



**KEYLAN**  
consulting pty ltd

Suite 2, Level 1  
1 Rialto Lane  
Manly NSW 2095

# **Re-imagining Complying Development**

## **Stage D – Options Testing Progress Summary Report**



Prepared for the Department of Planning, Industry and  
Environment

**December 2020**

## Contact



Dan Keary  
Director  
E: [dan@keylan.com.au](mailto:dan@keylan.com.au)

Michael Woodland  
Director  
E: [michael@keylan.com.au](mailto:michael@keylan.com.au)

All Rights Reserved. No material may be reproduced without prior permission of KEYLAN Consulting Pty Ltd. While KEYLAN Consulting Pty Ltd working on this project has tried to ensure the accuracy of the information in this publication, it accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in the information in this report. This report has relied on information provided by the Department of Planning, Industry and Environment in good faith and accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in the information in this report.

## Table of Contents

<b>1</b>	<b>Introduction .....</b>	<b>4</b>
<b>2</b>	<b>Background .....</b>	<b>5</b>
2.1	Stage A – Project Inception .....	5
2.2	Stage B – Baseline Research and Benchmarking .....	5
2.3	Stage C – Ideas Generation and Engagement with Market Sounding .....	6
2.4	Stage D – Options Testing .....	7
<b>3</b>	<b>SWOT Analysis .....</b>	<b>8</b>
<b>4</b>	<b>Options Testing .....</b>	<b>10</b>
4.1	Low Complexity Reforms.....	11
4.2	Medium to High Complexity Reforms.....	12
<b>5</b>	<b>Implementation .....</b>	<b>15</b>
5.1	Low Complexity Reforms.....	15
5.2	Medium to High Complexity Reforms.....	19
<b>6</b>	<b>Recommendations .....</b>	<b>24</b>

## Appendices

Appendix 1	SWOT Analysis of Ideas
Appendix 2	Categorisation of Proposed Land Uses and Suggested Codes SEPP clauses for review

## 1 Introduction

This progress summary report has been prepared by *Keylan Consulting* (Keylan) for the *Department of Planning, Industry and Environment* (DPIE) as part of Stage D- Options Testing of the *Re-Imagining Complying Development* project (the Project).

The purpose of the report is to further analyse the reform options identified during the Ideas Generation stage (Stage C) of the Project. The key reform recommendations of Stage C were as follows:

- 1. Open complying development up to a wider range of land uses**
- 2. Net reduction in complexity**
- 3. Increase building height and GFA limitations**
- 4. Precinct-based approach to expanded complying development provisions**

The findings of Stage C were considered by DPIE and the Quality Control Panel (the Panel) prior to the Market Sounding workshop on 23 November 2020.

As part of Stage D – Options Testing, we further reviewed the Stage C recommendations to develop a refined set of recommendations and associated implementation actions. This included consideration of key high-impact reforms that can be implemented with relative ease in a 6-month time frame, as well as other potential reforms that would involve more complex implementation requirements and could therefore be investigated in the longer term.

We also undertook a high-level review of Urbis' Draft Market Sounding Report (dated 4 December) and referred to Urbis' key findings, where relevant, in this report.

A previous version of this report was provided to DPIE and the Panel on 8 December 2020 for consideration ahead of a workshop presented by Keylan on 9 December 2020. This report has been revised and updated to incorporate verbal feedback received from DPIE and the Panel during the workshop and written feedback from the Panel received on 14 December 2020.

## 2 Background

### 2.1 Stage A – Project Inception

Keylan was engaged by DPIE in October 2020 to assist in “Re-imagining complying development” which entails the revision of complying development pathways for employment generating uses and zones. As part of Stage A, Keylan prepared a Project Plan stating our methodology for the five established project stages:

- A – Project Inception
- B – Baseline research and benchmarking
- C – Ideas generation and engagement with market sounding
- D – Options testing
- E – Final Report

### 2.2 Stage B – Baseline Research and Benchmarking

In October, Keylan comprehensively reviewed relevant background information to identify current constraints and opportunities in the existing complying development regime in NSW for employment related uses, including:

- *Productivity Commission Green Paper – Continuing the productivity conversation*, August 2020 (Productivity Commission Green Paper)
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
- Other relevant State Environmental Planning Policies (SEPPs)
- *Standard Instrument – Principal Local Environmental Plan 2006* (Standard Instrument)
- DPIE’s Local Development Performance Monitor and Local Environmental Plans for a sample of regional councils
- Monthly Jobs and Business Snapshot & Commercial and Industrial Property Snapshot provided by DPIE
- A sample of recent development consents for data centres
- Complying development or equivalent provisions in other National and International jurisdictions including Victoria, Queensland, the United Kingdom, New Zealand and Canada

Keylan also attended a workshop with Urbis, DPIE and the Panel on 26 October 2020 which presented the preliminary findings of the Market Sounding stream of the project.

Based on this review, Keylan provided a progress summary report to DPIE and the Panel with seven key findings and potential ideas for complying development reform:

1. *Precinct-based approach to complying development in employment generating areas*
2. *Design guide for employment generating complying development codes*
3. *Amenity-based development standards to address potential environmental impacts*
4. *Develop a specific commercial and industrial code for regional areas*
5. *Distance-based controls to mitigate land use conflict arising from expanded complying development provisions*
6. *Add definitions for data centres and other emerging industries to the Standard Instrument*
7. *Ensure reforms are used to aid economic recovery*

The findings within the progress summary report were presented to DPIE and the Panel at a workshop on 4 November 2020. At the workshop, DPIE and the Panel provided verbal feedback and the Panel provided written comments on 10 November 2020. In particular, the Panel:

- noted the risk that while some complying development reforms may ultimately provide greater flexibility they may also add to the overall complexity of the system
- requested a strong focus on simplifying the process and making it more comprehensible and user-friendly wherever possible

The issue of complexity was also highlighted in our background research, which demonstrated that there is a potential tension between introducing more innovative reforms and simplifying the complying development system. For example:

- bespoke complying development provisions in particular areas could result in a greater layering (or “patchwork”) of controls, rather than a streamlined system, which may disincentivise the use of complying development
- the introduction of a design guide would add another layer of technical considerations that would generally be outside the expertise of certifiers. This would likely require the involvement of design professionals and a design certification process, which could add time, cost and complexity

In light of these issues, the Panel requested a SWOT analysis of the seven key findings and potential ideas be completed during Stage C. The Panel also requested analysis of the potential to apply sustainability objectives and incentives to complying development.

### **2.3 Stage C – Ideas Generation and Engagement with Market Sounding**

Following the completion of Stage B, Keylan provided a second progress summary report in November ahead of the Market Sounding workshop with Urbis, DPIE and the Panel on 23 November 2020. The progress summary report incorporated comments received from the Panel and DPIE and further analysed and refined the preliminary ideas from Stage B and the ideas raised by the Panel.

The report made the following recommendations, noting their ability to be implemented with relative ease and within a short time frame, in order to facilitate prompt economic recovery:

1. *Open complying development up to a wider range of land uses*
2. *Net reduction in complexity*
3. *Increase building height and GFA limitations*
4. *Precinct-based approach to expanded complying development provisions*

At the 23 November 2020 workshop, Urbis presented the initial findings of its market sounding research and potential solutions to aid employment generating uses. Urbis’s findings and proposed solutions were largely consistent with and supported the research and options previously recommended by Keylan.

Urbis’ draft report was also provided to Keylan on 7 December and Urbis’ key findings were also used to inform the options testing and analysis within this report.

## 2.4 Stage D – Options Testing

Following Stage C, a previous version of this report was provided to DPIE and the Panel on 8 December 2020 for consideration ahead of a workshop presented by Keylan on 9 December 2020. This report has been revised and updated to incorporate verbal feedback received from DPIE and the Panel during the workshop and written feedback received from the Panel on 14 December 2020.

The key comments provided by the Panel can be summarised as below:

- Standardisation vs Flexibility is likely to continue to be an issue for users going forward
- The key to wider community and industry acceptance over time will be understanding change, communication and particularly the quality of outcomes
- Real or perceived conflicts of interest in policy change will need to be considered and addressed, especially where sign-off of any subjective matters are involved, paid for by a proponent
- The report is comprehensive, thorough, robustly researched and evidence-based and proposes an achievable set of transformative changes which considers economic benefit
- Matters for further consideration include:
  - Caution to avoid further complexity by switching off Codes for certain land uses or zones
  - Use of technology to improve accessibility to site history, certification information and E-Planning
  - Avoiding potential conflict and contention by including land uses which may conflict with land use objectives, e.g. tourist and visitor accommodation
  - Potential delays to development due to the need to obtain other approvals following the granting of a CDC.

