

Department of Planning, Industry and Environment

Building Business Back Better

Explanation of Intended Effect

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I Introduction

The Productivity Acceleration Package

How to read this document

The Department of Planning, Industry and Environment has prepared this Explanation of Intended Effect (EIE) under section 38 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The EIE proposes reforms to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) to accelerate capital investment in employment zones using complying development certification.

The proposed policy reforms relate to industrial (IN) zones and business (B) zones only.

Complying development can only be approved if the proposed land use is permitted in the zone applying to the property. The permitted land uses within each zone are set by councils in a Local Environmental Plan (LEP).

The EIE sets out the proposed policy reforms as follows:

- **Part A: Background to Policy Proposals** provides the background, evidence base and policy rationale for reforms that encourage investment and job-generating development by strengthening complying development.
- **Part B: Land use and business agility** outlines proposed policies that open the code to more land uses, streamline controls and remove outdated or restrictive provisions.
- **Part C: Zone-based building controls** outlines new zone-based building controls such as height and floor area, including a new building allowance for commercial buildings up to five-storeys in some business zones and a new commercial design code.

- **Part D: Supporting neighbourhood and local centres** outlines a range of land use and business agility proposals that are relevant to the scale of neighbourhood and local centres.
- **Part E: Masterplan pathway** outlines a new council-led approach to specifying complying development in a masterplan. The approach is proposed to be opt-in only for councils and includes a guideline to assist masterplan preparation.
- **Part F: Data centres** outlines a complying development pathway for data centres. The pathway would use the same built-form controls proposed for the industrial and business zones, with additional technical provisions for cooling and backup power systems to manage noise, emissions and hazards.
- **Part G: Circular economy** clarifies complying development pathways for emerging land uses that support the circular economy, such as community swap, share, re-use and repair centres and council-run community recycling facilities.
- **Part H: Consequential amendments** outlines the consequential changes to other parts of the planning legislation that may be necessary to facilitate the proposed reforms, including savings and transitional provisions.

The proposed policy reforms do not affect:

- permissibility of land uses is set by councils in their Local Environmental Plans
- existing notification requirements for complying development certificates (CDC's)
- the role and function of accredited certifiers under the complying development scheme.

The department is currently running a series of initiatives to reform the planning system and drive the economic recovery of NSW. We want to design a planning system that supports the future of work and encourages innovation and productivity.

To support this objective, we are undertaking two important areas of reform in relation to employment land:

- Employment zone reform
- Complying development reform.

What is the employment zone reform program?

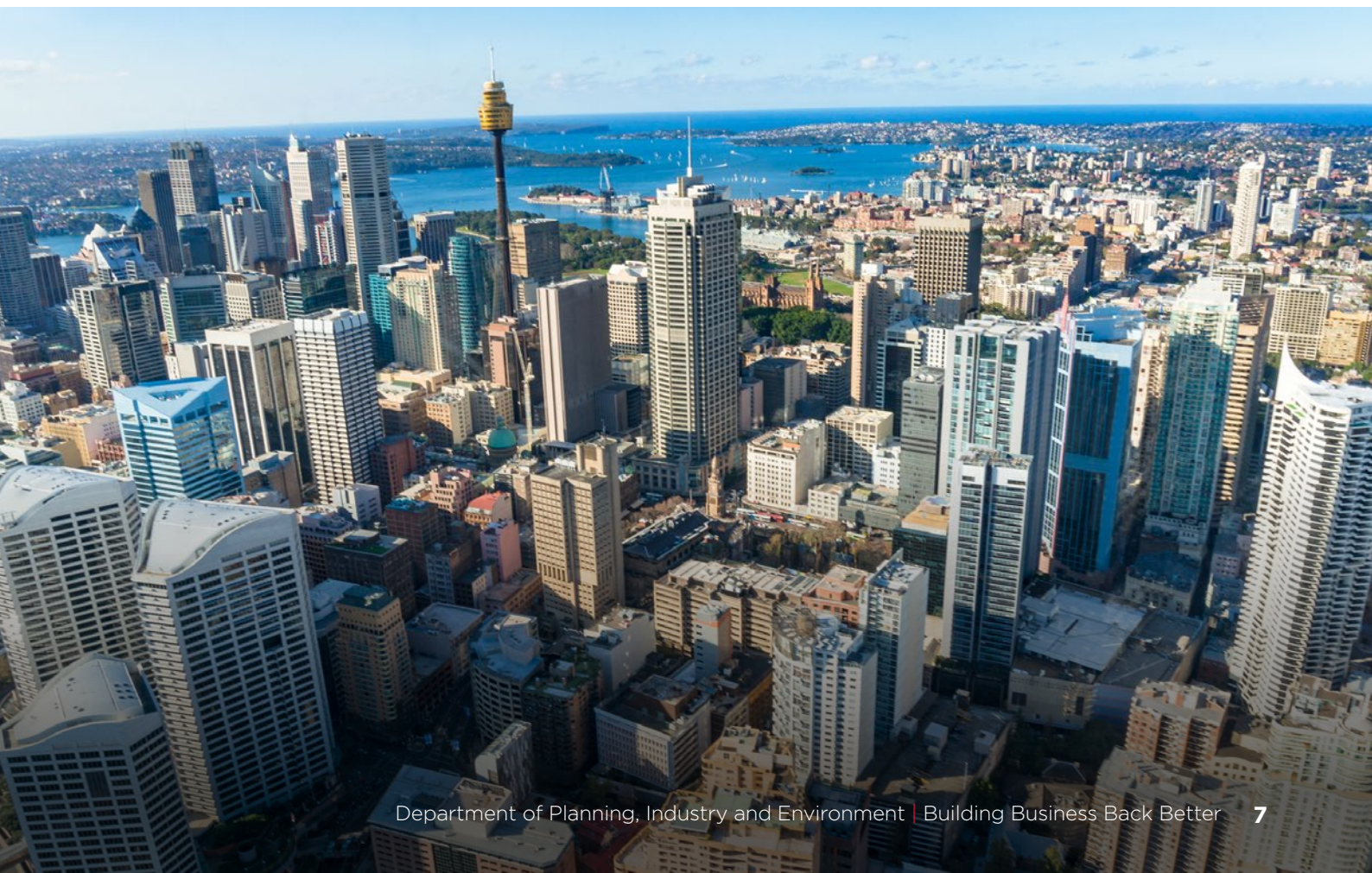
We are developing a simplified employment zone framework that is fit for purpose and can be applied consistently across NSW. The new zones will enable Councils to more clearly align strategic planning outcomes with zone objectives and in land use tables. Business and industry will also benefit from a simplified planning framework to deliver jobs and invest in local places.

