
Permit 24-hour operation in industrial zones, irrespective of existing consent requirements,	Where industrial land has a good separation distance or buffer from residential areas, there should be no obstacle from 24 hour operation.  In the case of those areas and where the relevant EPA noise policy criteria can be satisfied, we support this proposal as it will encourage greater use of industrial premises to respond to the economic shocks that business has experienced during and post-2020.
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 collection occurs on a public road).	This measure is fully supported as it will provide businesses with greater operational flexibility with little or no adverse impacts.
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.	The existing requirement that involves referring back to original or previous development consents can be time consuming and costly. This measure is fully supported and will encourage greater use of the complying development pathway.

Reduce duplication of other requirements within the code (for example, references to the Building Code of Australia and other standards).	This measure is appropriate and supported. Unless it is critical to refer to a requirement found in another document, there is no need for it to be duplicated within the Code SEPP.
---	--

### 2.3 Protecting amenity with continued operation of planning standards

The EIE provides certainty that the requirements in the SEPP pertaining to the protection of amenity will continue. In this regard, the following matters will continue to apply:-

- Development will still need to comply other applicable legislation, such as the *Roads Act 1993* and *Local Government Act 1993*, if it relates to the complying development proposal.
- It is proposed to generally align the existing traffic impact certification process for complying development with the 'traffic generating development' referral requirements in Schedule 3 of the Infrastructure SEPP.

**Property Council response:** The Property Council supports the existing provisions of the Codes SEPP that are intended to protect the on-site and amenity impacts.

## 3.0 Zone-based building controls

This section responds to Part C of the EIE that was released by the Department for consultation.

The EIE correctly notes the industrial, warehousing and logistics sector has the most opportunity for growth, both now and into the future.

We support the Department's intention to update the Industrial Alterations Code to keep pace with the rapidly evolving requirements of the industry.

### 3.1 Revised industrial zone building standards for zones IN1 to IN3

The EIE seeks feedback on the following proposals:

Proposal	Property Council Response
Increase allowable floor area from 20,000m <sup>2</sup> to 50,000m <sup>2</sup> , subject to existing LEP floor space ratio (FSR) controls or continue to apply an FSR of 1:1 in the code where no FSR control applies.	This change is appropriate and supported as it will expand the use of complying development.
Increase allowable building height in zones IN1, IN2 and IN3 from 15m to 18m where the existing LEP height is less than 18m.	This change is appropriate and supported as it will encourage the take up of the complying development pathway where it is available.
Permit a building height up to 45m where no LEP height limit exists, subject to: <ul style="list-style-type: none"> <li>- a new separation distance of up to 150m to a residential zone boundary, noting there will be no increase where the existing LEP height limit is already 18m to 45m.</li> <li>- a maximum floor area for any part of the building over 18m of up to 40% of the total floor area of the building.</li> </ul>	This change is appropriate and is supported as it will provide an incentive for the take up of complying development pathway where it is available.
Increase ancillary land uses, such as offices and industrial retail outlets, from 20% to 30% of gross floor area.	This change is appropriate and will offer considerable flexibility and agility to business to pivot their operations in a post-COVID environment.
Increase additions allowance from 5,000m <sup>2</sup> to maximum gross floor area, subject to LEP FSR.	This is an appropriate action and will provide an incentive for the take up of the complying development pathway where it is available.

### 3.2 New business zone building standards for zones B5 to B7

The Property Council welcomes the introduction of new complying development rules for the B5, B6 and B7 zones.

Under the Standard Instrument LEP, these zones allow for a wide range of commercial and industrial land uses, including but not limited to: *Business premises, Hardware and business supplies, specialised retail premises, warehouse and distribution centres and light industries.*

Expansion of the range of development that can be undertaken in these zones as complying development will provide a significant shot in the arm for commercial strips that have been in decline for many years.

The EIE released for consultation seeks feedback on the following proposals:

Proposal	Property Council response
Allowing new builds and alterations and additions (as complying development) in business zones up to 10,000m <sup>2</sup> and five (5) storeys within the B5, B6 and B7 zones, subject to existing LEP height, FSR and landscaped area controls.	<p>The Property Council welcomes this proposal being proposed as complying development.</p> <p>We support the Department's initiative to consider these types of developments as complying development in these three specified business zones.</p>
Introduce a new business zone design guide and design verification process to manage site planning, good design and amenity impacts for larger buildings or sites.	<p>The Property Council has reviewed the draft design guide that was released for consultation and note that it is intended to provide guidance to landowners who are considering this pathway.</p> <p>We support the use of a single State-wide design guide addressing key design elements for each of the main building typologies, to regulate the detailed planning and design of buildings taking advantage of the above new planning rules.</p>

### 3.3 Continued operation of alterations and additions code for zones B1 to B4

The EIE does not propose any change to the existing Codes SEPP provisions for commercial alterations and additions within the other business zones (B1, B2, B3 and B4).



## 4.0 Supporting neighbourhood and local centres

This section responds to Part D of the EIE released for consultation. The EIE has outlined several land use and business agility improvements that are relevant to neighbourhood and local centres (specifically B1 and B2 zones). These proposals facilitate consideration of the particular needs of neighbourhood and local centres.