The above issues have largely been addressed within the report and have been reiterated by the panel to emphasise their importance in gaining support for reform and ensuring longevity of recommended reforms.

In addition, Keylan undertook further review of the proposed revisions to the Codes SEPP (identified under the heading “*Simplifying complying development requirements*” and “*Open complying development up to a wider range of land uses in Business and Industrial zones*” in Sections 5.1.1 & 5.1.2) to categorise those that could be implemented immediately or those that require further review. This analysis is provided at Appendix 2.

### 3 SWOT Analysis

During Stage C of the Project, Keylan undertook a SWOT Analysis of the preliminary ideas previously presented to DPIE and the Panel. This analysis has been used to inform recommendations on ideas for further review and testing in this Stage. The full SWOT Analysis is provided at Appendix 1.

The key findings of the SWOT Analysis by idea are summarised below:

#### ***Precinct-based approach to complying development in employment generating areas***

- Allows for simpler, more lenient complying development provisions in targeted areas of investment and economic activity.
- However, it may potentially result in a patchwork of different provisions across the State, as noted by the Panel.
- It is also dependent on initial strategic planning work to identify suitable precincts, which may delay the introduction of reforms.

#### ***Design guide for employment generating complying development codes***

- May achieve high quality design outcomes and provide detailed and tailored standards, however there may be many practicality issues with implementation as observed with the Low Rise Housing Diversity Code (eg, high fees and liability issues).
- The design guide would need to be simple and easy to follow to encourage its use. Otherwise, it could add to the overall complexity of the system.

#### ***Amenity-based development standards to address potential environmental impacts***

- Measurable amenity-based development standards could effectively manage potentially adverse environmental impacts associated with employment generating development.
- However, to ensure potential complexity is addressed, an online tool (similar to BASIX) may be required. This could take time to develop and could add time and costs to the process.

#### ***Develop a specific commercial and industrial code for regional areas***

- A tailored regional code could respond to differing circumstances, support investment and increase uptake of complying development in regional areas.
- However, this fragments the complying development framework across the state, potentially resulting in the “patchwork” approach noted by the Panel.

#### ***Distance-based controls to mitigate land use conflict arising from expanded complying development provisions***

- Specific distance-based controls could be used to permit larger scale development as complying development provided sites are not near sensitive receivers/residential zones.
- However, such controls do not consider other factors contributing to impact such as topography and population density.
- This approach may also require develop of an online tool if combined with amenity-based controls.



***Add definitions for data centres and other emerging industries to the Standard Instrument***

- Will improve clarity for permissibility of Data Centres and simplification of all Standard Instrument definitions will improve legibility of the Codes SEPP.
- However, this is only one element of overall reforms which, by itself, may have limited effectiveness. It would need to be accompanied by other broader reforms.

***Sustainability***

- This approach is consistent with the State Government's sustainability objectives.
- However, it could add complexity, costs and time delays which may ultimately discourage take up of complying development.

***Incentives***

- Incentives in the form of height and floor space bonuses could potentially facilitate greater up take of CDCs.
- However, this may add significant complexity to the complying development regime and may not be appropriate for complying development.

## 4 Options Testing

The SWOT analysis further highlighted the tension between achieving greater flexibility and application in complying development controls whilst also increasing standardisation and reducing complexity.

That is, reform options with potentially greater impact generally involve more upfront planning and more timely and complex implementation arrangements, including additional regulation and/or new systems or tools.

Therefore, given the Project is aimed at implementing regulatory reforms to facilitate immediate economic recovery, it is important that the options identified in the previous phase of this project are further tested in terms of their level of complexity, ease of implementation and level of potential economic impact.

We have therefore further analysed reform options and categorised them into:

- reforms that are able to be implemented with minimal complexity and in the short-term (within the next 6 months)
- reforms that are more complex but should continue to be investigated for implementation in the longer term (more than 6 months)

Further detail on the potential implementation of all reform options is provided in Section 5.

## 4.1 Low Complexity Reforms

It is considered the following options are low complexity, short-term reform options: They generally only require legislative amendments to existing provisions within the Codes SEPP and generally could be implemented within a 6 month timeframe.

Option	Comment	Alignment with Market Sounding
<b>Open complying development up to a wider range of land uses in Business and Industrial zones</b>	<ul style="list-style-type: none"> <li>Relatively low level of complexity, subject to further review of appropriateness of existing development standards/ preparation of new standards for new uses</li> <li>Can be completed through minor amendments to existing Codes SEPP provisions within a relatively short timeframe</li> </ul>	<ul style="list-style-type: none"> <li>Emerging investment trends highlight need for more flexible planning controls for sectors and development types such as data centres, healthcare, retail, manufacturing, renewables and recyclables etc</li> <li>Strong market demand for private sector healthcare investment and data centres</li> <li>Shopping centres are evolving into mixed use precincts and are pursuing different land uses such as gyms, medical centres and co-working spaces</li> </ul>
<b>Simplifying complying development requirements</b>	<ul style="list-style-type: none"> <li>Can be completed through minor amendments to existing Codes SEPP within relatively short timeframe</li> <li>Low level of complexity</li> <li>Could be accompanied by improvements to the e-Planning Spatial viewer to ensure all exclusions are mapped. However, this could add time and complexity and may not be feasible within a 6 month timeframe</li> </ul>	<ul style="list-style-type: none"> <li>Complexity is a significant barrier to the use of the Codes SEPP</li> <li>Rationalisation of current controls and change of use in retail centres responds to market concerns over restrictiveness of controls such as heritage, hours of operation</li> </ul>
<b>Increase building height and GFA limits for commercial and industrial development</b>	<ul style="list-style-type: none"> <li>Can be completed through minor amendments to existing Codes SEPP provisions within relatively short timeframe</li> <li>Low level of complexity</li> </ul>	<ul style="list-style-type: none"> <li>Growing demand for warehouses up to 45m to accommodate new automation technology</li> <li>Urbis predicts increased height and GFA caps could unlock \$1.2 billion in investment per annum for industrial and \$70m per annum for commercial</li> </ul>

Option	Comment	Alignment with Market Sounding
<b>Resolve up-front amenity and hazard issues for data centres</b>	<ul style="list-style-type: none"> <li>• Low to medium level of complexity, as appropriate controls require a technical evidence base (we are advised DPIE is undertaking specific work in this regard)</li> <li>• Can be completed through adding tailored provisions to the Codes SEPP</li> <li>• Short timeframe provided acceptable impacts are determined and agreed quickly and responding Codes SEPP amendment prepared</li> </ul>	<ul style="list-style-type: none"> <li>• Growing demand for data centres</li> <li>• Urbis reported one industrial developer was aware of \$400 million in enquires from data centre investors</li> </ul>

Table 1: Low to Medium Complexity Reforms

## 4.2 Medium to High Complexity Reforms

It is considered the following are medium to high complexity, longer term reform options: Each generally requires more complex implementation requirements, such as stakeholder education and development of guidelines, new systems and online tools.

Option	Comment	Alignment with Market Sounding
<b>Department led precinct-based approach to complying development in employment generating areas</b>	<ul style="list-style-type: none"> <li>• Potential high impact if it switches off the Codes SEPP in certain areas and introduces more streamlined complying development provisions (similar to Aerotropolis and SAP SEPPs)</li> <li>• However: <ul style="list-style-type: none"> <li>- Requires significant upfront strategic planning and precinct specific studies</li> <li>- Requires significant consultation with local Councils and communities</li> <li>- Could require significant time and resources beyond a 6 month timeframe</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Strong investment demand in greenfield locations, particularly around the Western Sydney Aerotropolis and broader employment lands</li> </ul>
<b>Council led precinct-based approach to expanded complying development provisions</b>	<ul style="list-style-type: none"> <li>• Similar to the masterplan complying development approach within the</li> </ul>	<ul style="list-style-type: none"> <li>• Urbis estimates that \$2.6 billion in investment per annum could be fast-</li> </ul>

