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# Small to medium scale business and retail

A review of exempt and complying provisions for B1 and B2 zones

Prepared for Department of Planning, Industry and Environment  
December 2020

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22 December 2020

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22 December 2020

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# Executive Summary

This inquiry into land-use zones B1 Neighbourhood Centre and B2 Local Centre has the purpose of establishing the current state of play for development within those zones, and identifying opportunities for reform particularly in relation to exempt and complying provisions.

This paper uses a survey sample of 30 local government areas (LGAs), representative of metropolitan, regional and rural settings, to identify what is permitted, what can be undertaken as complying or exempt development, and what existing limitations might constrain the availability of streamlined authorisations.

It is not feasible to look at all LGAs, all conceivable types of development, or all statutory and policy settings which might influence approval pathways or consent conditions. The need is to consider the likely opportunities to improve the economic recovery in areas where local or neighbourhood scale business is carried on. That means looking at the elements within the land-use planning system which offer the most prospective opportunities to improve the ability of the system to enable new economic activity and maintain appropriate protections for communities and the environment.

Some of the key findings for the 'state of play' are:

- The application of both B1 and B2 zones is standard practice and it appears that councils generally do so as a planning tool to maintain 'scalability' for local business centres in their LGA, and to protect the economic viability of current hierarchy of business and commercial centres.
- There is no specific pattern across metropolitan, regional or rural LGAs where certain types of development are permitted exclusively in one or two of those regional classifications. There is however a more consistent spread of potential land-uses in B2 compared to B1. The use of B1 appears to be more tailored to local needs.
- Local strategic planning documents broadly promote values and outcomes consistent with agility and vibrancy in business and commercial precincts such as B1 and B2.
- Several land-uses associated with B1 and B2 have a range of other authorisations under other legislative instruments associated with undertaking that business or commercial activity.

The key recommendations for reform focus on actions which will:

- Ensure that heritage protections (i.e. exclusions for exempt or complying development) are applied to the portion of the land or the components of the building which represent the actual heritage conservation value, and not other parts of the land or building.
- Assume lawfulness rather than unlawfulness, and remove the burden of proof from the proponent of exempt or complying development.
- Remove the requirement for a new use to be bound by the consent conditions pertaining to an earlier use.

# Table of Contents

Executive Summary	ES.1
1 Introduction	1
2 Report structure	3
3 Are B1 and B2 zones used, and for what purpose?	4
4 What is permitted in B1 and B2 zones?	8
5 What is available as exempt or complying development, and what limits it?	14
6 What is found in development control plans?	22
7 What is found in local strategies?	25
8 What additional authorisations are required for typical small to medium commercial and retail activities?	27
9 Proposed reforms to existing provisions	31
<b>Appendices</b>	
Appendix A Councils included in survey sample	A.1
Appendix B Other authorisations	B.1
<b>Tables</b>	
Table A.1 Councils included in survey sample	A.0
Authorisations required under for selected developments or activities associated with B1 land-uses	B.2

# 1 Introduction

## 1.1 The project context

This project is focussed on small to medium scale business and retail centres, which are generally presented by a land zoning of B1 Neighbourhood Centre or B2 Local Centre.

The intent of the project is to identify opportunities for reforms which will facilitate a sustainable recovery for small to medium sized commercial centres in the wake of economic changes manifested by COVID-19.

More broadly, the Department of Planning, Industry and Environment (DPIE) is undertaking substantial reform programs to improve the NSW planning system and to facilitate improved productivity in NSW. This project – **Planning Barriers from a metropolitan/regional/rural perspective** – is part of *Initiative 4.5 – Supercharging complying development and supporting emerging new industries* which is a key component of the NSW Government’s Planning Reform Action Plan.

Companion projects which will integrate with this project are:

- the **Re-imagining Complying Development Project** which aims to develop a new approach to complying development for existing and emerging employment generating business and industry; and
- the **Market Sounding and Insights Project** to form an evidence base for policy options on complying development provisions across employment sectors and development scales.

## 1.2 Methodology

### 1.2.1 Representative sample of LGAs

There are currently 128 local government areas (LGAs) in NSW. Our analysis will be based on a representative sample of those LGAs with councils being selected, in consultation with DPIE, across geographical areas that are broadly classified as metropolitan, regional and rural.

The project will examine 30 local government areas as a sample size. Due to the amalgamation of some former local government areas, some of the LGAs will have multiple local environmental plans (LEPs) which are still in force and which are not yet aggregated into a single LEP, although some councils will have this process underway. The 30 LGAs therefore comprise 36 LEPs.

For the purposes of comparing the relevant provisions in LEPs, all 36 LEPs were examined.

A list of the councils included in the sample is provided at Appendix A.

This sample of LGAs will enable some extrapolation of results to the whole of NSW but does not represent a comprehensive review. For the purposes of identifying potential innovations, options and reforms, which will later be subject to broader consideration and testing, the sample size is adequate.

All of the LEPs in the sample conform to the Standard Instrument requirements and format.

For other matters, such the content of local strategies or policies relating to economic and commercial development, or the content of development control plans, a smaller sample size, drawn from the 30 LGAs, was used. For these matters we selected at random six metropolitan LGAs and six regional or rural LGAs.

The reason for using a sample size of twelve for DCPs and local strategies is that these are non-standard documents and there can be multiple documents per LGA. The inherent complexity and range of documents would effectively

limit any meaningful tabulation of common themes, policy settings or development controls for all 30 LGAs. It would also render this discussion paper unnecessarily lengthy.

Where specific matters of interest are identified through the examination of documents across the twelve LGAs, these may be subject to closer analysis or broader investigation at subsequent stages.

### 1.2.2 Types of development

Not all types of development, of which there are hundreds, are considered for the purpose of this study.

The context for the project is the need to enable greater productivity in the business (B) zones specifically B1 Neighbourhood centre and B2 Local centre. The focus of the project is therefore those types of development which might reasonably fit the purpose and objectives of a B1 or B2 zone, and which are identifiable as a current or potential purpose

### 1.2.3 Recommendations

This report advances some recommendations for reform but the detail of those reforms is yet to be subject to broader consultation with stakeholders, industry and the broader community. It also needs to be recognised that the recommendations are based on a representative sample of 30 LGAs and there will need to be further consideration of how reforms might influence development of small to medium scale businesses and commercial centres for the remainder of the council areas in NSW.

## 2 Report structure

This report firstly establishes a baseline for reform and identifies key findings from desktop research regarding the current 'state of play'.

The intention is to provide a snapshot of what is currently available for small to medium retail and commercial precincts. Several key questions are posed:

- Are B1 and B2 zones used, and for what purpose?
- What is permitted in B1 and B2 zones?
- What can be done as exempt or complying development?
- What is available as exempt or complying development, and what limits it?
- What is found in development control plans?
- What is found in local strategies?
- What additional authorisations are required for typical B1 activities?

Secondly the report considers the main areas of potential reform.

The key recommendations for reform focus are to:

- Ensure that heritage protections (i.e. exclusions for exempt or complying development) are applied to the portion of the land or the components of the building which represent the actual heritage conservation value, and not other parts of the land or building.
- Assume lawfulness rather than unlawfulness, and remove the burden of proof from the proponent of exempt or complying development.
- Remove the requirement for a new use to be bound by the consent conditions pertaining to an earlier use and insert, instead, a series of development controls for the management of amenity impacts.

# 3 Are B1 and B2 zones used, and for what purpose?

## 3.1 Standard Instrument – Principal Local Environmental Plan

The Standard Instrument – Principal Local Environmental Plan (the Standard Instrument) was commenced in 2006 and was an initiative to create a more standard basis for local environmental plans (LEPs) in NSW.

The Department of Planning, Industry and Environment (DPIE) has published a LEP Practice Note (PN 11-001) which guides councils on the use of clauses in the Standard Instrument when preparing local environmental plans (LEPs).

The Standard Instrument (Local Environmental Plans) Order 2006 (the SI Order) prescribes the form and content of a Standard Instrument for the purposes of section 33A of the Environmental Planning and Assessment Act 1979.

The Standard Instrument provides for mandatory clauses and optional clauses. Compulsory clauses include matters relevant to this inquiry such as definitions, land use zones, zone objectives and land use table. There are also compulsory clauses for exempt and complying development. Optional clauses relate to matters such as minimum subdivision size, height of buildings and floor space ratio.

Councils can add local clauses that address local circumstances, but those clauses need to be not inconsistent with the intended effect of the mandatory clauses.

### 3.1.1 Scope

The focus of this report is the land use zones:

- Zone B1 Neighbourhood centre; and
- Zone B2 Local centre.

There will be linkages to other zones, and also to other work being undertaken under *Initiative 4.5 – Supercharging complying development and supporting emerging new industries* which comprises part of the Planning Reform Action Plan for the NSW Government.

### 3.1.2 Land use zones

The zoning system under the Standard Instrument is given operational effect by clause 2.3 of the Standard Instrument.

It is compulsory to include clause 2.1 ‘Land use zones’ in a LEP. Additional zones or sub-zones cannot be inserted but it is possible for a council to *not* apply certain zones in the LEP. Zones B1 and B2 are nominally available for inclusion in a LEP but it is open to a council to not have a land use zone of B1 or B2 in their LEP.

Where a land use table refers to a type of building or other thing, it refers to development for the purpose of that type of building or thing.

If included, the compulsory provisions for B1 and B2 zones under the Standard Instrument are:

#### **Zone B1 Neighbourhood Centre**

##### **1 Objectives of zone**

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

## **2 Permitted without consent**

## **3 Permitted with consent**

Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Medical centres; Neighbourhood shops; Neighbourhood supermarkets; Oyster aquaculture; Respite day care centres; Shop top housing; Tank-based aquaculture

## **4 Prohibited**

Pond-based aquaculture

### **Zone B2 Local Centre**

#### **1 Objectives of zone**

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

## **2 Permitted without consent**

## **3 Permitted with consent**

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Service stations; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation

## **4 Prohibited**

Pond-based aquaculture

### **3.1.3 The application of B1 and B2 in LEPs**

From the cross-section of 30 councils (36 LEPs) forming the survey sample, the vast majority include a B1 and B2 land use zone within clause 2.1 of their LEP. Two regional council LEPs – Armidale Dumaresq and Bombala – do not utilise a B1 zone; and three councils – Bathurst, Ryde and Waverley - do not apply a B2 zone. No councils have both B1 and B2 excluded.

This choice to not apply either B1 or B2 warrants an examination of any additional objectives for the zone (B1 or B2) which is included because this may point to a rationale.

#### **i LEPs with B1 only**

Bathurst applies only a B1 zone in the land use table of the LEP. There is an additional objective being:

To promote development of a scale that is compatible with the role of the Bathurst Central Business District as the primary retail and business centre in the region.

Ryde has one additional objective for B1:

To encourage employment opportunities in accessible locations.

Waverley applies only B1. There are additional objectives stated, being:

To ensure that non-residential uses do not result in adverse impacts on the amenity of existing and future residential premises having regard to building design, operation and activities, transport, traffic generation and the car parking capacity of local roads.