What input have Councils had so far?

The department is developing the proposals in close consultation with all NSW councils. Feedback gained through extensive workshops and individual conversations has refined the policy and implementation approach. Further discussions with councils on the development of an interim policy is planned prior to exhibition.

What is the timeframe for implementation?

Exhibition of the proposed employment zones framework is planned for mid 2021. Following exhibition the Principal Standard Instrument Local Environmental Plan will be amended to introduce the new framework. Implementation will be staged from September 2021 until mid 2022 using self-repealing SEPPs to amend all council LEPs. The Department will work with councils to support the translation of existing LEPs into the new framework by providing mapping and policy support.



What is happening with complying development and employment lands?

Complying development offers the potential for fast-tracked planning pathways for low impact development. This means projects that meet strict construction and building standards may be approved faster by council or an accredited certifier.

The Department are currently consulting with Councils, stakeholders and industry to simplify the planning processes for complying development on employment lands under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*. The project is focused on delivering an urgent response to help support economic recovery following the COVID-19 pandemic, as well as longer term solutions that will drive broader productivity gains across the State.

What is the timeframe for implementation?

The NSW Government is pursuing an accelerated timeframe with changes to the Codes SEPP proposed for mid-2021, following a six-week exhibition in late March – April. Making these changes quickly means new jobs sooner. It also means NSW will be a competitive environment for business, responding to economic trends such as increased pressure on supply chains, e-commerce and the on-shoring of business.

Why aren't both reform projects on the same timeframe?

Both project teams are working closely to align outcomes and share stakeholder feedback. Given the immediate needs of the COVID response, changes to complying development are planned to commence earlier than the broader zone review project.

Employment zone reform has wider strategic impact and requires an extended implementation period. Further amendments to the Codes SEPP may be proposed to align with the progress and implementation of the employment zones reform to prevent unintended policy outcomes and to ensure that impacts continue to be appropriately managed for complying development under the Codes SEPP.



Photography

Image courtesy of Don Fuchs, Department of Planning, Industry and Environment.

Part A: Background to Policy Proposals

What is complying development?

Complying development is a fast-tracked approval process for development where planning and building standards can be signed-off by an accredited certifier. This process offers many benefits to applicants including certainty, as well as time and cost savings compared with a development application (DA). Complying development certificates (CDC's) can be issued by council and private accredited certifiers within 10 days.

Complying development may only occur if the proposed land use is permitted in the zone applying to the property. The permitted land uses within each zone are often established by councils through their LEP. (See below “what is permissibility”).

Complying development must strictly comply with the planning and buildings controls in the Codes SEPP. If a development cannot comply with just one of these controls, it cannot obtain a CDC and must go through the DA pathway.

The development controls are designed to ensure the complying development will not significantly impact surrounding properties.

The Codes SEPP currently offers pathways for complying development for some commercial and industrial developments. These include alterations or additions to commercial premises and the construction of new warehouses and industry. In 2018, 20% of industrial development in NSW was approved as complying development. In regional NSW, 12% of all industrial development was complying development.