Option	Comment	Alignment with Market Sounding
	<p>Aerotropolis SEPP - could be applied State-wide</p> <ul style="list-style-type: none"> <li>• However:               <ul style="list-style-type: none"> <li>- requires more complex legislative amendments (amendment to Codes SEPP or new SEPP/s)</li> <li>- requires Council buy-in to prepare their own complying development provisions</li> </ul> </li> <li>• An alternative, similar approach is to enable complying development to be identified through the concept approval process, ie, concept DAs and subsequent approvals could identify specific categories of complying development without relying on an EPI to do so.</li> <li>• Alternative option likely to require amendment of the EP&amp;A Act and Regs.</li> </ul>	<p>tracked through a masterplan approval model</p> <ul style="list-style-type: none"> <li>• Urbis also noted time savings of such a reform could equal 660 months per annum and opportunity costs of \$180 million per annum</li> <li>• Responds to market concerns over restrictiveness of controls such as heritage, hours of operation, signage requirements etc</li> </ul>
<b>Design guide for employment generating complying development codes</b>	<ul style="list-style-type: none"> <li>• Requires significant work to determine how the design guide approach can be improved noting implementation issues identified with the Low-Rise Housing Diversity Code</li> <li>• High complexity associated with any qualitative criteria and striking a balance needs to be found between flexibility and standardisation</li> </ul>	<ul style="list-style-type: none"> <li>• Industry is seeking design guidelines for retail development, eg shopfronts in shopping centres, to enable more minor works to be undertaken through a CDC</li> <li>• Can be used to manage impacts to facilitate expanded complying development as sought by employment generating sectors</li> </ul>
<b>Amenity-based development standards to address potential environmental impacts</b>	<ul style="list-style-type: none"> <li>• Requires analyses of specific land uses to determine potential environmental impacts and mitigation measures</li> <li>• This analysis will require time and resources</li> <li>• Introduction of new technical standards could also increase complexity</li> </ul>	<ul style="list-style-type: none"> <li>• Can be used to manage impacts to facilitate expanded complying development as sought by employment generating sectors</li> </ul>

Option	Comment	Alignment with Market Sounding
<b>Specific commercial and industrial code for regional areas</b>	<ul style="list-style-type: none"> <li>Requires upfront planning and analysis of opportunities in these areas and their common land use constraints such as flooding and bushfire</li> <li>Requires significant consultation with Regional Councils and communities</li> <li>Relatively CDC addressed by other low complexity reforms</li> </ul>	<ul style="list-style-type: none"> <li>Potential for regional areas to benefit from strong investment demand for renewables and emerging interest in recyclables and soy-based manufacturing</li> <li>A specific regional code can target industries where there is demand in regional areas</li> </ul>

Table 2: Medium to High Complexity Reforms

## 5 Implementation

This section provides an overview of the implementation requirements for both the low to medium complexity high complexity reform options. An evaluation of each idea based on the degree of difficulty and degree of impact is also provided.

### 5.1 Low Complexity Reforms

#### 5.1.1 Open complying development up to a wider range of land uses in Business and Industrial zones

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Impact
<ul style="list-style-type: none"> <li>Expand complying development provisions to a broader range of employment generating land uses</li> </ul>	Codes SEPP	Amend Codes SEPP to: <ul style="list-style-type: none"> <li>Remove the exclusion of <i>local distribution premises</i> and <i>artisan food and drink industry</i> (Clauses 5.1, 5.5 and 5A.2)</li> <li>Consider inclusion of following land uses as complying development (Parts 5 and 5A) in Business and Industrial zones with accompanying tailored development standards:               <ul style="list-style-type: none"> <li>Medical centre</li> <li>Community health service facility</li> <li>Health consulting room</li> <li>Recreation facility (indoor)</li> <li>Tourist and visitor accommodation</li> <li>Storage premises</li> <li>Data centres (also noting the recommendation that this development type be specifically defined in the Standard Instrument or included in an amended definition for storage premises)</li> </ul> </li> <li>Categorisation of the above land uses based on their ease of implementation is provided at Appendix 2</li> </ul>	Short term	Moderate - High	High

Table 3: Implementation - Open complying development up to a wider range of land uses

### 5.1.2 Simplify complying development requirements

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Rationalise and/or remove some existing provisions in the Codes SEPP (including duplicated standards, restrictive standards, references to other legislation etc)</li> <li>Rationalise land use definitions in the Standard Instrument as this impacts the Codes SEPP (in particular, data centres due to significant investment demand)</li> <li>Clearly define all terms used in the Codes SEPP</li> <li>Could be accompanied by improvements to the e-Planning Spatial viewer to ensure all Codes SEPP exclusions are mapped</li> </ul>	Codes SEPP	Amend Codes SEPP to amend and/or delete multiple clauses, as listed and categorised at Appendix 2.	Short term	Low - Moderate – (Low if updates to ePlanning Spatial View pursued)	Moderate
	Standard Instrument Codes SEPP	Amend Codes SEPP and/or Standard Instrument to: <ul style="list-style-type: none"> <li>Include definition for data centres in Standard Instrument</li> <li>Rationalise or define terms in Clause 1.19(5)(f) of the Codes SEPP that are not defined in the Standard Instrument, such as               <ul style="list-style-type: none"> <li>buffer area</li> <li>river front area</li> <li>ecologically sensitive area</li> <li>river front area</li> <li>protected area</li> </ul> </li> </ul> Definitions for these terms to be included in the Standard Instrument or delete reference to them in Codes SEPP			
		Any updates to ePlanning Spatial Viewer may require additional resources and time, however should include: <ul style="list-style-type: none"> <li>Map all exclusions within the Codes SEPP               <ul style="list-style-type: none"> <li>Clause 5A.30 refers to flood storage area, floodway area, flow path, high hazard area and high risk area – add these layers or delete exclusions from the Codes SEPP</li> <li>Standards apply to draft heritage items and conservation areas – add these layers</li> </ul> </li> <li>Will require collating and standardising mapping data from all Councils across NSW</li> </ul>			

Table 4: Implementation - *Simplify complying development requirements*



### 5.1.3 Increase building height and GFA limitations

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Increase height and GFA limits to increase the amount of commercial and industrial development eligible for complying development</li> </ul>	Codes SEPP	Amend Codes SEPP: <ul style="list-style-type: none"> <li>Amend Clause 5.2 to permit minor GFA changes for internal commercial and industrial building alterations, e.g. from no GFA changes up to 5%</li> <li>Amend Clause 5A.7 to increase maximum GFA for new industrial buildings, e.g. from 20,000m<sup>2</sup> to 30,000m<sup>2</sup></li> <li>Review whether Clause 5A.8 (maximum FSR for industrial buildings) needs to be amended in response to the amendment to Clause 5A.7</li> <li>Amend Clause 5A.9 to increase maximum height for new industrial buildings, e.g. from 15m to 45m</li> <li>Amend Clause 5A.19 to increase maximum GFA for commercial premises e.g. from 1,000m<sup>2</sup> to 5,000m<sup>2</sup></li> <li>Review whether Clause 5A.20 (maximum FSR for commercial premises) needs to be amended in response to the amendment to 5A.19</li> <li>Amend Clause 5A.21 to increase maximum height for commercial premises e.g. from 12m to 20m where there is not a dwelling on an adjoining lot</li> </ul>	Short term	Moderate - High	High

Table 5: Implementation - Increase building height and GFA limitations

#### 5.1.4 Resolve upfront amenity and hazard issues with data centres

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Make data centres complying development with accompanying standards to address environmental impacts (eg air quality, noise)</li> </ul>	Codes SEPP	<p>Amend Codes SEPP to:</p> <ul style="list-style-type: none"> <li>Incorporate standards requiring manufacturer certification of back-up generators to ensure they comply with the levels determined below</li> <li>Make data centres eligible for CDC subject to conditions under the Commercial and Industrial (New Buildings and Additions) Code</li> </ul> <p>Consultation and other requirements:</p> <ul style="list-style-type: none"> <li>Consult with developers and operators of data centres and manufacturers of back-up generators to determine the maximum acceptable level of impact and incorporate this as a development standard applying to data centres</li> </ul> <p>(Note: we are advised DPIE is currently undertaking separate work on data centres which will inform this implementation action)</p>	Short - medium term	Moderate	Moderate

Table 6: Implementation - *Resolve upfront amenity and hazard issues with data centres*

## 5.2 Medium to High Complexity Reforms

### 5.2.1 Department led precinct-based approach to complying development in employment generating areas

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Development of precinct-specific complying development provisions led by DPIE</li> <li>Should turn off the existing complex provisions of the Codes SEPP as per the SAP SEPP and Aerotropolis SEPP</li> </ul>	Codes SEPP  SAP SEPP  WSEA SEPP  Aerotropolis SEPP  New Area Specific SEPP	Amend relevant SEPP, or prepare a new SEPP to: <ul style="list-style-type: none"> <li>Override the provisions of the Codes SEPP (similar to SAP SEPP)</li> <li>Incorporate targeted complying development provisions that allow for a greater scale of employment generating development as complying</li> <li>Add new employment generating precincts to the SAP SEPP in both regional and metropolitan areas</li> <li>Review precincts with greatest investment demand for sectors noted by Urbis for targeted CDC provisions</li> </ul> Consultation and other requirements: <ul style="list-style-type: none"> <li>Upfront strategic planning to determine relevant land use constraints for each precinct, including preparing or reviewing heritage, bushfire and flooding studies</li> <li>Consultation with the relevant Councils, community and industry</li> </ul>	Med – Long term	Low - Moderate	High