To strengthen the viability of Waverley's existing business centres as places of vitality for investment, employment and cultural activity.

To provide retail facilities and business services for the local community commensurate with the centre's role in the local retail hierarchy.

To maximise public transport patronage and encourage walking and cycling.

## ii LEPs with B2 only

Armidale Dumaresq applies only B2. There is an additional objective stated for B2 being:

To encourage development in existing town centres that reflects or enhances their character.

Bombala also applies only B2. The additional objective is:

To consolidate commercial uses in the town centre of Bombala having regard to the need to preserve its historic character.

## iii LEPs with both B1 and B2

Most LEPs in the sample include additional objectives for both B1 and B2 zones.

For the B1 zone, six LEPs had no additional objectives. There was no discernible pattern for this. The LGAs include metropolitan and regional areas.

The B1 zone additional objectives were a mix of matters. Some of the notable recurring objectives relate to:

- respecting the residential context;
- encouraging non-car transport;
- retaining a hierarchy of business centres; and
- minimising amenity impacts.

For the B2 zone, only four LEPs had no additional objectives. Again, the mix was both metropolitan and regional areas.

The B2 zone additional objectives were a mix of matters. Some of the notable recurring objectives relate to:

- encouraging shop top housing;
- encouraging 'village scale' services;

- retaining a hierarchy of business centres; and
- promoting vitality and a sense of place.

### 3.1.4 Discussion

The inference from those additional objectives suggests that in these areas, there was a desire to consolidate business development in the existing local centres and to not facilitate new smaller scale centres at a neighbourhood scale, or vice versa. It is a strategic planning intention to limit the type of business arrangements to those which are established and, presumably, servicing the needs of the local community without further diversification.

Other than Bombala, all of the LEPs included a land use zone of B3 Commercial core, suggesting that those councils had a strategic need to maintain a higher intensity of development at a major centre and to limit the number of competing types of business and commercial land use.

Overall, this decision to include or not include a B1 or B2 zone within a local government area appears to be based on a need to maintain economic viability for commercial centres at different scales.

The emerging bias towards greater 'work-from-home' arrangements may see consumer demand for more locally-based services but this likely be expressed as a need for different types of services available locally rather than a need to scale up the intensity of development in what are currently small to medium sized business/retail centres.

## 4 What is permitted in B1 and B2 zones?

What is permitted in B1 and B2 zones is revealed by the land-use tables in LEPs.

Under the directions provided in the Standard Instrument, specified uses may be added to (but not removed from) the list of development that is permitted or prohibited in a zone under the Standard Instrument. Additional uses may be added to an item of a zone even if some uses are already specified in that item. Most councils elect to add specified types of development.

Note that what is permitted in B1 and B2 zoned land represents a pool of potential land-uses, and this is not necessarily the same as the actual patterns of land-uses which make up typical Neighbourhood Centres or Local Centres. The permitted uses are unlikely to be distributed evenly or represented in all established Neighbourhood Centres or Local Centres. The permitted uses are a guide to what local Councils consider appropriate in zones B1 and B2.

### 4.1 Types of development permitted with consent in a B1 zone

The cross-section of LEPs reveals a general pattern of development types which are permitted with consent.

In the lists below, those development types in *italics* are mandated in the Standard Instrument - Principal Local Environmental Plan.

#### 4.1.1 Most common

The most common types of development permitted with consent in B1 zoned land across the sample (90% or more within the sample) are:

- Restaurants and cafes
- Take away food and drink premises
- Kiosk
- *Neighbourhood shop*
- *Neighbourhood supermarket*
- Market
- Office premises
- *Business premises*
- *Other business premises (banks, hairdressers, dry cleaners, travel agencies etc)*
- *Shop-top housing*
- *Medical centre*
- *Centre-based child care facilities*

#### 4.1.2 Reasonably common

Some of the types of development which form a second tier of availability (50% to 89% within the sample) across LGAs in the sample include:

- Pubs
- Small bar
- Garden centre
- Plant nursery
- Hardware and building supplies
- Other retail (shops, kiosk, markets etc)
- Other food and drink premises
- Service station
- Indoor recreation facility
- Home-based child care facility
- School-based child care facility

#### 4.1.3 Occasional

Less representative types of development (10% to 49% within the sample) are:

- Cellar door premises
- Function centre
- Timber yard
- Vehicle sales or hire premises
- High technology industry
- Home industry
- Artisan food and drink
- Other light industries (home industry, high technology industry)
- Industrial training facility
- Outdoor recreation facility

#### 4.1.4 Rare

Those types of development permitted in rare circumstances (less than 10% within the sample) are:

- Restricted premises
- General industry
- Industrial retail outlet
- Warehouse or distribution centre
- Wholesale supplies
- Self-storage units
- Major recreation facility
- Specialised retail premises

#### 4.1.5 Discussion

There is no specific pattern across metropolitan, regional or rural LGAs where certain types of development are permitted exclusively in one or two of those regional classifications.

Given that local planning authorities can add to the lists of development permitted with consent, and the Standard Instrument only mandates one development which is prohibited, there is not any evidence of an inherent impediment to expanding permissibility. Potentially, those uses which fall into the most common or reasonably common categories are the most likely candidates for permissibility.

The expansion of permissible uses, if considered, would benefit from discussion with local councils.

## 4.2 Types of development permitted with consent in a B2 zone

The cross-section of LEPs reveals a general pattern of development types which are permitted with consent.

### 4.2.1 Most common

The most common types of development permitted with consent in B1 zoned land across the sample (90% or more within the sample) are:

- *Specialised retail premises*
- *Cellar door premises*
- *Pub*
- *Restaurants and cafes*
- *Take away food and drink premises*
- *Small bar*

- *Garden centre*
- *Hardware and building supplies*
- *Kiosk*
- *Landscaping material supplies*
- *Market*
- *Plant nursery*
- *Roadside stall*
- *Neighbourhood shop*
- *Neighbourhood supermarket*
- *Rural supplies*
- *Timber yard*
- *Vehicle sales or hire premises*
- *Other retail premises (shops, kiosk, markets etc)*
- *Office premises*
- *Funeral home*
- *Other business premises (banks, hairdressers, dry cleaners, travel agencies etc)*
- *Function centre*
- *Restricted premises*
- *Service station*
- *Shop top housing*
- *Medical centre*
- *Indoor recreation facility*
- *Centre-based child care facility*

#### 4.2.2 Reasonably common

Some of the types of development which form a second tier of availability (50% to 89% within the sample) across LGAs in the sample include:

- Outdoor recreation facility

- Home-based child care facility
- School-based child care facility

### 4.2.3 Occasional

Less representative types of development (10% to 49% within the sample) are:

- Sex services premises
- High technology Industry
- Home industry
- Artisan food and drink industry
- Other light industries (home industry, high technology industry)
- Industrial retail outlet
- Industrial training facility
- Warehouse or distribution centre
- Wholesale supplies
- Self-storage units
- Major recreation facility

### 4.2.4 Rare

Those types of development permitted in rare circumstances (less than 10% within the sample) are:

- General industry
- Hazardous industry
- Offensive industry
- Storage premises
- Freight transport facility

### 4.2.5 Discussion

There is no specific pattern across metropolitan, regional or rural LGAs where certain types of development are permitted exclusively in one or two of those regional classifications.

It is however apparent that there is less diversity across LGAs in the range of land-uses contemplated in B1 compared to B2.

Given that local planning authorities can add to the lists of development permitted with consent, and the Standard Instrument only mandates one development which is prohibited, there is not any evidence of an inherent impediment to expanding permissibility. Potentially, those uses which fall into the most common or reasonably common categories are the most likely candidates for permissibility.

The expansion of permissible uses, if considered, would benefit from discussion with local councils.

# 5 What is available as exempt or complying development, and what limits it?

## 5.1 State Environmental Planning Policy (Exempt and Complying Codes) 2008

The State Environmental Planning Policy (Exempt and Complying Codes) 2008 (Codes SEPP) is the primary instrument setting out the provisions and development controls for exempt and complying development in NSW.

### 5.1.1 General requirements - heritage

#### i Exempt

Under section 4.1 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development—

- (a) must be of minimal environmental impact, and
- (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
- (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

The general requirements under the Codes SEPP for exempt development (clause 1.16) include a range of matters. The provision of most likely relevance to B1 and B2 land is subclause 1.16(1C) which states:

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, any restriction on carrying out development on the relevant land on which the item is located applies only to the part of the land that is described and mapped on that instrument.

#### ii Complying

The requirements for complying development in all environmental planning instruments include a provision at subclause 1.17A(1)(d) that, to be complying development, the development must not be carried out on land that 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.

Additionally, subclause 1.17A(4) provides that

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.

For reference, the definition of “land” is found in section 1.4 of the EP&A Act:

**land** includes—

- (a) the sea or an arm of the sea,
- (b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal, and
- (c) a river, stream or watercourse, whether tidal or non-tidal, and
- (d) a building erected on the land.

### iii Discussion

For commercial premises listed as a heritage building on a local environmental planning instrument (EPI), the statement of significance will often refer only to the façade or the exterior of the building.

The Standard Instrument – Principal Local Environmental Plan (Standard Instrument) has a note which directs Councils in how to list heritage items in LEPs and which appears to acknowledge the fact that it is not always the entire lot or entire building which holds heritage value. The direction in the Standard Instrument states:

Direction—

The description of a heritage item should be included in a column headed “Item” and should include a brief description of those things that are part of the heritage significance of the item—for example, “House, front garden and front fence”, or “Lindsey (including homestead, outbuildings, stables, Bunya Pine tree and driveway)” or “Dunmore Park (including bandstand, fountain and avenue of fig trees)”. If any interior features are part of the heritage significance of a heritage item, these should also be described—for example “Lindsey (including original bathroom, dining room fireplace with mantelpiece and original detailing throughout)” or “Lindsey (including all interior features)”. Any thing that is part of the heritage significance of a heritage item should also be included in the inventory of heritage items.

A heritage item listed in a LEP in the manner described by the direction in the Standard Instrument would neatly serve the provisions in the Codes SEPP (such as 1.16(1C) and 1.17A(4)) which refer to “the part of the land that is described and mapped” in the LEP. Many LEPs, however, simply identify items by a land title reference or generic description such as ‘commercial building’.

The desire for brevity in listing items of environmental heritage in a LEP is acknowledged but that brevity does not allow the reader of the LEP to identify what elements of a building or land possess the heritage value. This in turn creates ambiguity as to whether the provisions under the Codes SEPP are available for any proposed activity associated with the land or building.

There are commonly applied methods by which the ambiguity can be resolved, such as making a formal request to the relevant Council to determine whether the proposed activities require development consent or not. This is, however, an avoidable burden on both proponents and Councils. The cause is the mismatch between the provisions and policy intent of the Standard Instrument and Codes SEPP for detailed descriptions when listing heritage items, and the preference for brevity in the listing of heritage items when Councils make a LEP.