### 4.1 Land uses

The EIE seeks feedback on the following proposals:

Proposal	Property Council response
<p>Allowing a wider range of land uses to be complying development in B1 and B2 zones with development standards for these new land uses to mitigate amenity impacts. The uses include:</p> <ul style="list-style-type: none"> <li>- <i>entertainment facilities,</i></li> <li>- <i>indoor recreation facilities (dance studios),</i></li> <li>- <i>function centres,</i></li> <li>- <i>local distribution premises,</i></li> <li>- <i>medical and veterinary centres,</i></li> <li>- <i>health consulting rooms,</i></li> <li>- <i>amusement centres,</i></li> <li>- <i>neighbourhood supermarkets.</i></li> </ul>	<p>This change is welcomed. We encourage the Department to proceed with this proposal as it provides greater opportunity for existing commercial premises to be used for a more diverse range of uses, particularly where traditional retail strips want to attract service and entertainment uses.</p>
<p>Introducing standard hours of operation from 7am to 10am, irrespective of existing consent conditions (subject to those noise controls such as the intrusiveness and amenity criteria from the EPA <i>Noise Policy for Industry</i>).</p>	<p>This change is welcomed. Many local centres have suffered from the closure of some businesses during COVID. The Property Council supports the development of the night-time economy as it will bring greater vibrancy to these centres. This change is an appropriate step to support existing cafes and restaurants.</p>
<p>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).</p>	<p>This change is welcomed. We support the use of the complying development pathway to allow food and drink premises to increase seating allowances up to a maximum of 100 seats.</p>
<p>Removing additional parking and loading bay requirements for existing premises that are less than 500m<sup>2</sup> (where parking or loading is already absent or below development control plan requirements).</p>	<p>This change is welcomed. Often the need to provide additional car parking and loading space is a significant challenge for businesses in local centres. We encourage the Department to support this proposal as it will help to rejuvenate many local neighbourhood centres that have struggled during the COVID pandemic.</p>
<p>Allowing minor external alterations (such as shopfront and awning repairs and maintenance) to existing buildings in a heritage conservation area and on the site of</p>	<p>This change is welcome. We support the move to allow these types of minor building works to commercial premises in conservation areas using the complying</p>

listed local heritage items (but not the listed heritage item itself).	development pathway. Often when these are considered as development applications, the owner or tenant has to go to considerable expense to prepare a DA, including heritage impact reports, for there to be no issues from the Council's heritage officer. We encourage the Department to support this proposal.
Making new allowances for neighbourhood circular economy land uses, such as repair-shop cafes and swap-and -re-use- centres.	This change is welcome. These types of land uses (if kept at an appropriate scale) can have minimal impact on the local centre and provide a boost to the local economy.
Allow ancillary complying development for lots that adjoin a lane and secondary or parallel road, given many centres adjoin these types of roads. The current size limitations for ancillary development would remain.	The Property Council notes that this proposal will allow for complying development for certain ancillary development. It is not clear what type of development would fit into this category. It may be necessary to clarify the types of development that this proposal would include.

#### 4.2 Continued operation of Codes SEPP standards

The EIE released by the Department for consultation has made it clear that the Codes SEPP contains standards and conditions to manage on-site and amenity impacts (including waste management, site maintenance, drainage and noise). No changes are proposed to these standards, which we completely support.

Where it is necessary for development to comply with other relevant legislation (such as the *Liquor Act 2007*, *Roads Act 1993* and the *Local Government Act 1993*) those obligations and approvals will still apply. We support this position.

## 5.0 Masterplan pathway

The EIE released by the Department for consultation also seeks feedback on a council-led pathway to allow a local council to specify complying development on identified industrial or business zoned land in a masterplan. Using this mechanism, councils could undertake up-front planning for the purpose of specifying complying development in a masterplan. A council and a developer/landowner could partner together to prepare land use studies that would support this pathway.

This pathway would only be available for industrial and business zones and would not be available for residential development (such as in the B4 Mixed Use zone).

The EIE suggests that this pathway could be used to develop complying development pathways as part of a town centre revitalisation strategy or to assist attracting emerging industries and economic development to industrial areas.

**Property Council Response:** The Property Council welcomes this proposal. Based on the concept described in the EIE we would encourage local councils who support this concept to work with landowners and developers to facilitate pilot schemes to trial the masterplan pathway.

## 6.0 Data centres

This section responds to Part F of the EIE released for consultation. The EIE outlines a number of proposals relating to the use of the complying development pathway for the development of new data centres.

### 6.1 Complying development pathway

Currently, the Infrastructure SEPP permits development for the purpose of a data centre in the B5, B6, B7, IN1, IN2 and IN3 zones with development consent. The EIE is consulting on the establishment of a new complying development pathway within the Codes SEPP. We support the use of complying development where it does not create any adverse environmental impacts.

### 6.2 Land use definition

The EIE indicates that a new definition to apply to data centres will be established in the Standard Instrument LEP in order to allow for the use of complying development pathway. We note that the new definition will help accredited certifiers to easily characterise a data centre when they issue a Complying Development Certificate. This is an appropriate course of action to ensure that the complying development pathway is used appropriately.