Table 7: Implementation - Department led precinct-based approach to complying development in employment generating areas

### 5.2.2 Council led precinct-based approach to expanded complying development provisions

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Allow Councils to prepare masterplans for employment generating precincts in their LGA with complying development provisions facilitating greater scale development as CDC</li> <li>Similar to Masterplan approach under the Aerotropolis SEPP</li> <li>Alternatively, allow complying development provisions to be incorporated and approved as part of the Concept DA process</li> </ul>	Codes SEPP  New SEPP	<ul style="list-style-type: none"> <li>Amend Codes SEPP or prepare new SEPP/s to enable Councils to prepare a masterplan for their employment generating precincts with specific complying development provisions.</li> <li>Prepare amendments in consultation with Councils and create an education program for Council Officers on how the process will work (Note: this will add time and complexity)</li> </ul>	Short - medium term	Low - Moderate	High
	EP&A Act  EP&A Regulations	Amend EP&A Act: <ul style="list-style-type: none"> <li>Amend section 4.22 of the EP&amp;A Act and Regulations to allow concept applications and approvals to identify complying development types</li> </ul>			

Table 8: Implementation - Council led precinct-based approach to expanded complying development provisions

### 5.2.3 Design guide for employment generating complying development codes

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Develop design guide for employment generating complying development categories controls to ensure a high-quality design outcome and reduced impacts</li> <li>Similar to the <i>Low Rise Housing Diversity Code</i> (LRHD Code).</li> <li>Can be targeted to commercial design noting commercial development is usually in more visually sensitive areas than industrial development</li> </ul>	Codes SEPP	<p>Amend Codes SEPP to:</p> <ul style="list-style-type: none"> <li>Remove existing prescriptive design standards</li> <li>Include mandatory consideration of design guide in the Commercial and Industrial (New Buildings and Additions) Code</li> <li>Amend Codes SEPP to apply a commercial design code to Part 5 Division 3 (note this should apply to only the B5, B6 and B7 zones as the B1 and B2 zones are being reviewed separately through the local character program)</li> </ul> <p>Consultation and other requirements:</p> <ul style="list-style-type: none"> <li>Undertake a lessons learnt exercise with certifiers, designers and planners who have worked in practice with the LRHD Code</li> <li>Undertake extensive consultation and education with the community, Councils and industry</li> <li>Ensure real and perceived conflicts of interest are addressed where sign-off of any subjective matters are paid for by a proponent (e.g. Design Verification Statement)</li> </ul>	Medium - Long term	Low	High

Table 9: Implementation - *Design guide for employment generating complying development codes*

#### 5.2.4 Amenity-based development standards to address potential environmental impacts

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Incorporate measurable amenity-based standards to manage some potentially adverse environmental impacts from expanded complying development provisions</li> </ul>	Codes SEPP	<ul style="list-style-type: none"> <li>Review the applicability of existing guidelines for issues such as noise, air quality and vibration (eg. EPA <i>Noise Policy for Industry</i>)</li> <li>Landuse-by-landuse analysis to determine what levels of impact are associated with different employment generating development</li> <li>Consult with industry experts and manufacturers, to incorporate technical specifications into development standards or manufacturer certification</li> <li>Prepare and exhibit a Codes SEPP amendment to incorporate new standards if deemed appropriate</li> </ul>	Medium term	Low - Moderate	Low - Moderate

Table 10: Implementation - *Amenity-based development standards to address potential environmental impacts*

## 5.2.5 Specific commercial and industrial code for regional areas

Description	Instrument/s and Acts	Implementation	Estimated Timing	Ease of Implementation	Estimated Economic Benefit
<ul style="list-style-type: none"> <li>Develop a tailored commercial and industrial code applying to regional areas</li> <li>Aims to increasing complying development uptake in regional areas</li> </ul>	Codes SEPP	<ul style="list-style-type: none"> <li>Monitor uptake of complying development for employment generating development following implementation of the Low Complexity Reforms</li> <li>Continue to monitor market demand in the regions, noting relatively low take up rates to date</li> <li>Consult with Councils, certifiers and planners to determine reasons for low take-up rates in regional areas and evaluate whether a specific code would resolve this</li> <li>Amend Codes SEPP to implement the new code and associated education/guidance material</li> </ul>	Long term	Low	High

Table 11: Implementation - *Specific commercial and industrial code for regional areas*

## 6 Recommendations

Based on the above analysis, we recommend that the following low to medium complexity reforms be pursued for short-term implementation:

1. **Open complying development up to a wider range of land uses in Business and Industrial zones**
2. **Simplify complying development requirements**
3. **Increase building height and GFA limitations**
4. **Resolve up-front amenity and hazard issues for data centres**

These reforms will help reduce the complexity of the Codes SEPP, significantly expand the employment generating development that is eligible for CDC and have a significant positive economic impact. A further analysis of these options to identify those that could be implemented immediately or those that require further review is contained in Appendix 2.

In addition to the above, we also recommend further concurrent investigation of the following medium to high complexity reforms:

1. **Department led precinct-based approach to complying development in employment generating areas**
2. **Council-led precinct-based approach to expanded complying development provisions**
3. **Design guide for employment generating complying development codes, in particular a commercial design code applying to the B5, B6 and B7 zones**

These reforms could be implemented within the medium term, with low-moderate ease of implementation and potentially significant economic benefit.





**KEYLAN**  
consulting pty ltd

Suite 2, Level 1  
1 Rialto Lane  
Manly NSW 2095

## **Appendix 1**

### **SWOT Analysis of Ideas**

## **SWOT Analysis of Preliminary Ideas**

Keylan has analysed the Strengths, Weaknesses, Opportunities and Threats (SWOT Analysis) of the preliminary ideas previously presented to DPIE and the Panel. This analysis has been used to inform recommendations on potential reforms.

## 1. Precinct-based approach to complying development in employment generating areas

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Ability to provide greater flexibility and tailored provisions in specific areas identified for targeted economic development</li> <li>Potential to turn off the Codes SEPP and provide bespoke controls</li> <li>Could be implemented immediately if target precincts are already known</li> </ul>	<ul style="list-style-type: none"> <li>May add complexity in comparison to a whole of State approach by adding additional rather than reduced controls</li> <li>May not be easy to transfer provisions from precinct to precinct</li> <li>Geographically limits reforms, therefore may not reach a broad range of development types. May be more effective to expand the range of uses to which complying development applies across the State</li> <li>Requires prior strategic work to identify targeted areas</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Precinct-based approach could be used to trial any new significant changes before rolling out to the State, eg, introduced in key employment growth areas such as Western Sydney Employment Area (noting WSEA SEPP does not contain specific complying development controls)</li> <li>Employment generating industries which tend to locate in the same area can input and benefit from a bespoke approach</li> <li>A council-led precinct-based approach, eg through preparation of master plans identifying additional complying development categories, would give LGAs ownership and accountability over the process</li> </ul>	<ul style="list-style-type: none"> <li>Issues which arise with the approach at a trial stage could hinder the take up and/or roll out of any new significant changes at the State level.</li> <li>Increased complexity could undermine take-up</li> <li>Resistance from Councils to recognise and promote the precinct-based approach could impact on take-up, particularly if the precinct crosses multiple LGAs</li> <li>Prior strategic work to identify suitable areas may significantly delay introduction of reforms</li> </ul>

### Comments:

- Precinct-based approach is similar to the existing complying development provisions in the Aerotropolis and Activation Precincts SEPPs.
- Key strength is provision of a simpler complying development pathway for targeted areas of investment and economic activity.
- Also provides an opportunity to trial complying development reforms, eg through rationalised development standards, before introducing such reforms on a broader scale.
- There is also an opportunity to provide a Council-led process of identifying additional complying development categories in these areas. This would potentially achieve greater Council and community acceptance of revised complying development controls.
- Conversely, limiting reforms to specific areas only would also limit the geographic extent of reforms, which may neutralise their overall benefits. There may be greater benefit in expanding the range of uses to which complying development applies across the State.

- Similarly, the introduction of different complying development models across the State may add to the overall complexity of the system, which may be contrary to the objective of simplifying the system.
- It is also dependent on initial strategic planning work to identify suitable precincts, which may delay introduction of reforms.