#### 5.1.2 Footpaths – outdoor dining

The use of a footway or public open space as an outdoor dining area is exempt development subject to compliance with the *Roads Act 1993* and the *Local Government Act 1993* is currently being trialled across NSW.

### 5.1.3 Replacement of identification signs

The Codes SEPP (clause 2.96) provides for the replacement of an existing building or business identification sign or content of such a sign to be exempt development subject to several development controls such as no increase in the size of the sign and no obstruction of traffic signs.

There is a provision however that the sign being replaced must be a lawful sign.

The onus is on the proponent to establish lawfulness.

### 5.1.4 Building alterations (internal)

Part 5 of the Codes SEPP deals with complying development for commercial and industrial alterations.

Clause 5.1 stipulates

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.

There are several development standards for such development which include:

- (a) the current use of the premises must be a lawful use,
- (b) the current use of the premises must not be an existing use within the meaning of section 4.65 of the Act,
- (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

The onus is on the proponent to establish lawfulness.

### 5.1.5 Ancillary development

Subdivision 9 of Part 5 of the Codes SEPP provides for certain ancillary development to be complying development provided that a range of development standards are met.

The development standards include:

- (a) have an area of not more than 100m<sup>2</sup>, or 15% of the area of the site on which the development is carried out, whichever is the lesser, and
- (b) not have a building height of more than 5m, and
- (c) be located at least 1m behind the building line of any road frontage (except where the development is a front awning on a building), and
- (d) be located at least 3m from any boundary adjoining land on which a dwelling is located, and
- (e) not be located over a registered easement, and
- (f) not reduce vehicular access to, parking on or loading or unloading on or from, the lot, and
- (g) not reduce the landscaped area of the lot, and
- (h) if carried out in a heritage conservation area or in a draft heritage conservation area—

(i) be located behind the rear building line and no closer to each side boundary than the existing development with which it is associated, and

(ii) not be carried out on a lot that adjoins a lane or a secondary or parallel road, ...

#### i Discussion

The development standard at subclause 5.18(h)(ii) is likely to apply to most business and retail premises that are in a heritage conservation area. Small to medium scale commercial premises are likely to have the benefit of a rear or side service lane, and this will switch off complying development provisions for ancillary development in those circumstances.

### 5.1.6 Change of use

Change of use is likely to arise in circumstances where current business enterprises vacate commercial premises of a type found in areas zoned B1 or B2, and alternative businesses seek to operate from the same space.

#### i Exempt

Part 2 of the Codes SEPP deals with the general exempt development code.

Subdivision 10A provides for a change of use of premises.

Clause 2.20A of the Codes SEPP provides for certain types of use to be changed to another type of use as exempt development. To be specified as exempt development, the change in use needs to align with the list of new uses which are available under a table at subclause 2.20A, and also meet the development standards prescribed at clause 2.20B.

The types of development likely to be found as permitted with consent in a B1 or B2 zoning are found in Category 1 and 2 of the table. The tables for Category 1 and 2 are reproduced below.

#### Category 1

business premises

office premises

shop

public administration building

#### Category 2

landscaping material supplies

hardware and building supplies

garden centre

plant nursery

rural supplies

timber yard

vehicle sales or hire premises

#### Category 1

business premises

office premises

shop

kiosk

public administration building

#### Category 2

landscaping material supplies

hardware and building supplies

garden centre

plant nursery

rural supplies

timber yard

**a**      **New uses under development standards**

The development standards at clause 2.20B specifically exclude certain new uses from the general exempt provisions. Those excluded new uses include:

- (i) food and drink premises,
- (ii) a funeral chapel,
- (iii) a funeral home,
- (iv) retail premises where firearms within the meaning of the Firearms Act 1996 are sold,
- (v) landscaping material supplies,
- (vi) a market,
- (vii) premises that are a beauty salon or hair dressing salon,
- (viii) premises where a skin penetration procedure within the meaning of section 51 of the Public Health Act 1991 is carried out,
- (ix) restricted premises,
- (x) a roadside stall,
- (xi) sex services premises,
- (xii) vehicle sales or hire premises.

**b**      **Parking, traffic and noise**

Subclause 2.20B(i) provides that the new use must not cause the contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management and landscaping.

**c**      **Hours of operation**

Hours of operation must be consistent with any existing development consent or, if no relevant condition in an existing consent, only operate between 7:00am and 7:00 pm on any day.

**ii**      **Complying**

Part 5 of the Codes SEPP deals with commercial and industrial alterations.

Subdivision 2 provides for a change of use of premises.

Clause 5.3 specifies certain complying development and identifies the changes of use by reference to a table in clause 5.3. The types of development generally (but not exclusively) aligned with uses in B1 and B2 zones are found in Category 1 and 2, which are reproduced below.

**Category 1**

specialised retail premises  
 landscaping material supplies  
 hardware and building supplies  
 vehicle sales or hire premises  
 garden centre  
 plant nursery  
 rural supplies  
 timber yard  
 warehouse or distribution centre (other than local distribution premises)

**Category 2**

business premises  
 office premises  
 shop  
 food and drink premises  
 kiosk  
 medical centre  
 veterinary hospital  
 tertiary institution

**Category 1**

landscaping material supplies  
 hardware and building supplies  
 vehicle sales or hire premises  
 garden centre  
 plant nursery  
 rural supplies  
 self-storage units  
 timber yard  
 warehouse or distribution centre (other than local distribution premises)  
 neighbourhood shop  
 kiosk  
 wholesale supplies  
 business premises  
 office premises  
 light industry (other than artisan food and drink industry)  
 general industry  
 packaging industry  
 industrial retail outlet

**Category 2**

medical centre  
 shop  
 food and drink premises  
 kiosk  
 business premises  
 office premises  
 tertiary institution

Hence a lawful shop could nominally be changed to a medical centre, food and drink premises or business premises under the complying development provisions.

There is no provision however for a range of new local services which might reasonably be accommodated in place of uses such as shop, office premises, garden centre etc. The potential additional uses include neighbourhood supermarkets, markets, specialised retail premises, some indoor recreational facilities (limit to health studio, squash court, table tennis centre) and outdoor recreational facilities (mini-golf centre, tennis court).

There are however development standards which apply to any change of use as listed in the table at 5.3 and these development standards are provided at clause 5.4. If those development standards cannot be satisfied, the change of use is not available as complying development.

**a** [New uses excluded under development standards](#)

The development standards at clause 5.4(1)(d) specifically exclude certain new uses. Those excluded new uses include:

- a funeral home;
- sex service premises;

- restricted premises;
- retail premises where firearms are sold;
- a roadside stall;
- a market;
- a pub;
- a small bar; and
- food and drink premises with the capacity for more than 50 seats.

#### b Parking, traffic and noise

There is a provision at clause 5.4(g), as an item in the Development standards for a change of use, which provides:

(g) the new use must not cause the contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, car parking, loading, vehicular movement, traffic generation, waste management or landscaping,

#### iii Car parking

Another development control for change of use relates to car parking (subclause 5.4(1)(h)):

(h) car parking must be provided—

(i) in accordance with any existing condition relating to car parking that applies to the use of the land, or

(ii) if there is no existing condition relating to car parking either—

(A) in accordance with any relevant requirements contained in an environmental planning instrument or development control plan applying to the land, or

(B) if a contribution in relation to car parking in compliance with a contributions plan under Division 7.1 of the Act is imposed as a condition of approval under clause 136K of the *Environmental Planning and Assessment Regulation 2000*—if that contribution is made

#### iv Discussion

There is an opportunity to revisit the list of available new uses to more closely reflect those uses which are most common or reasonably common in B1 and B2 zones across LGAs.

It is also noted that while more recent development consents are often available on-line, the requirement to identify existing conditions for the subject development becomes a more challenging if the consent was determined many years ago. This may require access to historical records under the Government Information (Public Access) Act 2009 ('the GIPA Act').

There is also some question over the relevance of conditions attached to an existing consent if that prior use is unrelated to the proposed new use.

### 5.1.7 Shop top housing

It is noted that the Codes SEPP does not currently have a subdivision for shop top housing as exempt or complying development.

There may be an interest in creating such a subdivision and identifying appropriate development standards.

# 6 What is found in development control plans?

Development control plans (DCPs) are a widely applied mechanism to guide the interpretation and implementation of LEPs. Councils are required to publish their DCPs on the NSW Planning Portal. DCPs are not statutory instruments.

There are currently over 400 different DCPs across NSW and these vary significantly in scope and format between councils. A standard format is being introduced by the NSW Government for DCPs.

There can be multiple DCPs for any given LGA, but only one DCP made by the same relevant planning authority can apply to the same land (pursuant to section 3.43(2) of the EP&A Act).

DCPs are important for the purposes of exempt and complying development because some Codes SEPP provisions 'pick up' the provisions of DCPs.

## 6.1 Development control plans

### 6.1.1 Car parking

From a sample of six metropolitan and six regional/rural it was found that development control plans (DCPs) tend to base a local parking formula on a specific variable, such as net lettable area (NLA) or gross floor area (GFA), which is separately enumerated for common classifications of land-use such as child care centre, shops, medical centre etc.

The numeric basis can however vary widely. For example, a restaurant or café is required to have one car space per 25m<sup>2</sup> of NLA (Bathurst, Dubbo); one car space per 6.5m<sup>2</sup> of NLA; one car space per 30m<sup>2</sup> of serviced floor area (Port Macquarie-Hastings); one space per 4 staff plus one space per 6m<sup>2</sup> (Wollongong); one space per 10m<sup>2</sup> GFA (Campbelltown).

Some LGAs do not have a numeric formula. Liverpool City Council, for example, specifies performance outcomes.

#### i Discussion

There is inconsistency found in many LGAs where the objectives for B1 or B2 are to promote community movement via walking, cycling and use of public transport in preference to reliance on private cars, and yet the more detailed requirements under the relevant DCP seek to ensure that parking is provided (usually based on a numeric formula) at premises normally available at neighbourhood or local centres. These requirements are also often expressed as a minimum number of car parking spaces to be provided.

The traditional provision of parking tends to induce demand for car-based movement, which is not aligned with the strategic intent, expressed in many LEPs, to reduce reliance on car-based transport.

### 6.1.2 Noise

The Codes SEPP refers to noise conditions in an existing development consent but does not refer to DCP noise provisions as a specific limiter on the availability of exempt or complying development for B1 or B2 zoned land. The Codes SEPP does switch off exempt development for elements which may be associated with B1 and B2, such as air conditioning units

Noise controls are not always included in DCPs and the approach adopted in those DCPs which address noise is quite varied. There is a predominance of non-numeric performance-based controls and also a frequent attempt to carve out particular noise-generating activities, such as waste storage and garbage collection, and to state a preference for those to be located such that noise impacts are minimised. Few DCPs referred specifically to B1 or B2 zones in terms of noise.