### 6.3 Building controls

The EIE explains the type of building controls that will apply to the establishment of data centres. The standards for industrial buildings such as height, FSR and setbacks will be carried over to this category of development. As these types of development have the external appearance of industrial buildings and warehouses, this proposal is completely appropriate and supported.

## 6.4 Technical Standards

Our support for a complying development pathway for the approval of new data centre developments is subject to broad community support. In order for complying development to be accepted as an appropriate pathway for the development of data centres, there must be stringent regulation of noise and amenity impacts. For this reason, there will be two technical standards issued for noise and air quality.

We would also recommend that the Department consult with Sydney Water Corporation regarding any specific requirements (concerning servicing for water supply and sewer) that it has regarding the development of data centres. We understand that Sydney Water has requirements that must be satisfied for land to be used for this purpose.

### Noise Technical Standard

The EIE indicates that an online noise assessment tool will be developed to produce a noise-assessment certificate that will be provided to an accredited certifier with a complying development certificate. The tool will use a standard process for determining noise impacts consistent with the *Noise Policy for Industry* (EPA). Where the tool confirms noise compliance, a developer would receive a noise-compliance certificate that would need to be provided to the certifier with the CDC application.

We acknowledge this will be an appropriate approach to considering potential noise impacts from data centres on sensitive receivers. Should this proposal proceed, the Department should provide guidance information to the industry and other stakeholders looking to use the CDC process for develop a data centre. It is important that there are no unnecessary barriers to the take up of this pathway through a lack of adequate guidance information.

### Air Quality Technical Standard

It is understood that the Department is currently in the process of taking advice regarding how to consider potential noise impacts for data centres. Once the technical advice is complete, the Department will consult directly with key stakeholders on its details. This

The EIE indicates that an air emissions compliance table will be developed to determine minimum separation distance from sensitive receivers. Accredited certifiers will be able to determine and certify the required distance between back-up generators and residential homes and other sensitive land uses as part of certification.

We note that there will not be a requirement to review any technical information in relation to air emissions. We support this approach which will avoid the need for applicants to commission costly emissions reports.

### Fuel and batteries

It is understood the Department has commissioned a hazards expert to investigate the potential hazards and risks associated with fuel and batteries for back-up power systems. This advice has resulted in the development of three (3) standard to ensure community safety.

The EIE indicates that the proposed standards have been drafted to ensure that data centres using the complying development pathway do not trigger key hazards and risk thresholds such as *SEPP No 33* and the *Protection of the Environment Operations Act 1997*.

We encourage the Department to consult with relevant stakeholders with expertise in this area to ensure that these standards are fit for purpose.

## 6.5 Hours of operation

The EIE released by the Department for consultation indicates that a data centre needs to allow for operations 24 hours a day, in order to provide continuous data storage and processing services. Most staff working within these facilities work between 9am and 5pm with only a small number of critical technical staff and security personnel on site outside of normal business hours.

It is proposed that any approval issued for a data centre using the complying development pathway would provide for unrestricted operations (24 hours a day/7 days a week).

This is appropriate and supported.

## 7.0 Consequential amendments

### 7.1 EP&A Regulation

The proposal will introduce new requirements into the *Environmental Planning and Assessment Regulation 2000* (the Regulation) that will enable the proposed changes to complying development. The amendment will include providing for noise-compliance certificates, design verification statements and masterplans for complying development.

We support the proposed amendments to the Regulation to facilitate the expansion of complying development as identified in the EIE.

### 7.2 Standard Instrument

The proposal will introduce a new definition for “*data centre*” into the Standard Instrument LEP Order.

We support this change.

### 7.3 State Environmental Planning Policy (Infrastructure) 2007

The proposal will update the relevant provision within the Infrastructure SEPP to reflect the change to definition of “*data centre*” within the Standard Instrument LEP Order.

### 7.4 Savings and transitional provisions

The Department intends to include savings and transitional provisions regarding the proposed changes to the Codes SEPP. This will ensure that any current application for a CDC made under the following codes:

- *Part 5 – Commercial and Industrial Alterations Code*
- *Part 5A – Commercial and Industrial (New Buildings and Additions) Code*
- *Part 5B – Container Recycling Facilities Code*

can either be determined as if the changes had not yet been made or determined under the new Code.

## 8.0 Conclusion

The proposal to implement changes to the complying development pathway to support commercial and industrial development is supported. The economic impacts of the COVID pandemic have been significant and led to significant change to the commercial and industrial sector. This proposal provides considerable incentive, by reducing assessment timeframes and administrative costs, to proceed with new business investment.

The Property Council and our members welcome the Department investigating the expansion of land uses and development types that could proceed using the complying development pathway, particularly the repurposing of existing commercial premises for new uses and the development of new buildings in certain business zones. These proposals all have considerable merit and are worthy of support.

We would welcome the opportunity to review the proposed instrument that will give effect to the proposals outlined in the EIE to provide feedback on the implications of each proposed measure.