## 2. Design guide for employment generating complying development codes

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Can be used to ensure high quality design outcomes, similar to the intended outcome of the Low Rise Housing Diversity Code (LRHD Code)</li> <li>Enables detailed and tailored standards to address design outcomes and mitigate potential adverse impacts associated with expanded complying development provisions</li> <li>Could address potential Council and community concerns that expanded complying development provisions will result in poor development outcomes</li> <li>Reduces complexity within legislation and enables flexibility as standards can be refined without requirement for legislative amendment</li> </ul>	<ul style="list-style-type: none"> <li>Likely to involve quantitative as well as qualitative criteria, eg. local character, which introduces subjectivity</li> <li>Adds time and cost to the overall CDC process</li> <li>Process may stall on detailed issues which are outside the expertise of certifiers</li> <li>Each site is unique and therefore standardised controls may not be appropriate</li> <li>Perceived conflict of interest, as designers are appointed by applicants to certify subjective matters</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Potential to set out how the specific design criteria will be assessed in the design guide</li> <li>Streamline current qualitative design assessment criteria in Codes SEPP into a simplified process</li> <li>Standardise design assessment criteria</li> <li>Potential to add sustainability incentives through a design code (eg. non-compliances with certain criteria may be acceptable provided sustainability criteria are met)</li> </ul>	<ul style="list-style-type: none"> <li>Additional time and costs may limit CDC uptake as seen with the LRHD Code</li> <li>Fees for design verification statements may be prohibitive</li> <li>Certifier concerns regarding liability relating to design verification if protections required are not addressed in the legislation</li> </ul>

### Comments:

- Design guide approach is similar to the approach taken for the LRHD Code. Accordingly, there is an existing model that can be adapted for employment generating development.
- Key benefit is that it removes detailed and prescriptive standards from legislation, meaning it can be refined and amended more easily.
- However, it is noted there have been challenges implementing the code such as high fees for design verification statements and certifiers concerns regarding liability. Such challenges would also likely apply to a design code for employment generating development.
- Design guide would need to be simple and easy to follow to encourage its use. Otherwise, it could add to overall complexity of system.

### 3. Amenity-based development standards to address potential environmental impacts

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Addresses potential environmental impacts of some employment generating development types through measurable standards such as noise and emission levels</li> <li>There are a range of existing policies and guides for amenity issues that could be integrated eg. EPA Noise Policy for Industry</li> <li>Builds on existing amenity-based standards in Codes SEPP, eg, noise limits for mechanical ventilation systems</li> </ul>	<ul style="list-style-type: none"> <li>May add complexity to the Codes SEPP</li> <li>There is an argument that amenity-based issues such as noise and vibration should not be limiting in industrial and commercial areas</li> <li>Amenity-based development standards may not account for site specific differences in variables such as geographical, meteorological, topographical differences throughout the State.</li> <li>May require third party certification, eg from an acoustic engineer, which could add time and cost to process</li> <li>The use of amenity buffer zones within employment generating land uses would in effect create two different complying development regimes within the same zone, which would also add to complexity</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Opportunity to involve industry experts on the development of amenity parameters, such as distance and noise levels etc.</li> <li>Opportunity for manufacturer certification of relevant technologies (eg diesel generators) to incorporate technical specifications into development standards that limit impacts</li> <li>Amenity controls could be located within buffer zones adjacent to sensitive land uses in employment generating precincts</li> </ul>	<ul style="list-style-type: none"> <li>Additional complexity, time and costs may limit CDC uptake</li> <li>Uniform controls may unreasonably restrict development in some areas where impacts are minimal, despite the relevant technical standard not being met</li> </ul>

#### Comments:

- Measurable amenity-based development standards could be an effective way to manage some potentially adverse environmental impacts associated with employment generating development.
- There is precedent for such controls in the Codes SEPP, which could be adapted for broader use.
- There is great potential to incorporate manufacturer certification of relevant technologies into development standards (eg. Diesel generators) to manage amenity impacts.
- Controls must be qualitative to enable verification.
- Potential complexity of standards could be addressed through an online tool (similar to BASIX) for determining compliance.

#### 4. Develop a specific commercial and industrial code for regional areas

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Allows controls to be tailored to the unique circumstances within regional areas</li> <li>Promotes growth in regional areas</li> <li>The code would include development standards for key issues which are specific to regional areas</li> </ul>	<ul style="list-style-type: none"> <li>Adds an additional code to the SEPP rather than simplifying it</li> <li>Regional areas within the State are subject to significant variation in terms of factors such as physical environment, existing land uses and socio-economic characteristics. Therefore, it could be overly simplistic to group all 'regional' areas as one</li> <li>Excludes metro areas where the majority of commercial and industrial development potential is located</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Able to develop the code with buy-in from regional councils (similar to Option 1 above)</li> <li>Potential to improve take up rates in regional areas, particularly those identified through broader strategic planning as suitable for increased investment and (similar to Activation Precincts approach)</li> </ul>	<ul style="list-style-type: none"> <li>Potential confusion in practice over which code applies</li> <li>Some councils may still incentivise DAs through lower fees than CDCs</li> <li>Could be dependent upon acceptance and willingness of regional areas to adopt</li> <li>Reliant upon employment generating uses / industry wanting to locate in regional areas</li> <li>Uptake may be limited and centred on smaller scale commercial and industrial which create less jobs</li> </ul>

#### Comments:

- A tailored commercial and industrial code for regional areas could respond to differing circumstances in these areas, support investment and increase uptake of complying development in regional areas.
- However, this approach fragments the complying development framework across the State and may only be appropriate if broad-based reforms still do not improve take-up rates in regional areas.

## 5. Distance-based controls to mitigate land use conflict arising from expanded complying development provisions

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Potential to allow larger scale development as complying if there are standards addressing potential impacts on nearby sensitive receivers/residential zones</li> <li>Can be quantitative and easy to assess</li> <li>Can be flexible with increases in height / noise permissible with distances from the boundary / receptor</li> </ul>	<ul style="list-style-type: none"> <li>Could add complexity to the Codes SEPP as provisions would vary according to distance from sensitive receivers/residential zones.</li> <li>Impacts may not be measurable based on physical distance only, eg. noise is also dependent on other factors such as existing background noise, topography, climatic conditions etc</li> <li>As this is not a precinct-based control; the relevant distance controls need to ensure they are applicable to all areas of the State</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Opportunities to also review height and noise-based controls commensurate with distance from boundary (similar to existing development standards for setbacks for industrial buildings in the Codes SEPP)</li> <li>This approach is already used within Schedule 3, Clause 7 of the Education SEPP, eg. addresses noise impacts from indoor recreation facilities and community facilities by requiring a 20m distance from the boundary of land used for residential accommodation.</li> <li>Simple quantitative controls are easily understood by certifiers and this may encourage uptake of CDCs</li> </ul>	<ul style="list-style-type: none"> <li>Concern whether distance-based controls can be effectively applied</li> <li>Could still result in inappropriate development</li> <li>Distance-based development standards would need to be tested to ensure they respond to variables such as geographical, meteorological, and topographical differences throughout the State.</li> </ul>

### Comments:

- Distance based controls have the potential to allow for larger scale development as complying development, provided sites are not near sensitive receivers/residential zones.
- There are precedents for distance-based controls in the Codes and Education SEPPs which could be adapted for broader use.
- Note distance-based controls do not consider other factors contributing to impact such as topography and population density.
- The potential to allow increased scale complying development particularly in large industrial precincts is consistent with the Project objectives and should be subject to further investigation.
- Potential complexity of standards could be addressed through an online tool (similar to BASIX) for determining compliance.



## 6. Add definitions for data centres and other emerging industries to the Standard Instrument

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Will improve clarity and assessment for data centres</li> <li>Certifiers note the definitions as an issue and believe clarifying definitions would resolve much of the complexity surrounding CDCs</li> <li>Ensures the planning process keeps up to date with market and industry trends for emerging industries</li> </ul>	<ul style="list-style-type: none"> <li>Revised definitions only address one aspect of required reforms – effect of updating definitions is also dependent on other complying development reforms</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Respond to emerging industry and markets with updated and more contemporary land use definitions</li> <li>Definitions can be addressed as part of the broader planning reform agenda</li> </ul>	<ul style="list-style-type: none"> <li>As these industries are emerging, they can shift direction and classification and therefore “point in time” definitions may become redundant.</li> </ul>

### Comments:

- Adding a definition of Data Centres to the Standard Instrument will improve clarity and will ensure the planning process keeps up to date with market and industry trends in emerging industries.
- Other definitions could also be added, informed by the Market Sounding work.
- Simplification of all definitions within the Standard Instrument would improve legibility of the Codes SEPP.
- However, this is only one element of overall reforms which, by itself, may have limited effectiveness. It would need to be accompanied by other broader reforms.

## SWOT Analysis of Panel Ideas

The Panel also identified the following ideas for further review:

- **Sustainability** – Panel noted that sustainability objectives could be factored into the complying development process.
- **Incentives** – Panel noted that there is potential to consider incentives that would encourage applicants to take up the CDC approach.

A SWOT Analysis of these ideas is provided below.