Dubbo DCP, for example, sets performance objectives for noise, such as “Hours of operation are restricted to avoid any noise nuisance on surrounding residential areas” and then offers some deemed to satisfy solutions such as “The operation of commercial activities in the RU5, B1, B3 and B4 zones shall not exceed the requirements as stated in the *Protection of the Environment Operations Act 1997*”.

Sutherland includes one of the few DCP controls to nominate a specific numeric performance for noise generating equipment, being that noise level generated by any equipment must not exceed an LAeq (15min) of 5dB(A) above background noise at the property boundary.

It is also noted that there is a NSW Government *Noise Guide for Local Government* (2013) which identifies noise from commercial premises as a potential nuisance. The recommended test is assessment against any relevant council policy. The suggested management mechanism is a Noise Control Order (POEO Act ss. 263–267B) or Prevention Notice (POEO Act s. 96).

It is also noted that Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises and registered clubs (or their patrons).

### 6.1.3 Air quality

The air quality or odour provisions of DCPs are not picked up by the Codes SEPP in terms of limiting exempt of complying development.

DCPs do not always include development controls for air quality.

The DCP for the Parramatta LGA, for example, provides that “development that is likely to result in the emission of atmospheric pollutants, including odours, is to include operating practices and technology to ensure that the development does not contribute to increased air pollution”.

The most specific control was provided by the Campbelltown DCP which provides that “any commercial buildings that are designed to accommodate the preparation of food from a commercial tenancy, shall provide ventilation facilities to ensure that no odour is emitted in a manner that adversely impacts upon any residential premises”.

### 6.1.4 Hours of operation

Many (mostly regional or rural) LGAs make no reference to hours of operation within a DCP. Those which do consider hours of operation adopt a range of approaches.

Shoalhaven Council DCP includes a number of performance measures for hours of operation. These include:

- Do not have an unreasonable adverse impact on any neighbouring premises.
- Encourage employment and street activation outside of standard business hours, in appropriate locations.
- Hours of operation and trading days are appropriate for the location and type of business [however] Council will consider variations to usual trading hours for the location and type of business if all of the following is satisfied:
  - The proposed hours are required for the standard operation of the proposed business;

- The proposed hours are compatible with surrounding development and will not result in negative impacts on residential amenity;
- Extended trading hours will encourage employment, street activation and provide employment opportunities; Security and safety of employees and customers has been addressed.

Hawkesbury Council DCP provides a case-by-case arrangement, being:

- Hours of operation will be determined at Council's discretion taking into consideration other land uses within the neighbourhood and to avoid times of peak community activity.

Similarly, City of Parramatta Council states:

- Non-residential development is not to adversely affect the amenity of adjacent residential development as a result of noise, odour, hours of operation and/or service deliveries.

Liverpool Council applies a base case and allows for variation by stating:

- Restaurants/outdoor cafes: The hours of operation shall be restricted to between 7:00 am to 10:00 pm, unless otherwise varied by Council.

The most comprehensive approach was adopted by Sutherland Shire Council which separates controls depending on the existing level of activity (high, intermediate or low) and then sets base hours and extended hours for all non-licensed venues.

# 7 What is found in local strategies?

## 7.1 Local strategies

Almost all councils within the sample have strategies, statements or growth plans for economic development, retail precincts or commercial centres.

Most strategies articulate an intention for the local government area to remain active and vibrant. Key principles or aspirations that recur in the strategies and which may assist in some interpretation for the purposes of reforming B1 and B2 zones include:

- growth;
- prosperity;
- innovation / technology;
- local authenticity;
- agility;
- collaboration;
- connection; and
- diversification.

Some specific references to local or neighbourhood centres in those strategies include (some abbreviation and paraphrasing):

*The changing nature of local economies and society will continue to shape communities, neighbourhood centres and civic spaces (Camden)*

*Locating retail and commercial development in centres will make them more robust and maximise the use of existing infrastructure and community facilities. It will also allow for more efficient public and active transport use and catalyse further urban renewal. If well configured and well designed, local centres can have a unique character. They can create a sense of place, belonging and connectedness that makes them an attractive place for residents and investors (Central Coast)*

*Redevelopment of a number of vacant neighbourhood centres for local retail and community services (Eurobodalla)*

*Neighbourhood centres provide a range of small-scale retail and other services that serve the convenience needs of people that live and work in the surrounding neighbourhood. Local centres provide for retail, business, entertainment and community uses serving people who live in, work in and visit the local area, encouraging employment opportunities in accessible locations (Inner West)*

*The many local and neighbourhood centres across the City of Parramatta LGA will be vibrant, attractive and sustainable with a wide variety of businesses that provide opportunities for small business and employment whilst also serving the needs of the community. Local centres will continue to play an integral role in the cohesion and social fabric of the City of Parramatta LGA by connecting residents with each other and fostering a stronger sense of community and social cohesion (City of Parramatta)*

*Maintain the role of neighbourhood shopping centres. Provide and encourage a range of business/retail spaces and business incubators. Encourage innovation, research or knowledge-based businesses to locate or remain in Willoughby. Develop and implement revitalisation programs for our local centres (Willoughby)*

## 8 What additional authorisations are required for typical small to medium commercial and retail activities?

Our research included an examination of the likely authorisations required for selected developments or activities associated with B1 and B2 land-uses under other State and Commonwealth legislation.

The intent of this research was to discover the extent to which the matters assessed as part of any non-EP&A Act authorisations were able to reduce the range of controls currently required under the planning system, or indeed if the role of the non-EP&A Act authorisations resulted in any residual planning matters being so inconsequential as to warrant removal of the current planning system controls.

The research is tabulated at Appendix B. The table at Appendix B identifies whether the licence applies to all aspects of a development or land-use or rather only to specific controlled activities, the timing for when the licence is typically sought, and an overview of the eligibility/information requirements for each licence.

Our primary finding is that a majority of the authorisations required under other State and Commonwealth legislation relate to a business entity rather than a specific premises. As expected, for these licences the application and/or information requirements for these authorisations relate to details concerning the business entity and/or director/applicant rather than the premises. Those licences that control for a particular activity at a particular premises include:

- an Approval for Outdoor Dining in a Public Place;
- an On-Premises Licence (cafe or restaurant);
- an Approval to Sell Goods or Services from a Temporary Store;
- a Packaged Liquor Licence;
- a Hotel Licence (General Bar Licence);
- a Small Bar Licence
- a Licence for a Private Health Facility;
- a Service Approval;
- an Application for a Licence for a Private Health Facility; and
- a Service Approval (child care facility).

For most of the licences specified above, a business owner is required to provide details concerning the premises (eg floor plans) and a copy of development consent/complying development certificate. Some licences require additional information that may be beyond the requirements of a development consent/complying development certificate such as a community impact statement for alcohol-supply related licences and a soil assessment or soil statement for an approval to provide a family day care or centre-based service. Therefore, there is potential to use the requirements for these licences to offset criteria requirements for complying development.

In terms of what might be considered 'normal' environmental amenity matters that are considered under the EP&A Act, only the liquor licensing and service approval which address noise/disturbance and soil assessment respectively.

Additionally, our research suggests that a majority of licences do not apply to all aspects of a land use. For example, a business owner could develop a funeral home without Registration of a Pre-Paid Funeral Fund as such a licence only pertains to a specific activity that a business may not engage in. Further there are broad land-use classes such as office premises which can vary widely in licencing requirements. Accordingly, there is little potential in relying upon or these licences to provide for a complying development pathway on a whole-of-premises basis. However there remains potential to provide for a complying development pathway for those aspects of a business that are controlled for by a licence (for example an Approval for Outdoor Dining in a Public Place).

Ultimately, our research indicates that there is limited intersection between development approval under the EP&A Act and those authorisations required under other State and Commonwealth legislation.

Nevertheless, the most common candidate activities under a B1 and B2 for which other authorisations are required are described below.

## 8.1 Key licensing or other controls, by activity

Not all of the authorisations required under these various Acts and Regulations have a bearing on the range of matters typically considered under the EP&A Act. Selected provisions which may seek to regulate similar environmental impact matters are described below.

### 8.1.1 Disposal of liquid trade waste

Liquid trade waste means all liquid waste other than sewage of a domestic nature. It includes liquid waste from

- business/commercial premises (e.g.. beautician, brewery, florist, hairdresser, hotel, motel, restaurant, butcher, service station, supermarket, dentist);
- community/public premises (including craft club, school, college, university, hospital and nursing home); and
- any commercial activities carried out at a residential premises.

#### i Metropolitan

Section 49 of the Sydney Water Act 1994 requires the written agreement of Sydney Water Corporation (SWC) in order to discharge liquid trade waste to the sewerage network.

SWC will not accept trade wastewater from any business if it will:

- harm sewerage systems and operations;
- impose unacceptable risks on the health of workers or the public;
- threaten SWC compliance with environmental laws and licences;
- hamper the beneficial re-use of wastewater; or
- not conform to SWC standards.

Commercial customers pay charges to SWC based on the mass of pollutants they discharge to the wastewater system. The quality of trade wastewater for commercial customers is based on historical records for the particular process.

Hunter Water Corporation has a similar arrangement pursuant to the requirements of section 31 of the Hunter Water Act 1991.

## ii Non-metropolitan

In non-metropolitan areas of NSW, local water utilities (LWUs) are responsible for approving liquid trade waste dischargers to their sewerage system through section 68 of the Local Government Act. However, section 90 (1) of the Local Government Act and clause 28 of the Local Government (General) Regulation 2005 (Regulation) require LWUs to obtain concurrence from the Department of Trade and Investment, Regional Infrastructure and Services.

### 8.1.2 Outdoor dining

Section 125 of the Roads Act provides:

- (1) A council may grant an approval that allows a person who conducts a restaurant adjacent to a footway of a public road (being a public road that is vested in fee simple in the council) to use part of the footway for the purposes of the restaurant.
- (2) An approval may be granted on such conditions (including conditions as to payments in the nature of rent) as the council determines.
- (3) An approval may not be granted in respect of a footway of a classified road except with the concurrence of RMS.
- (4) The term of an approval is to be such period (not exceeding 7 years) as is specified in the approval.
- (5) An approval lapses at the end of its term or, if the part of the footway the subject of the approval ceases to be used for the purposes of a restaurant, when that use ceases.

The caveat on the issue of an approval (expressed at section 127 of the Roads Act) is that it not constitute a public nuisance or give rise to an offence against any Act.

### 8.1.3 Trading hours and noise from licensed premises

The NSW Liquor Act 2007 includes provisions relating to community impact which must be considered when the Authority is determining an application for a licence (club, hotel, small bar or packaged liquor) under the Liquor Act. These include:

- (a) the views of the local community, and
- (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.

A community impact statement may be required.

Trading hours are stipulated under the terms of a licence issued under the Liquor Act.