## 1. Sustainability

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Ensures that sustainability outcomes, which are otherwise achieved through the DA process (eg through DCP requirements), are factored into the complying development process</li> </ul>	<ul style="list-style-type: none"> <li>Green Star requirements require third party certification through the Green Building Council of Australia (GBCA) which could add to complexity and time to process</li> <li>Additional sustainability initiatives may also add to upfront development costs</li> <li>If only applied to employment generating development, would place additional burden relative to complying development provisions for other development categories</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Could be implemented through accepted industry standards, eg, Green Star rating</li> <li>Could use standards that require new developments to generate a certain percentage of their energy needs from on-site renewable energy, such as PV solar panels.</li> <li>Potential to incentivise retrofitting and reuse of existing buildings through complying development as this is more sustainable than demolition and construction of new buildings</li> </ul>	<ul style="list-style-type: none"> <li>Additional requirements and associated complexity, costs and time delays could discourage complying development take up for employment generating development</li> </ul>

### Comments:

- Introducing sustainability standards is consistent with the State Government's sustainability objectives and could have the benefit of ensuring that sustainability outcomes are properly accounted for in the complying development process.
- However, this option could add complexity, costs and time delays could discourage additional complying development take up rates for employment generating development, which is contrary to the objectives of this reform initiative.

## 2. Incentives

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>Greater uptake of the Codes SEPP if incentives address current constraints of complying development provisions (eg complexity, limited categories of complying development, cost etc)</li> </ul>	<ul style="list-style-type: none"> <li>Incentives may add further complexity to the Codes SEPP</li> <li>Floor space bonuses may not be an appropriate incentive for employment generating development, as floor areas for commercial and industrial development are often dictated by operational requirements rather than yield</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>Could be implemented through floor space bonuses, similar to existing bonus provisions for design excellence, heritage conservation etc in the planning system</li> <li>Could be implemented through lowering and standardising CDC application fees across the State</li> <li>Opportunities to link sustainability objectives to incentives</li> </ul>	<ul style="list-style-type: none"> <li>Floor space bonuses may be met with community and council opposition if it results in larger-scale/higher impact development</li> <li>Reduced fees may be opposed by certifiers</li> </ul>

### Comments:

- Incentives would potentially facilitate greater take up of CDCs, however could also add significant complexity to the complying development regime.
- Any incentives would need to be tailored to employment generating development, noting the comment above that the benefit of incentives such as floor space bonuses may have limited benefit for employment generating development.
- Furthermore, any incentives would also need to be accompanied by other development standards to ensure that the incentives themselves do not result in unintended additional development impacts, eg, additional visual impact resulting from additional GFA.
- On balance, we consider that effective reforms to complying development provisions, for example, which provide for application across a broader range of development times and which reduce the complexity of the system, should provide sufficient incentive to greater take up rate of CDCs.



**KEYLAN**  
consulting pty ltd

Suite 2, Level 1  
1 Rialto Lane  
Manly NSW 2095

## **Appendix 2**

### **Categorisation of Proposed Land Uses and Suggested Codes SEPP Clauses for Review**

## Proposed Land Uses, Clauses for Review & Categorisation of Amendments

On 9 December, Keylan presented to the Department of Planning, Industry and Environment and the Quality Control Panel our findings from Stage D – Options Testing of the Re-imagining Complying Development Program. During this workshop, Keylan committed to further categorising the suggested land uses and suggested clauses for review based on whether they are able to be implemented immediately or require further review. This information is provided below:

### 1 Suggested Land Uses for Inclusion in the Commercial and Industrial Codes

Land Use	Definition	Comment	Category
<b>Local distribution premises</b>	<p><b>local distribution premises</b> means a building or place used for the storage or handling of items (whether goods or materials) pending their delivery to people and businesses in the local area, but from which no retail sales are made.</p> <p>Note— Local distribution premises are a type of <b>warehouse or distribution centre</b>—see the definition of that term in this Dictionary.</p>	<ul style="list-style-type: none"> <li>Excluded from the Codes SEPP via Clauses 5.1, 5.5 and 5A.2. It is unclear why this exclusion applies.</li> <li>Able to be incorporated through a legislative amendment to the above Clauses</li> <li>The current standards within Part 5 &amp; 5A are predominantly appropriate for <i>local distribution premises</i></li> <li>We also understand that DPIE has engaged architectural advice to analyse potential revisions to the built form standards of industrial/warehouse buildings which would apply to <i>local distribution premises</i>.</li> </ul>	Immediate implementation
<b>Artisan food and drink industry</b>	<p><b>artisan food and drink industry</b> means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—</p>	<ul style="list-style-type: none"> <li>Excluded from the Codes SEPP via Clauses 5.1, 5.5 and 5A.2</li> <li>Unclear why this land use is currently excluded, although we understand it is a recent land use inclusion in the Standard Instrument</li> </ul>	Further review

Land Use	Definition	Comment	Category
	<p>(a) a retail area for the sale of the products, (b) a restaurant or cafe, (c) facilities for holding tastings, tours or workshops.</p> <p>Note— See clause 5.4 for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.</p> <p>Artisan food and drink industries are a type of <b>light industry</b>—see the definition of that term in this Dictionary.</p>	<ul style="list-style-type: none"> <li>• Able to be incorporated through a legislative amendment to the above Clauses</li> <li>• The current standards within Part 5 &amp; 5A are generally appropriate for Artisan food and drink industry but may require review to verify</li> <li>• The Standard Instrument (Clause 5.4) allows Council's to limit the GFA able to be used for retail. Similar controls could be adopted as a specific development standard in the Codes SEPP</li> <li>• E.g. the Sydney Local Environmental Plan 2012 states the following:  (10) Artisan food and drink industry exclusion If development for the purposes of an artisan food and drink industry is permitted under this Plan in an industrial or rural zone, the floor area used for retail sales (not including any cafe or restaurant area) must not exceed—     (a) 20% of the gross floor area of the industry, or     (b) 400 square metres, whichever is the lesser.</li> </ul>	
<b>Medical Centre</b>	<p><b>medical centre</b> means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.</p> <p>Note—</p>	<ul style="list-style-type: none"> <li>• Urbis noted an increasing trend of medical centres in shopping centres and robust appetite for private sector healthcare investment</li> <li>• Currently excluded from Part 5A of the Codes SEPP but not excluded from Part 5 – note change of use to and from medical uses is listed under Category 2 of Clause 5.3</li> <li>• Appropriate for inclusion to Part 5A where permissible in the zone</li> <li>• Able to be incorporated through a legislative amendment to Clause 5A.17</li> </ul>	Immediate Implementation

Land Use	Definition	Comment	Category
	Medical centres are a type of <b>health services facility</b> —see the definition of that term in this Dictionary.	<ul style="list-style-type: none"> <li>The current standards within Part 5 &amp; 5A are generally appropriate for Medical Centres but may require a minor adjustment</li> <li>Eg, an additional subclause should be added to Clause 5A.26 to require appropriate management of hazardous waste</li> </ul>	
<b>Community health service facility</b>	<p>No definition provided in Standard Instrument</p> <p><b>health services facility</b> means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—</p> <p>...</p> <p>(b) community health service facilities,</p> <p>...</p>	<ul style="list-style-type: none"> <li>As above</li> <li>Currently not identified under Category 2 of Clause 5.3</li> <li>Category 2 of Clause 5.3 should be amended to include <i>Community health service facility</i></li> <li>The current standards within Part 5 &amp; 5A are generally appropriate for <i>community health service facilities</i></li> </ul>	Immediate Implementation
<b>Health consulting room</b>	<p><b>health consulting rooms</b> means premises comprising one or more rooms within (or within the curtilage of) a dwelling house used by not more than 3 health care professionals at any one time.</p> <p>Note— Health consulting rooms are a type of <b>health services facility</b>—see the definition of that term in this Dictionary.</p>	<ul style="list-style-type: none"> <li>As above</li> <li>Note: <ul style="list-style-type: none"> <li>Not identified under Category 2 of Clause 5.3</li> <li>Part 5A would only apply where the dwelling house that is used as health consulting rooms is within a B or IN zone</li> </ul> </li> <li>The current standards within Part 5 &amp; 5A are generally appropriate for <i>health consulting rooms</i></li> </ul>	Immediate Implementation
<b>Recreation facility (indoor)</b>	<b>recreation facility (indoor)</b> means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table	<ul style="list-style-type: none"> <li>Urbis noted an increasing trend of indoor recreation facilities in shopping centres</li> <li>Excluded from Part 5A of the Codes SEPP</li> <li>Not specifically excluded from Part 5 but is not permitted as a Change of Use – suggest Clause</li> </ul>	Further Review