Under the Liquor Act, a person can complain regarding disturbance to the neighbourhood. Grounds for complaint include:

(a) the manner in which the business of the licensed premises is conducted, or

(b) the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

A key matter relevant to land-use planning is that the Liquor Act imposes an obligation upon the decision maker determining a disturbance complaint, to consider the “order of occupancy”, between the licensed premises concerned and the person/organisation making the disturbance complaint (s.81(3)(a) Liquor Act 2007). It is noted however that this is a compliance action (post approval) and not a pre-approval assessment as may be required for planning purposes.

# 9 Proposed reforms to existing provisions

Based on the research conducted for this project, the following reforms are recommended for further consideration.

## 9.1 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

### 9.1.1 General heritage provisions

Division 2 of Part 1 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ('the Codes SEPP') relates to the general requirements for exempt and complying development.

There are heritage related provisions at subclauses 1.16(1C) and subclause 1.17A(4) which warrant reform.

Subclause 1.16(1C) states:

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, any restriction on carrying out development on the relevant land on which the item is located applies only to the part of the land that is described and mapped on that instrument.

Similarly, subclause 1,17A(4) states:

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.

[Subclause (1)(d) provides that complying development is not to be carried out on land 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]

The impediment to exempt development and complying development arises because, for B1 and B2 zoned land, a heritage item listed on a LEP frequently fails to adequately distinguish (by description or mapping) between the component of the development which holds heritage value – such as a building facade – and the land on which the heritage value components are situated.

As a case study example, the Schedule 5 Environmental heritage, of the North Sydney LEP, lists a commercial building at 1 Chandos Street, St Leonards.



Source: North Sydney Council

The template for the listing includes the locality, item name, address, property description, significance and an item reference number. Hence the case study of 1 Chandos Street has the item description of “commercial building”; the address of 1 Chandos Street, and the property description of “Lot 1 DP 564685”.

This suggests that the entire building and land are the components displaying heritage value, but this is not the case.

The NSW Heritage Register provides helpful additional information including the statement of significance which indicates that the actual heritage value is in the construction method (‘lift-slab’) demonstrated by the building shell, the structural columns and horizontal slit windows.

The requirement under sub-clause 1.16(1C) however is that exempt development should only be switched off for “the part of the land that is described and mapped on that instrument”. This means that because the LEP - as opposed to the Heritage Register - describes the heritage item as the entire commercial building, internal minor works are not available as exempt or complying development or are, at best, uncertain as to status.

Further the North Sydney LEP sub-clause 5.10(2) states that development consent is required for “altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item”. There is a subsequent provision at sub-clause 5.10(3) that development consent is not required if:

the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development—

(i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and

(ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area

In this case study, the matter was referred to Council for clarification and advice from the Council was that Council did consider the proposed minor works to be for the purpose of maintenance. This was, however, a costly and time-consuming exercise for the proponent for something that should be able to be resolved by reading the LEP. It is also essentially a type of ‘work-around’ which would not be necessary if the heritage components were adequately described in the EPI.

The issue is therefore the mismatch between the expectation under the Codes SEPP for the ‘description and mapping’ of heritage items to relate only to the heritage value components, and the reality of the ‘description and mapping’ of heritage under most LEPs which, possibly in the interests of brevity, often refer generically to the whole building or the entire lot.

It is noted that the Standard Instrument - Principal Local Environmental Plan includes a direction to instrument makers under Schedule 5 that:

Direction—

The description of a heritage item should be included in a column headed “Item” and should include a brief description of those things that are part of the heritage significance of the item—for example, “House, front garden and front fence”, or “Lindsey (including homestead, outbuildings, stables, Bunya Pine tree and driveway)” or “Dunmore Park (including bandstand, fountain and avenue of fig trees)”. If any interior features are part of the heritage significance of a heritage item, these should also be described—for example “Lindsey (including original bathroom, dining room fireplace with mantelpiece and original detailing throughout)” or “Lindsey (including all interior features)”. Any thing that is part of the heritage significance of a heritage item should also be included in the inventory of heritage items.

The available solutions are therefore

#### i [Refine the requirements under the Codes SEPP sub-clause 1.16\(1C\)](#)

Modify the wording (bolded) such that exempt development is only to be switched off for “the part of the land **or the building component** that is described and mapped **as possessing heritage values** on that instrument **or under the NSW Heritage Register**”.

This has the advantage of rendering a quick change and utilising available information.

The disadvantage is that not all heritage items will have sufficient information under the Heritage Register, and there is a research burden

#### ii [Require all LEPs to more closely comply with the direction under the Standard Instrument](#)

This could be achieved by preparing a DPIE Practice Note for all LGAs outlining the policy intent and requiring a closer alignment to the Standard Instrument direction.

The advantage is that this will bring LEPs into line with the provisions in the Codes SEPP and Standard Instrument.

The disadvantage is that it will take many years for LEPs to be updated.

#### iii [Promote simple systems within Councils to resolve ambiguity if it arises](#)

This is a common but non-standardised practice now in many LGAs. The arrangement could be streamlined and standardised.

The advantage is that it builds on an existing practice.

The disadvantage is that it does not fix the central problem.

#### iv [Recommendation](#)

Implement both (ii) and (iii) concurrently, and phase out (iii) as LEPs are updated.

### 9.1.2 [Specific heritage provisions](#)

#### i [Shop fronts and awnings](#)

Division 1 of Part 5 of the Codes SEPP deals with commercial and industrial alterations which are complying development under the SEPP.

Subclause 5.9 provides that the complying development provisions are not available if the development is carried out in a heritage conservation area or draft heritage conservation area.

Some small to medium scale retail precincts (e.g. The Corso at Manly) are within a heritage conservation area but the heritage value may or may not reside in the street level facades of those buildings. If the value of the heritage is in the scale and character of the buildings, the alteration of shopfront facades may not have any detrimental heritage effect.

As with the general heritage provisions, the matter requiring reform is the identification of what components of a building or what portions of land hold the heritage values.

The provision to switch off complying development in a conservation heritage area should be limited to those components identified as having heritage significance in the relevant DCP.

In the case of The Corso, the statement of heritage significance in the Manly DCP is focussed on the formality of the street, scale of buildings, views of parapets, and the open spaces. It does not prevent new shop fronts. In fact, the DCP states that shopfronts are to maximise their contribution to the liveliness and safety of the street. For The Corso Heritage Conservation Area, therefore, the Codes SEPP switches off complying development unnecessarily.

#### ii [Recommendation](#)

There is insufficient detail from current research to fully gauge the extent to which this is an impediment to small and medium scale business and commercial activities. Seek further inputs from stakeholders.

## 9.2 Proof of lawfulness provisions

The Codes SEPP includes a provision in a number of development standards which relates to the lawfulness of the existing development.

### 9.2.1 Replacement of business identification sign

The replacement of a business identification sign as exempt development (Codes SEPP clause 2.97) includes a development control that the new sign must “replace a lawful sign”.

The issue here is whether the burden of proof should rest with the proponent seeking to replace an existing sign or the compliance authority tasked with enforcing the removal of unlawful signs. An assumption here is also that a compliance authority should actively monitor development within their jurisdiction for unlawful activity.

Noting the difficulty and cost (including time cost) of obtaining sufficient evidence of prior authorisation for a business identification sign in order to satisfy this provision, relative to the minor nature of the proposed development, and the need to satisfy other standards such as no increase in sign size, the burden seems unreasonable.

There may also be benefit shifting to a policy setting based on a presumption that, ‘on the balance of probabilities’, an existing item which is not the subject of an enforcement notice is likely to be lawful.

#### i Recommendation

Delete subclause 2.97(a) being:

#### **2.97 Development standards**

The standards specified for that development are that the development must—

- (a) ~~replace a lawful sign, and~~
- (b) not be greater in size than the sign that it replaces, and
- (c) not be a sign that is animated, flashing or illuminated, unless the sign it replaces is the subject of a development consent to be an illuminated sign, and
- (d) not involve any alteration to the structure or vessel on which the sign is displayed, and
- (e) not obstruct or interfere with traffic signs.

### 9.2.2 Lawfulness in change of use

One of the general requirements for complying development, as provided for at clause 1.18, is that the development must:

- (b) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out.

In Subdivision 2 of Division 1 of Part 5 of the Codes SEPP, there are provisions for the change of use as complying development. The development standards include at subclause 5.2(1) include:

- (b) the current use of the premises must not be an existing use within the meaning of section 4.65 of the Act,

Therefore, the requirement for complying development in terms of change of use is that:

- (a) the new use must be for a purpose which is permitted with consent in the relevant zone; and
- (b) the use being abandoned cannot be an existing use (meaning a development which was lawful when commenced but which is now a use prohibited in that zone under the new planning scheme).

In principle, the transitioning of a lawful development away from a (now) prohibited use to a use which is permitted with consent should be viewed as a good thing and as consistent with the treatment of existing uses under the EP&A Act.

The current provisions for change of use as complying development do not allow for this. It would only be available via a development application.

The difficulty is whether a complying development pathway can include satisfactory development controls for a new use when the new use.

#### i Recommendation

Review these provisions pending the reforms, if any, which may be considered in terms of the change of use tables in subclause 5.3(1). This topic is discussed further in the Change of Use section below.

### 9.2.3 Building alterations (internal)

Similar to the provisions relating to the replacement of a business identification sign, internal building alterations provisions (clauses 5.1 and 5.2 of the Codes SEPP) place the burden of proof regarding lawfulness on the proponent of the internal alterations.

The development standard that “the current use must be a lawful use” might be reworded such that the current use must not be the subject of any enforcement matter. This is an easier matter to ascertain.

The other development standard related to lawfulness is that “the current use of the premises must not be an existing use”.

There are already provisions under the EP&A Regulation (Part 5, clause 41) which set out the limits for any changes to a development reliant on existing use provisions.

Internal building alterations should not be presumed to equate to intensification. It is reasonable for internal alterations to be the subject of a complying development certificate because the EP&A Regulation already adequately regulates issues such as intensification, expansion and rebuilding.

#### i Recommendation

Delete subclauses 5.2(1)(a) and 5.2(1)(b), and add a new subclause 5.2(1)(a) being (bolded):

#### **5.2 Development standards**

(1) The standards specified for that development are as follows—

~~(a) the current use of the premises must be a lawful use,~~

~~(b) the current use of the premises must not be an existing use within the meaning of section 4.65 of the Act,~~

**(a) the current use must not be the subject of any enforcement action under Part 9 of the *Environmental Planning and Assessment Act 1979*;**

- (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,
- (d) the alteration must not involve the conversion of any area that is excluded from the measurement of gross floor area of the building (such as a basement, plant room, car parking space, loading space or void),
- (e) if the alteration is to a building used for the purposes of an entertainment venue (such as a cinema, theatre, hall or auditorium) in a registered club or used as an entertainment facility, the alteration must not increase the floor area used for those purposes,
- (f) if the alteration involves food and drink premises, the alteration must be carried out in accordance with AS 4674—2004, Design, construction and fit-out of food premises,
- (g) the alteration must not relate to the cooking of food at the premises by barbecue or charcoal methods,
- (h) if the alteration involves a loading dock, the alteration must not—
  - (i) reduce the number or capacity of the trucks accommodated, or
  - (ii) reduce the area for goods handling, or
  - (iii) reduce the area for waste handling (including any recycling area), or
  - (iv) reduce the manoeuvring area of the loading dock or access driveway,
- (i) if the alteration involves the amalgamation of retail premises located in a building, the amalgamation must not result in 1 retail premises having more than 50% of the total floor area of the building that is used for the purposes of retail premises,
- (j) the alteration must not affect an existing awning, or more than 25% of the gross floor area of an existing building to which an awning is attached, unless the awning complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia.

#### 9.2.4 Ancillary development

Clauses 5.17 and 5.18 of Subdivision 9 in Part 5 of the Codes SEPP provide for certain ancillary development to be complying development provided that a range of development standards are met.

The development standards have a range of controls related to scale and position, however one control is likely to arise for B1 and B2 development, being related to a premises with a rear lane. That provision is for any ancillary development in a heritage conservation area (or draft heritage conservation area) to not be specified complying development if the lot adjoins a lane or secondary or parallel road (subclause 5.18(h)(ii)).

##### i Recommendation

Delete (subclause 5.18(h)(ii)) being:

##### **5.18 Development standards**

The standards specified for that development are that the development must—

- (a) have an area of not more than 100m<sup>2</sup>, or 15% of the area of the site on which the development is carried out, whichever is the lesser, and
- (b) not have a building height of more than 5m, and

- (c) be located at least 1m behind the building line of any road frontage (except where the development is a front awning on a building), and
- (d) be located at least 3m from any boundary adjoining land on which a dwelling is located, and
- (e) not be located over a registered easement, and
- (f) not reduce vehicular access to, parking on or loading or unloading on or from, the lot, and
- (g) not reduce the landscaped area of the lot, and
- (h) if carried out in a heritage conservation area or in a draft heritage conservation area—
  - (i) be located behind the rear building line and no closer to each side boundary than the existing development with which it is associated, ~~and~~
  - ~~(ii) not be carried out on a lot that adjoins a lane or a secondary or parallel road, and~~
  - (i) to the extent that it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials, and
  - (j) if located on bush fire prone land—be constructed of non-combustible material, and
  - (k) satisfy the requirements contained in an applicable development control plan applying to the land concerning its drainage systems and not interfere with the functioning of existing drainage fixtures or flow paths, and
  - (l) (Repealed)
  - (m) in the case of a garbage bin enclosure—
    - (i) not have a floor area more than 5m<sup>2</sup>, and
    - (ii) not be higher than 3m if roofed or 1.5m above ground level (existing) if not roofed, and
  - (n) not be carried out under an awning unless the awning—
    - (i) complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia, and
    - (ii) is structurally sound.

## 9.3 Change of use

Change of use is likely to arise in circumstances where current business enterprises vacate commercial premises of a type found in areas zoned B1 or B2, and alternative businesses seek to operate from the same space.

### 9.3.1 Exempt development

The nominated categories of development available as a change of use for exempt development are reasonable although consideration of a change of use to ‘a market’ is warranted.

The development controls relating to parking, traffic, noise and hours of operation also warrant consideration.

## i Market

Clause 2.20A (Change of use of premises) should include “market” in the New Use column for Category 1 and Category 2. It is noted that a market is a common inclusion in permitted development across the sample LEPs.

### a Recommendation

Delete the exclusion of ‘a market’ at subclause 2.20B(f)(vi).

## ii Parking

Subclause 2.20B(i) provides that the new use (as exempt development):

must not cause the contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management and landscaping.

This may present a challenge for a business owner who proposes a change of use. Establishing the existence of all prior development consents and identifying conditions, if any, related to traffic and parking, requires a significant research effort. Electronic records are generally only available for more recent records in most LGAs and establishing the existence of historical consents can require access to records under the Government Information (Public Access) Act 2009 (‘the GIPA Act’) and in some circumstances records are simply unavailable

### a Recommendation

Delete subclause 2.20B(i) as below, and replace with a new subclause which requires the proposed development to:

- maintain the existing provision of car parking spaces (if any); or
- if the development is ‘traffic generating’, then provide car parking spaces as prescribed in the *Guide to traffic generating developments* (RTA, 2002, or as updated from time to time); or
- provide car parking spaces as required under the relevant development control plan.

Note that the deletion of subclause 2.20B(i) also deletes references to other amenity-based conditions which may apply, and so this recommendation needs to be considered concurrently with other changes, if any, to the subclause.

A summarised version of the proposed new subclauses at 2.20B is provided at the end of this section.

## iii Hours of operation

There is also a default setting in the absence of any consent conditions relating to hours of operation (refer to subclause 2.20B(j)) being:

if there is no such existing condition applying to the premises relating to the hours of operation, the premises must only operate between 7.00 am and 7.00 pm on any day,

Limiting hours of operation to between 7:00am and 7:00 pm on any day is reasonable for retail premises but the change of use provisions at subclause 2.20A allow for office premises or business premises to replace a shop. This existing provision would mean that an accountant replacing a shop could not operate after 7:00pm.

a Recommendation

This subclause should be expanded by adding “or, if the premises are to be used for office based services, between 7:00am and 10:00pm”. See bolded insert in the revised subclause below.

iv Noise

Noise can be managed by reference to a specific threshold rather than by consent conditions relating to a prior development.

A suggested performance measure is that noise level generated by any equipment or activity must not exceed an LAeq (15min) of 5dB(A) above background noise at the nearest residential property boundary, consistent with the NSW Government *Noise Policy for Industry* and the requirements (if applicable) of the *Liquor Act 2007*.

a Recommendation

Insert a new subclause which stipulates “noise level generated by any equipment or activity must not exceed an LAeq (15min) of 5dB(A) above background noise at the nearest residential property boundary”.

v Revised subclause

Deleted section are shown as strikethrough; additional provisions shown as bold.

**2.20B Development standards**

The standards specified for that development are that—

- (a) the current use must be a lawful use, and
- (b) the current use must not be an existing use within the meaning of section 4.65 of the Act, and
- (c) the new use must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out, and
- (d) the new use must not result in a change of building classification under the Building Code of Australia, unless the change of use is from a class 5 building to a class 6 building, or from a class 6 building to a class 5 building, and the building meets all the relevant provisions of that code for the new use, and
- (e) the new use must not be carried out at premises that are a manufactured home, moveable dwelling or associated structure, temporary structure, tent, swimming pool, ship or vessel, and
- (f) the new use must not be any of the following—
  - (i) food and drink premises,
  - (ii) a funeral chapel,
  - (iii) a funeral home,
  - (iv) retail premises where firearms within the meaning of the Firearms Act 1996 are sold,
  - (v) landscaping material supplies,
  - (vi) a market,
  - (vii) premises that are a beauty salon or hair dressing salon,

- (viii) premises where a skin penetration procedure within the meaning of section 51 of the Public Health Act 1991 is carried out,
- (ix) restricted premises,
- (x) a roadside stall,
- (xi) sex services premises,
- (xii) vehicle sales or hire premises, and
- (g) the new use must not involve building alterations, other than alterations that are exempt development under this Policy, and
- (h) the new use must not result in an increase in the gross floor area of any building within which it is carried out, and
- ~~(i) the new use must not cause the contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management and landscaping, and~~
- (i) noise level generated by any equipment or activity must not exceed an LAeq (15min) of 5dB(A) above background noise at the nearest residential property boundary; and**
- (j) if there is no such existing condition applying to the premises relating to the hours of operation, the premises must only operate between 7.00 am and 7.00 pm on any day, **or if the premises are to be used for office-based services, between 7:00am and 10:00pm**, and
- (k) the new use must not be carried out under an awning unless the awning complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia.

### 9.3.2 Complying development

The nominated categories of development available as a change of use for complying development (refer to the table of current and new uses under subclause 5.3(1) of the Codes SEPP) are reasonable but may benefit by the addition of other 'local' services such as neighbourhood supermarkets, markets, specialised retail premises, some indoor recreational facilities (health studio, squash court, table tennis centre) and outdoor recreational facilities (mini-golf centre, tennis court).

One type of service emerging as local development in B1 and B2 zones is fitness centres or gymnasiums. These are not broadly suited to all situations and need to be excluded from any building where there are residential premises above or below the proposed gymnasium. There are concerns regarding noise and vibration.

There is scope for a new subdivision for shop top housing.

The development controls relating to parking, traffic, noise and hours of operation warrant consideration.

#### i Parking, traffic and noise

There is a provision at clause 5.4(g), as an item in the development standards for a change of use, which provides:

- (g) the new use must not cause the contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, car parking, loading, vehicular movement, traffic generation, waste management or landscaping,

Conditions written into a development consent for another, unrelated development may or may not be tailored to the new use.

Another development control for change of use relates to car parking (subclause 5.4(1)(h)):

(h) car parking must be provided—

(i) in accordance with any existing condition relating to car parking that applies to the use of the land, or

(ii) if there is no existing condition relating to car parking either—

(A) in accordance with any relevant requirements contained in an environmental planning instrument or development control plan applying to the land, or

(B) if a contribution in relation to car parking in compliance with a contributions plan under Division 7.1 of the Act is imposed as a condition of approval under clause 136K of the *Environmental Planning and Assessment Regulation 2000*—if that contribution is made

#### a Recommendation

Insert selected additional new uses in the table at subclause 5.1(1) to include:

- neighbourhood supermarkets
- markets
- specialised retail premises
- selected indoor recreational facilities (health studio, squash court, table tennis centre); and
- selected outdoor recreational facilities (mini-golf centre, tennis court).

Consider a new subdivision to provide for shop top housing as complying development.

Apply the same development controls as recommended for the amenity controls in the exempt development section above.

### 9.3.3 First use

Codes SEPP subdivision 3, clauses 5.5 and 5.6, relate to the 'first use' of a building that is BCA Class 5, 6, 7b or 8 but specifically excludes certain uses, some of which represent common uses in a B1 or B2 zone. The excluded uses include a funeral home, a pub, a small bar and food and drink premises with a capacity of greater than 50 seats.

Separate to this initiative, DPIE is considering the revocation of this subdivision. It is not specifically examined here but noted to be a relevant consideration.