Land Use	Definition	Comment	Category
	<i>tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.</i>	<p>5.3 is amended to include <i>recreation facility (indoor)</i> where appropriate</p> <ul style="list-style-type: none"> <li>• Current standards within Part 5 &amp; 5A are generally appropriate for indoor recreation facilities, however, may require review to verify</li> <li>• Can be incorporated through a legislative amendment to Clause 5A.17</li> <li>• Noise impacts can be managed through Schedule 8 Clauses 21 and 22 which limits hours of operation and noise</li> <li>• May lead to a loss of industrial land – a review of LEPs across NSW is required to determine extent of permissibility of <i>recreation facility (indoor)</i> in IN zones</li> </ul>	
<b>Tourist and visitor accommodation</b>	<p><b>tourist and visitor accommodation</b> means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—</p> <p>(a) backpackers' accommodation,</p> <p>(b) bed and breakfast accommodation,</p> <p>(c) farm stay accommodation,</p> <p>(d) hotel or motel accommodation,</p> <p>(e) serviced apartments,</p> <p>but does not include—</p> <p>(f) camping grounds, or</p> <p>(g) caravan parks, or</p> <p>(h) eco-tourist facilities.</p>	<ul style="list-style-type: none"> <li>• Excluded from Part 5A</li> <li>• Not specifically excluded from Part 5 but is not permitted as a Change of Use</li> <li>• <i>Tourist and visitor accommodation</i> includes a number of different sub land uses which vary significantly in impact</li> <li>• <i>Tourist and visitor accommodation</i> are associated with a different nature of impacts to commercial and industrial development</li> <li>• The Panel noted potential conflict and contention with land use zone objectives</li> <li>• Requires further review and development of specific development standards</li> </ul>	Further Review
<b>Storage premises</b>	<p><b>storage premises</b> means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of land, and includes self-storage units, but does not</p>	<ul style="list-style-type: none"> <li>• Excluded from Part 5A</li> <li>• Not specifically excluded from Part 5 but is not permitted as a Change of Use</li> <li>• Current standards within Part 5 &amp; 5A are appropriate for <i>storage premises</i></li> </ul>	Further Review

Land Use	Definition	Comment	Category
	<i>include a heavy industrial storage establishment or a warehouse or distribution centre.</i>	<ul style="list-style-type: none"> <li>• However, there may be issues associated with loss of employment land particularly as self-storage units employ relatively few people</li> <li>• Resultingly, <i>storage premises</i> may not be appropriate for inclusion at all noting project objectives</li> <li>• Requires further review to determine if appropriate for complying development</li> </ul>	
<b>Data Centres</b>	No definition currently in the Standard Instrument	<ul style="list-style-type: none"> <li>• Urbis noted high demand for Data Centres</li> <li>• DPIE currently developing specific standards for Data Centres</li> </ul>	Immediate Implementation

Table 1: Categorisation of the suggested land uses for inclusion in the Commercial and Industrial Codes

## 2 Suggested Codes SEPP Clauses for Review

### 2.1 Overall Comments

Issue	Comment	Category
Cross referencing to other legislation	<ul style="list-style-type: none"> <li>There are a large number of references to other acts within Part 1 General, this adds complexity and increases the risk of missing a key consideration. Acts, regulations and EPIs referred to and requiring cross checking within Part 1 include: <ul style="list-style-type: none"> <li>The relevant LEP</li> <li>Wilderness Act 1987</li> <li>Heritage Act 1977</li> <li>Protection of the Environment Operations Act 1997</li> <li>Local Government Act 1993</li> <li>Native Vegetation Act 2003</li> <li>Environmental, Planning and Assessment Act 1979</li> <li>Environmental Planning &amp; Assessment Regulations</li> <li>Mine Subsidence Compensation Act 1961</li> <li>Biodiversity Conservation Act 2016</li> <li>Crown Land Management Act 2016</li> <li>National Parks and Wildlife Conservation Act 1974</li> <li>Contaminated Land Management Act 1997</li> </ul> </li> <li>Rationalising the amount of referencing to other legislation will significantly reduce confusions and risk of error while using the Codes SEPP</li> <li>This will require significant time and potentially a range of new clauses to resolve</li> </ul>	Further Review
Building Code of Australia	<ul style="list-style-type: none"> <li>Under Clause 1.18 (c) the relevant Building Code of Australia provisions must be met, yet the SEPP also names specific BCA provisions under most subdivisions</li> <li>This creates duplication throughout the SEPP</li> <li>Suggest the specific BCA clauses under each subdivision are removed and a table be provided on the planning portal which identifies the relevant BCA sections for respective development</li> </ul>	Further Review
Exclusions throughout the SEPP	<ul style="list-style-type: none"> <li>Site specific exclusions are included within both Part 1 and 5A and requires cross checking</li> <li>This makes the SEPP difficult to use</li> <li>Relevant provisions within Part 1 should be moved to the beginning of the relevant code.</li> </ul>	Immediate Implementation

Table 2: Categorisation of overall comments on the Codes SEPP Provisions

## 2.2 Specific Clauses

Clause	Comment	Category
<b>Part 1 General</b>		
<p><b>1.17A Requirements for complying development for all environmental planning instruments</b></p> <p><i>(1) To be complying development for the purposes of any environmental planning instrument, the development must not—</i>  ...  <i>(d) be carried out on land that—</i>  <i>(i) comprises an item that is listed on the State Heritage Register under the Heritage Act 1977 or on which such an item is located, or</i>  <i>(ii) is subject to an interim heritage order under that Act or on which is located an item that is so subject, or</i>  <i>(iii) is identified as an item of environmental heritage or a heritage item by an environmental planning instrument or on which is located an item that is so identified, or</i>  ...  <i>(2) Despite subclause (1)(d), if development meets the requirements and standards specified by this Policy and that development—</i>  <i>(a) has been granted an exemption under section 57(2) of the Heritage Act 1977, or</i>  <i>(b) is subject to an exemption under section 57(1A) or (3) of that Act,</i>  <i>the development is complying development under this Policy.</i>  <i>(3) If an item listed on the State Heritage Register is not located on, or does not comprise, the whole of the relevant land, subclause (1)(d) applies only to the part of the land that is described and mapped on that register.</i></p>	<ul style="list-style-type: none"> <li>• Clause 1.17A(1)(d) precludes complying development on land with a heritage item, even if development is minor/low impact (Note: Clause 1.17A (2), (3) &amp; (4) partially address this issue)</li> <li>• Could consider an exceptions provision, similar to Clause 5A.30 which allows engineers to certify the development can be undertaken on a flood control lot, ie, a heritage specialist could certify works are unlikely to impact the heritage significance</li> <li>• However, this could add further complexity to SEPP</li> </ul>	Further Review

Clause	Comment	Category
<p>(4) If an item not listed on the State Heritage Register but identified as an item of environmental heritage in an environmental planning instrument does not comprise, or is not located on, the whole of the relevant land, subclause (1)(d) applies only to the part of the land that is described and mapped on that instrument.</p>		
<p><b>1.18 General requirements for complying development under this Policy</b></p> <p>(1) To be complying development for the purposes of this Policy, the development must—</p> <p>...</p> <p>(c1) must not require an environment protection licence within the meaning of the Protection of the Environment Operations Act 1997, and</p>	<ul style="list-style-type: none"> <li>Standard potentially precludes a lot of employment generating development from complying development</li> <li>As an EPL is still needed whether or not development is complying development, suggest deleting this clause</li> </ul>	Immediate Implementation
<p><b>1.19 Land on which complying development may not be carried out</b></p> <p>...</p> <p>(5) Specific land exemptions for Commercial and Industrial (New Buildings and Additions) Code To be complying development specified for the Commercial and Industrial (New Buildings and Additions) Code, the development must not be carried out on—</p> <p>(a) land within a heritage conservation area or a draft heritage conservation area, or</p> <p>...</p> <p>(c) land identified on an Acid Sulfate Soils Map as being Class 1 or Class 2, or</p> <p>...</p> <p>(f) land identified by an environmental planning instrument as being—</p> <p>(i) within a buffer area, or</p> <p>(ii) within a river front area, or</p> <p>(iii) within an ecologically sensitive area, or</p> <p>(iv) environmentally sensitive land, or</p> <p>(v) within a protected area, or</p>	<ul style="list-style-type: none"> <li>Clause 1.19(5)(a) does not apply to other forms of complying development, therefore suggest deleting</li> <li>Clause 1.19(5)(c) may be too restrictive particularly for above ground works, therefore suggest deleting</li> <li>Terms within Clause 1.19(5)(f) such as buffer area, river front area, ecologically sensitive area and protected area are not defined in the SEPP or the Standard Instrument thus creating ambiguity and potentially significant restrictions. Therefore, suggest reviewing</li> <li>The implications of the above changes need to be reviewed in further detail</li> </ul>	Further Review