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Appendix A

## Councils included in survey sample

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## A.1 Councils included in survey sample

**Table A.1 Councils included in survey sample**

<b>Council name</b>	<b>Metro (M) or Rural/Regional (R)</b>
City of Sydney	M
Wollongong	M
Newcastle	M
Liverpool	M
Sutherland	M
Willoughby	M
Parramatta	M
Central Coast	M
Ryde	M
Inner West	M
Campbelltown	M
Blue Mountains	M
Hawkesbury	M
Waverley	M
Hornsby	M
Canterbury-Bankstown	M
Camden	M
Shoalhaven	R
Tweed	R
Dubbo	R
Wagga Wagga	R
Armidale	R
Port Macquarie-Hastings	R
Bathurst	R
Tamworth	R
Mid-Western	R
Eurobodalla	R
Snowy Monaro	R
Kempsey	R
Bega Valley	R

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Appendix B

## Other authorisations

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## B.1 Other authorisations

### Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
<b>All land uses/businesses</b>					
Approval to Install, Construct or Alter an Onsite Sewage Management System	No	Where intending to install, construct or alter an onsite sewage management system. Onsite sewerage management systems include portable toilets, septic tanks, aerobic treatment units, compost toilets or any other apparatus used for the treatment of sewage. It also includes any of the tanks, beds, sewers, drains, pipes, fittings, fixtures and land used in connection to this system.	Typically sought prior to licenced activity.	NSW <i>Local Government Act 1993</i> – <ul style="list-style-type: none"> <li>Section 68 (Activities that require the approval of Council)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>the address of the premises on where the system is to be installed;</li> <li>details of drainage;</li> <li>details of sewerage management system;</li> <li>details of waste to be treated</li> </ul>
Regulated Water System Registration	No	Where intending to: <ul style="list-style-type: none"> <li>occupy a premises that has a water cooling system or warm water system; or</li> <li>install a water cooling system or water system in a premises.</li> </ul>	Typically sought prior to licenced activity.	NSW <i>Public Health Regulation 2012</i> – <ul style="list-style-type: none"> <li>Part 2, Clause 12 (Register of water-cooling and warm-water systems)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>the address of the premises; and</li> <li>details concerning the system/s.</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Approval to Dispose of Waste and Trade Wastewater	No	<p>Where intending to undertake development or business that may produce trade wastewater. Trade wastewater includes:</p> <ul style="list-style-type: none"> <li>wastewater produced at industrial or commercial premises;</li> <li>wastewater transported by vehicle, including septic effluent;</li> <li>wastewater from ships and boats; and</li> <li>run-off from contaminated surface water and groundwater.</li> </ul>	Typically sought prior to licenced activity.	NSW <i>Sydney Water Act 1994</i>	<p>A business owner must provide:</p> <ul style="list-style-type: none"> <li>the address of the premises;</li> <li>details of the business activities that will produce trade wastewater;</li> <li>details about when discharging would occur;</li> <li>details about any existing pre- treatment or pre-treatment you plan to install;</li> <li>a site map that shows the property water and wastewater services; and</li> <li>relevant details if you want to pump wastewater.</li> </ul>
<b>Restaurants and cafes</b>					
Approval for Outdoor Dining in a Public Place	No	Where a restaurant, cafe or food intends to use a footpath for restaurant purposes.	Typical sought and acquired after obtaining a development consent or a complying development certificate.	<p>NSW <i>Roads Act 1993</i> –</p> <ul style="list-style-type: none"> <li>Section 125 (Approval to use footway for restraint purposes)</li> <li>Section 126 (Authority to erect structures)</li> </ul> <p>NSW <i>Local Government Act 1993</i> –</p> <ul style="list-style-type: none"> <li>Section 68 (Activities that require the approval of Council)</li> </ul>	<p>A business owner must provide:</p> <ul style="list-style-type: none"> <li>a copy of any relevant development approval, complying development certificate or construction certificate to operate a food and drink premises or a licenced (liquor) premises; and</li> <li>details as to the proposed location of business articles (eg furniture).</li> </ul> <p>Should the outdoor dining area adjoin a classified road the application will also be referred to Transport for New South Wales for concurrence.</p>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
On-Premises licence (cafe or restaurant)	No	Where a restaurant or cafe intends to supply alcohol along with the other products or services at a premises.	Typical sought and acquired after obtaining a development consent or a complying development certificate.	NSW <i>Liquor Act 2007</i> – <ul style="list-style-type: none"> <li>Division 4 (On-premises licences)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details including a floor plan showing boundaries for the licenced premises;</li> <li>a copy of any relevant development approval; and</li> <li>a community impact statement (this is a summary of consultation held with the local community about any issues or concerns they have with a proposed liquor licence application).</li> </ul>
Recognised Competency Card (Liquor)	No	Where a restaurant or cafe intends to supply alcohol along with the other products or services at a premises.	Typically sought after obtaining an on-premises licence.	NSW Regulation 2018 – <ul style="list-style-type: none"> <li>Division 3 (Recognised competency cards)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>evidence of completion training (Responsible Service of Alcohol, Responsible Conduct of Gambling, Licensee and Advanced Licensee training).</li> </ul>
<b>Road stalls and kiosks</b>					
Approval to Sell Goods or Services from a Temporary Store	Yes	Where intending to sell any goods from a stall or vehicle, eg: <ul style="list-style-type: none"> <li>selling goods from a vehicle or stand;</li> <li>temporary food stalls; and</li> <li>mobile food vendors.</li> </ul>	Prior to commencing controlled activity.	NSW <i>Local Government Act 1993</i> – <ul style="list-style-type: none"> <li>Section 68 (Activities that require the approval of Council)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>information relating to the type of stand, stall, vehicle or etc;</li> <li>proposed locations; and</li> <li>time/date of operation.</li> </ul>
<b>Neighbourhood shops; supermarkets</b>					
Tobacco and e-Cigarette Retailing Notification	No	Where a shop, store, or supermarket intends to sell tobacco or e-cigarettes.	Prior to commencing controlled activity.	NSW <i>Public Health (Tobacco) Act 2008</i> – <ul style="list-style-type: none"> <li>Division 3 (Notification by tobacco retailers and e-cigarette retailers)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>address(es) of all the trading premises listed under the company that are selling tobacco, non-tobacco smoking products and/or e-cigarettes.</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Packaged Liquor Licence	No	Where a shop intends to sell alcohol to the public in sealed containers for consumption off premises.	Typical sought and acquired after obtaining a development consent or a complying development certificate.	NSW <i>Liquor Act 2007</i> – <ul style="list-style-type: none"> <li>Division 5 (On-premises licences)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details including a floor plan showing boundaries for the licenced premises;</li> <li>a copy of any relevant development approval; and</li> <li>a community impact statement (this is a summary of consultation held with the local community about any issues or concerns they have with a proposed liquor licence application.</li> </ul>
Licence for a Food Premises to Process/Store Meat	No	Where a shop, store, or supermarket intends to function as a meat retail premises.	Prior to commencing controlled activity.	NSW Food Regulation 2015 – <ul style="list-style-type: none"> <li>Division 2 (Licensing of food businesses)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>address of premises for inspection.</li> </ul>
Fish Receiver Registration	No	Where a shop, store, or supermarket intends to receive fish from commercial fisheries for the purposes of re-sale or other commercial use.	Prior to commencing controlled activity.	NSW <i>Fisheries Management Act 1994</i> <ul style="list-style-type: none"> <li>Division 4 (Fish receivers)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>address of premises.</li> </ul>
<b>Office premises (other than those uses noted below)</b>					
Registration as an Authorised Audit Company	No	Where intending to undertake a business intending to provide assurance and audit services.	Prior to commencing controlled activity.	Commonwealth <i>Corporations Act 2001</i> – <ul style="list-style-type: none"> <li>Part 2M.4, Division 2 (Registration requirements)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details concerning place of practice</li> <li>details concerning their person (qualifications and etc).</li> </ul>
Recognition of a Professional Association (Taxation and Finance)	No	Applying to accounting services, financial insurance services, and credit services	Prior to commencing controlled activity.	Commonwealth <i>Tax Agent Services Regulations 2009</i> – <ul style="list-style-type: none"> <li>Schedule 1, Part 3 (Recognised tax (financial) adviser association)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details concerning the busines (ANC, ABN, business address, business constitution and by-laws, annual reports, any other relevant documents, such as charter, code of ethics, and etc.</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Corporation Licence (Act as a Real Estate Agent, Business Agent, Stock and Station Agent, Strata Management Agent, On Site Residential Property Manager for a Company)	No	Where intending to operate a corporation that carried on the business of either a real estate agent, business agent, stock and station agent, strata / community management agent or on-site residential property manager.	Prior to commencing controlled activity.	NSW <i>Property and Stock Agents Act 2002</i> <ul style="list-style-type: none"> <li>Part 2, Division 1 (Requirement for licence or certificate of registration)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>evidence that the director and secretary of the corporation is fit and proper person for the purposes of the licence;</li> <li>details of the partnership particulars if operating as a partnership; and</li> <li>details as to the place of the business.</li> </ul>
Individual Agent's Licence (Act as a Real Estate Agent or Stock and Station Manager)	No	Where intending to operate a business that provides services as a real estate agent, stock and station agent, business agent, buyer's agent, strata managing agent and on-site residential property manager. Agents provide services related to the purchase, sale, auctioning, letting, leasing, management, or dealing of property (premises or land), accommodation (short-term or holiday), businesses or livestock.	Prior to commencing controlled activity.	NSW <i>Property and Stock Agents Act 2002</i> <ul style="list-style-type: none"> <li>Part 2, Division 1 (Requirement for licence or certificate of registration)</li> </ul>	An individual must provide: <ul style="list-style-type: none"> <li>evidence that the applicant is fit and proper for the purposes of the licence; and</li> <li>evidence that the applicant has successfully completed all necessary qualifications.</li> </ul>
<b>Pubs</b>					
Hotel Licence (General Bar Licence)	Yes	Where the primary purpose of the premises is to sell alcohol to the public for consumption on and off the premises. A licence may be designated as a general bar licence.	Typical sought and acquired after obtaining a development consent or a complying development certificate.	NSW <i>Liquor Act 2007</i> – <ul style="list-style-type: none"> <li>Division 2 (Hotel licences)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details including a floor plan showing boundaries for the licenced premises;</li> <li>a copy of any relevant development approval; and</li> <li>a community impact statement (this is a summary of consultation held with the local community about any issues or concerns they have with a proposed liquor licence application.</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Recognised Competency Card (Liquor)	Yes	Where a restaurant or cafe intends to supply alcohol along with the other products or services at a premises.	Typically sought after obtaining a Hotel Licence.	NSW Regulation 2018 – Division 3 (Recognised competency cards)	A business owner must provide: evidence of completion training (Responsible Service of Alcohol, Responsible Conduct of Gambling, Licensee and Advanced Licensee training).
<b>Small bars</b>					
Small Bar Licence	Yes	Where intending to operate a small bar that does not exceed a capacity of more than 120 patrons.	Typical sought and acquired after obtaining a development consent or a complying development certificate.	NSW <i>Liquor Act 2007</i> – <ul style="list-style-type: none"> <li>Division 3A (Hotel licences)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details including a floor plan showing boundaries for the licenced premises;</li> <li>a copy of any relevant development approval; and</li> <li>a community impact statement (this is a summary of consultation held with the local community about any issues or concerns they have with a proposed liquor licence application.</li> </ul>
Recognised Competency Card (Liquor)	Yes	Where a restaurant or cafe intends to supply alcohol along with the other products or services at a premises.	Typically sought after obtaining a Small Bar Licence.	NSW Regulation 2018 – <ul style="list-style-type: none"> <li>Division 3 (Recognised competency cards)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>evidence of completion training (Responsible Service of Alcohol, Responsible Conduct of Gambling, Licensee and Advanced Licensee training).</li> </ul>
<b>Funeral homes</b>					
Registration of a Pre-Paid Funeral Fund	No	Where intending to operate a pre-paid funeral fund.	Prior to commencing controlled activity.	NSW <i>Funeral Funds Act 1979</i> – <ul style="list-style-type: none"> <li>Part 3, Division 1 (Registration of pre-paid funeral funds)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details concerning their business and character.</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
<b>Banks</b>					
Authority to Carry on Banking Business as an Authorised Deposit-Taking Institution	Yes	Where intending to carry on a banking business. A banking business consists of: <ul style="list-style-type: none"> <li>taking deposits;</li> <li>making advances of money; and</li> <li>other financial activities.</li> </ul>	Prior to commencing controlled activity.	Commonwealth <i>Banking Act 1959</i> – <ul style="list-style-type: none"> <li>Part 2, Division 1 (Authority to carry on banking business)</li> </ul>	A business owner must apply in writing to the Australian Prudential Regulation Authority for authority. A business owner must demonstrate that its corporation is a suitable applicant with the capacity and commitment to conduct banking business with integrity, prudence and competence on a continuing basis among other eligibility requirements.
Authorisation for the Representative Office of a Foreign Bank	No	Where a foreign bank intends to establish a representative bank office in Australia.	Prior to commencing controlled activity.	Commonwealth <i>Banking Act 1959</i> – <ul style="list-style-type: none"> <li>Part 9, Section 67 (Restriction on establishment or maintenance of representative offices of overseas banks)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details concerning their business (eg annual report/public financial statements), overview of the functions of the representative office, details of equity interests, and etc.</li> </ul>
Australian Financial Services Licence	No	Where intending to engage in either one or more of the following activities: <ul style="list-style-type: none"> <li>providing financial product advice;</li> <li>detailing in financial products;</li> <li>making a market in financial products;</li> <li>operating a registered managed investment scheme;</li> <li>conducting crowd-funding campaigns; and</li> <li>providing custodial or depository services.</li> </ul>	Prior to commencing controlled activity.	Commonwealth <i>Corporations Act 2001</i> – <ul style="list-style-type: none"> <li>Part 7.6, Division 2 (Requirement to be licenced or authorised)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>details concerning their business.</li> </ul> Business must comply with Pro Forma 209 – Australian financial services licence conditions.