Clause	Comment	Category
<b>Part 5 Commercial and Industrial Alterations Code</b>		
<b>5.1 Specified complying development</b> <i>An internal alteration to a building that is used, or is the subject of a development consent for use, for any purpose (other than for the purpose of residential accommodation, artisan food and drink industry, heavy industry, local distribution premises, sex services premises or restricted premises) is development specified for this code.</i>	<ul style="list-style-type: none"> <li>Unclear why artisan food and drink industry and local distribution premises are excluded, particular as this only applies to internal alterations</li> <li>Suggest reviewing and deleting reference to the above uses</li> </ul>	Immediate Implementation
<b>5.2 Development standards</b> <i>(1) The standards specified for that development are as follows—</i> <i>...</i> <i>(b) the current use of the premises must not be an existing use within the meaning of section 4.65 of the Act,</i> <i>(c) the alteration must not result in an increase in the gross floor area of any building within which it is carried out, except if the increase is required for the alteration to comply with the Premises Standards,</i> <i>...</i>	<ul style="list-style-type: none"> <li>Clause 5.2(1)(b) may be overly restrictive as existing use rights does not necessarily mean it is high impact</li> <li>Clause 5.2(1)(c) may be overly restrictive precluding even the smallest GFA increase</li> <li>Suggesting reviewing and potentially deleting</li> </ul>	Immediate Implementation
<b>5.4 Development standards</b> <i>(1) The standards specified for that development are as follows—</i> <i>...</i> <i>(d) the new use must not be any of the following—</i> <i>...</i> <i>(vii) food and drink premises with the capacity for more than 50 seats, other than premises where the seating is provided within a common food court or food hall,</i>	<ul style="list-style-type: none"> <li>As noted by Urbis, limiting change of use to food and drink premises with capacity of less than 50 seats seems overly restrictive, particularly for tenancies within shopping centres</li> <li>Suggest deleting Clause 5.4(1)(d)(vii)</li> </ul>	Immediate Implementation
<b>5.9 Specified complying development</b> <i>An external alteration to, or the repair or replacement of, an existing shop front or awning, or the construction of a new awning, on a building that is used for any purpose other than for the purpose of a dwelling house is development specified for this code if it is not carried out in a heritage conservation area or a draft heritage conservation area.</i>	<ul style="list-style-type: none"> <li>Overly prescriptive to exclude this subdivision in heritage conservation areas for minor works such as awning repairs</li> <li>Suggest clause be reviewed and potentially revised to allow minor works</li> </ul>	Immediate Implementation

Clause	Comment	Category
<b>Part 5A Commercial and Industrial (New Buildings and Additions) Code</b>		
<b>5A.2 Alterations or additions to an existing building or construction of new building</b> <i>(1) The following development is development specified for this code—</i> <ul style="list-style-type: none"> <li><i>(a) the construction of a building for the purposes of industry (other than heavy industry or an artisan food and drink industry) or a warehouse or distribution centre (other than a local distribution premises),</i></li> <li><i>(b) an addition to an existing building that is used for the purpose of industry (other than heavy industry or an artisan food and drink industry) or a warehouse or distribution centre (other than a local distribution premises),</i></li> <li><i>(c) the external alteration of an existing building used for the purpose of industry (other than heavy industry or an artisan food and drink industry) or a warehouse or distribution centre (other than a local distribution premises),</i></li> <li><i>(d) an addition to the rear of existing commercial premises, other than on a corner lot,</i></li> <li><i>(e) the external alteration of existing commercial premises.</i></li> </ul>	<ul style="list-style-type: none"> <li>Review whether exclusion of uses such as, artisan food and drink and local distribution premises is appropriate</li> </ul>	<div>Immediate Implementation</div> <div>Remove exclusion of local distribution premises</div>
<b>5A.12 Front façade material finishes for new industrial buildings</b> <i>(1) A new industrial building must have a front door or entry with an awning or portico, or be distinguished by the use of different building materials, as part of the front facade wall of the building that faces the primary road or principal entry onto the site.</i> <i>(2) The front facade wall of a new industrial building must contain at least 30% of materials that are not the main exterior finish.</i> <i>(3) Sun shading devices, screens or canopies must be provided for each glazed wall or window in a new industrial building if the glazed wall or window faces in a direction that is between north and west.</i>	<ul style="list-style-type: none"> <li>Very prescriptive detailed design requirements</li> <li>Consideration should be given to relaxing these requirements or addressing in a design code</li> <li>The impacts of removing these clauses should be further analysed prior to deletion</li> </ul>	<div>Further Review</div> <div>Remove exclusion of artisan food and drink industry (See Table 1)</div>
		Further Review

Clause	Comment	Category
(4) All glazing in a new industrial building must be of low reflective glass.		
<b>5A.13 Building elements within the articulation zone for new industrial buildings</b> (1) The following building elements are permitted within an articulation zone for a new industrial building— (a) an entry feature or portico, (b) an awning or canopy over a door or window. (2) A building element within the articulation zone of a new industrial building— (a) must not reduce the required landscape area, car parking spaces or driveway, and (b) may extend 2m into the minimum required front setback, but must not be more than 25% of the width of the front facade of the building, and (c) must not be more than the maximum height of the building.	<ul style="list-style-type: none"> <li>As above</li> </ul>	Further Review
<b>5A.18 General standards</b> The standards specified for that development are that— ... (d) the finish to the proposed building addition or alteration that comprises the development must be of similar materials and colour to the existing premises so that the addition or alteration is in keeping with the existing premises, and (e) any new facade created by the development that faces any street must have a surface comprised of not more than 50% glazed materials which must be low reflective glass.	<ul style="list-style-type: none"> <li>As above</li> </ul>	Further Review
<b>5A.25 Loading facilities and driveways</b> (1) Each building in the development must be provided with its own loading bay and the loading facilities must be contained wholly within the lot on which the development is carried out. (2) Loading bays must be located behind the front building line of the building and must not be located on any side of the building that faces an adjoining lot on which there is a dwelling.	<ul style="list-style-type: none"> <li>May preclude development types that do not need loading facilities (i.e. dance/fitness studios, health consulting rooms and some offices)</li> <li>Suggest reviewing and potentially revising this clause</li> <li>Suggested revision would be to specify land uses that this clause does not apply to</li> </ul>	Immediate Implementation



Clause	Comment	Category
<p>(3) Driveways within the lot on which the development is carried out must be designed so as to enable vehicles to leave the lot in a forward direction.</p> <p>(4) Ingress to and egress from the site, driveway widths, turning circles and the dimensions of all loading bays must be designed in accordance with—</p> <p>(a) AS/NZS 2890.1:2004, Parking facilities, Part 1: Off-street car parking or AS 2890.2—2002, Parking facilities, Part 2: Off-street commercial vehicle facilities and RMS Australian Standard Supplements, Australian Standard—AS2890, Parking Facilities, Parts 1–6, and</p> <p>(b) the document entitled Guide to Traffic Generating Developments, Version 2.2, published by the Roads and Traffic Authority in October 2002.</p>		
<b>Schedule 8 Conditions applying to complying development certificates under the Commercial and Industrial Alterations Code, the Commercial and Industrial (New Buildings and Additions) Code and the Container Recycling Facilities Code</b>		
<p><b>10 Maintenance of site</b></p> <p>...</p> <p>(2) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.</p>	<ul style="list-style-type: none"> <li>A waste management plan is required under Subsection 3 of Schedule 8 which would detail these measures</li> <li>Suggest reviewing</li> </ul>	Further Review
<p><b>21 Hours of operation</b></p> <p>(1) If there are existing conditions on a development consent applying to hours of operation, the development must not be operated outside the hours specified in those conditions.</p> <p>(2) If there are no existing conditions on a development consent applying to hours of operation, the development must not be operated outside the following hours—</p> <p>(a) if the development involves a new use as specialised retail premises or other commercial premises—7.00 am to 10.00 pm Monday to Saturday and 7.00 am to 8.00 pm on a Sunday or a public holiday,</p> <p>(b) if the development involves a new use as something other than a specialised retail premises or other commercial premises and adjoins or is opposite a</p>	<ul style="list-style-type: none"> <li>Potentially restrictive for certain business types</li> <li>Suggest reviewing if this remains appropriate</li> <li>Urbis has suggested amending this to permit 24/7 operations provided the development is not within 500m or sensitive noise receptors, meet noise emission criteria and have a plan of management</li> </ul>	Further Review

Clause	Comment	Category
<i>residential lot within a residential zone or Zone RU5 Village—7.00 am to 7.00 pm Monday to Saturday and no operation on a Sunday or a public holiday, (c) in any other case not referred to in paragraph (a) or (b)—7.00 am to 7.00 pm Monday to Saturday and 9.00 am to 6.00 pm on a Sunday or a public holiday.</i>		

Table 3: Categorisation of suggested clauses for review and deletion