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
<b>Financial institutions and corporations</b>					
Australian Financial Services Licence	No	Where intending to engage in either one or more of the following activities: <ul style="list-style-type: none"> <li>• providing financial product advice;</li> <li>• detailing in financial products;</li> <li>• making a market in financial products;</li> <li>• operating a registered managed investment scheme;</li> <li>• conducting crowd-funding campaigns; and</li> <li>• providing custodial or depository services.</li> </ul>	Prior to commencing controlled activity.	Commonwealth <i>Corporations Act 2001</i> – <ul style="list-style-type: none"> <li>• Part 7.6, Division 2 (Requirement to be licenced or authorised)</li> </ul>	A business owner must provide details concerning their business. Business must comply with Pro Forma 209 – Australian financial services licence conditions.
Application for Declaration as an Identifying Cash Dealer	No	A declaration if operating as a cash dealer. A cash dealer includes: <ul style="list-style-type: none"> <li>• financial institutions;</li> <li>• financial corporations;</li> <li>• motor vehicle dealers who are insurers;</li> <li>• trustees or a manger of a unit trust;</li> <li>• currency or bullion dealers; and</li> <li>• casinos and gambling houses.</li> </ul>	Prior to commencing controlled activity.	Commonwealth <i>Financial Transaction Reports Act 1988</i> – <ul style="list-style-type: none"> <li>• Part 2, Division 1(Cash transaction reports by cash dealers)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>• details concerning their business.</li> </ul>
Approval of Alternative Method of Identification in Cash Dealings	No	Where intending to operate as a cash dealer that has an identification record for a signatory to an account and where intending to carry out an alternative method / procedure of identification.	Prior to commencing controlled activity.	Commonwealth <i>Financial Transaction Reports Act 1988</i>	A business owner must provide: <ul style="list-style-type: none"> <li>• details concerning their business.</li> </ul>
<b>Post offices</b>					

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Licence to Operate a Licensed Post Office	No	Where intending to operate as a Licensed Post Office and provide postal products and services such as selling stamps, post packs and money orders. Services can be provided as a standalone activity or as part of a broader business that sells other non-postal products or services.	Prior to commencing controlled activity.	Commonwealth <i>Australian Postal Corporation Act 1989</i>	A business owner must apply to Australia Post with details concerning its business.
Licence to Operate as a Community Postal Agent	No	Where intending to operate as a Community Postal Agent. Community Postal Agents offer various mail services in rural or remote areas. They offer: <ul style="list-style-type: none"> <li>• basic postage assessment;</li> <li>• stamp sales; and</li> <li>• over-the-counter mail acceptance and delivery.</li> </ul>	Prior to commencing controlled activity.	Commonwealth <i>Australian Postal Corporation Act 1989</i>	A business owner must apply to Australia Post with details concerning its business.
<b>Betting agencies</b>					
Declared Betting Event Authority (Approval to Take Bets on Declared Betting Events in New South Wales)	No	Where intending to take bets on any declared betting events. A declared betting event is a sporting event a sporting event (other than horse racing, harness racing or greyhound racing) or other event, or class of sporting or other events (such as golf, the Olympic Games, football, or test matches).	Prior to commencing controlled activity.	NSW <i>Betting and Racing Act 1998</i> – <ul style="list-style-type: none"> <li>• Part 3, Division 2A (Declared betting event authorities)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>• details concerning their business; and</li> <li>• location of premises proposed for the licenced activity.</li> </ul>
Application to Prescribe Declared Betting Event (Application to Prescribe a Sporting Event as a Declared Betting Event)	No	Where intending to enable betting on sporting or other events that is not otherwise available. This includes any sporting or event other than a greyhound, thoroughbred or harness race.	Prior to commencing controlled activity.	NSW <i>Betting and Racing Act 1998</i> – <ul style="list-style-type: none"> <li>• Part 3, Division 2A (Declared betting event authorities)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>• details concerning their business; and</li> <li>• location of premises proposed for the licenced activity.</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Authority to Conduct Telephone or Electronic Betting	No	Where an entity is a licensed bookmaker and it is intended to make bets by telephone or on the internet.	Prior to commencing controlled activity.	NSW <i>Betting and Racing Act 1998</i>	A business owner must provide: <ul style="list-style-type: none"> <li>• details concerning their business; and</li> <li>• location of premises proposed for the licenced activity.</li> </ul>
<b>Medical centres</b>					
Application for a Licence for a Private Health Facility (Operate a Private Hospital or Day Procedure Centre)	No	Where intending to operate private health facilities and day procedure centres. Private health facilities include a premises which patients are admitted, provided with medical, surgical or other prescribed treatment and then discharged or premises at which patients are provided with prescribed services or treatments.	Typical sought and acquired after obtaining a development consent or a complying development certificate.	NSW <i>Private Health Facilities Act 2007</i> <ul style="list-style-type: none"> <li>• Part 2 (Licensing of private health facilities)</li> </ul>	A business owner must provide: <ul style="list-style-type: none"> <li>• evidence that the applicant is fit and propose to operate a private health facility;</li> <li>• evidence that consultation with relevant Local Health District and relevant Branches in the NSW Ministry of Health have taken place;</li> <li>• evidence of proper consideration of any submissions received from third parties following public advertisement of the proposed private health facility;</li> <li>• evidence of development consent and approved architectural plans;</li> <li>• details regarding the private health facility</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Approval as a Workplace Rehabilitation Provider (Accreditation as a Workers Compensation Rehabilitation Service Provider)	No	<p>For individuals intending to offer occupational rehabilitation services to workers' compensation recipients in order to help them return to work. This could involve:</p> <ul style="list-style-type: none"> <li>• assess the needs of the injured worker and the workplace requirements, to develop a rehabilitation plan of action, listing the services needed to return the injured worker to work;</li> <li>• employ different health professionals, such as occupational therapists, physiotherapists, psychologists and rehabilitation counsellors;</li> <li>• be referred to by an employer, insurer or the treating doctor to help in complex cases; and</li> <li>• be involved in the return-to-work program.</li> </ul>	Prior to commencing controlled activity.	NSW <i>Workplace Injury Management and Workers Compensation Act 1998 New South Wales</i>	A business owner must provide evidence that the persons/organisation have the demonstrated ability to comply with the standards for providers and hold the minimum qualifications and experiences as required by the authority (Department of Customer Service)
<b>Centre-based child care facilities and school-based child care facilities</b>					
Provider Approval (Approval to Provide Child Care in a Centre-Based or Family Day Care Facility)	Yes	<p>Where intending to provide a family day care or centre-based service for children under 13 years of age. A centre-based service is an education and care service delivered at a centre and can include:</p> <ul style="list-style-type: none"> <li>• most long day care;</li> <li>• preschool; and</li> <li>• outside school hours care services.</li> </ul>	Prior to commencing controlled activity.	NSW <i>Children (Education and Care Services) National Law</i> – <ul style="list-style-type: none"> <li>• Part 2, Division 1 (Application for provider approval)</li> </ul>	<p>A business owner must provide:</p> <ul style="list-style-type: none"> <li>• details relating to the fitness/propriety of the person to be involved in the provision of an early childhood education service;</li> <li>• supporting documents of person (eg criminal record check, working with children check, bankruptcy information, etc.</li> </ul>

## Authorisations required under for selected developments or activities associated with B1 land-uses

Licence	Applying to all aspects of land use	Details	Timing	Controlling provisions	Requirements/restrictions
Service Approval (Centre-Based) (Approval to Operate an Education and Care Service)	Yes	<p>Where intending to provide a family day care or centre-based service for children under 13 years of age. A centre-based service is an education and care service delivered at a centre and can include:</p> <ul style="list-style-type: none"> <li>• most long day care;</li> <li>• preschool; and</li> <li>• outside school hours care services.</li> </ul> <p>A service approval is required for each education and care service intended to be operated.</p>	Typical sought and acquired after obtaining a development consent or a complying development certificate and after being granted a provider approval.	<p>NSW <i>Children (Education and Care Services) National Law</i> –</p> <ul style="list-style-type: none"> <li>• Part 3, Division 1 (Application for service approval)</li> </ul>	<p>A business owner must provide:</p> <ul style="list-style-type: none"> <li>• site plans including details such as the location of associated children’s service, location of fences and gates and elevation of plans;</li> <li>• evidence of a right-to-occupy;</li> <li>• a soil assessment or soil statement (ie contamination assessment);</li> <li>• a copy of development consent for the proposed early childhood education premises if consent were required. If consent was not required, a signed and dated letter from the local council confirming this information;</li> <li>• building compliance certificate; and</li> <li>• insurance.</li> </ul>