What zones are the focus of the proposed reforms?

Industrial zones:

IN1 General Industrial
IN2 Light Industrial
IN3 Heavy Industrial

Business zones:

B5 Business Development
B6 Enterprise Corridor
B7 Business Park

Neighbourhood and local centre zones:

B1 Neighbourhood Centre
B2 Local Centre

What is permissibility?

Complying development is always carried out for a land use purpose. In NSW planning law there is a [dictionary of defined terms](#) that is used to characterise the types of land use.

When deciding where and how to zone particular land, a local council will also specify the land uses from the dictionary that can be carried out in each zone, and those that cannot. The land uses that can be carried out in the zone are known as permissible land uses, while those that cannot are known as prohibited land uses.

Complying development, and the complying development reforms proposed in this EIE is based on permissibility. If a land use is prohibited in a zone, then a CDC cannot be issued for it, even if the land use is listed as a complying development in the Codes SEPP. A land use must both be permissible in the zone and listed as a complying development land use in order to be able to access the complying development pathway.

The complying development opportunity

Commercial and industrial development significantly contributes to the NSW economy. NSW is home to a leading range of industry sectors, including the food and beverage, aerospace, medical technology, research, finance, retail and creative industries. Many companies in these sectors use state-of-the-art technology and highly skilled staff to create and sell their products.

Manufacturing, for example, contributes around \$33 billion to the NSW economy and employs more than 362,000 people through direct jobs and indirectly through related industries such as freight and professional services.¹

Following the impacts of the COVID-19 pandemic, businesses have told us that they need to be more agile and have the ability to quickly adapt to changing markets in order to grow and remain competitive. Business and industry also need to be able to use new technologies and innovate to meet the unique and ongoing challenges of a post-pandemic climate.



The reality is that the term “manufacturing” now covers a much broader range of activities than those performed in traditional factories. Today, manufacturing centres on complex research and design work in the preproduction phase. There are also many value-adding post-production opportunities in the form of ongoing services.

- Standards Australia: Industry 4.0 Recommendations Report

1. www.business.nsw.gov.au/industry-sectors/industry-opportunities/advanced-manufacturing/economic-value-sector-overview

A case for change

The planning system has an important role to play in helping NSW unlock productivity, support innovation and enable job creation and investment.

The NSW Government announced the Planning Reform Action Plan in August 2020. The action plan outlines a series of initiatives to achieve long-term structural reform of the planning system. This includes cutting red tape, reducing time and costs associated with the planning system, and making the system more transparent and easier to use.

As part of the action plan, the government has committed to improving and expanding complying development opportunities, with a focus on employment lands.

The aim is to help fast-track ongoing economic recovery by facilitating a broader range of job-generating projects with a more timely, certain and simplified complying development framework. Reform will also support industries and businesses to be more agile and responsive to changing business conditions.

The NSW Productivity Commission has also identified planning system barriers to boosting commercial and industrial output in the context of recovery from the COVID-19 pandemic. The commission has recommended improvements, such as streamlining regulation and addressing the current complexity and inflexibility of the system.

Building Business Back Better

Following the government's commitment to change, the department has sought industry, certifier and stakeholder feedback to inform the proposed reform package. This feedback indicates that the current settings for industrial and commercial development are complex and not up-to-date with advances and new standards in building design, technology and site requirements, such as car parking. Also, the codes do not clearly recognise emerging lands uses, such as data centres. The department commissioned independent economic analysis that identifies that these issues, as well as the inefficient operation of the Codes SEPP, result in delayed investment and higher costs for business.



Figure 1

Productivity acceleration objectives.

Delivering economic benefits to NSW

A new approach to complying development for existing and emerging employment-generating business and industry can support economic recovery and resilience in NSW.

Importantly, the reform package focuses on employment-generating land uses that will bring the most economic benefit to the NSW economy.

In total, the reforms aim to unlock as much as \$4.85 billion of annual economic benefit.

This includes capital investment value, time savings and opportunity costs for industry. The following section provides future detail on the potential value of the reforms.



Figure 2
Estimated potential economic impact.

Key evidence base for reform

Market sounding and insights

To better understand the current issues around complying development and find out where reform could help bring forward more development and investment, the department commissioned an independent consultant to conduct a 'market sounding and insights' project (**Attachment B**). Key stakeholders representing commercial and industrial builders and investors, private certifiers, small business and local business chambers participated and shared current experiences and challenges with the complying development process. Many of the issues raised were common across the stakeholder groups and their feedback has helped inform many of the proposed policy changes.

What industry told us

The report found that the general sentiment towards complying development was overwhelmingly positive, particularly given that the pathway offers developers a faster alternative to a DA. Industry wants to do more complying development, as it typically leads to positive commercial outcomes compared with the DA process.

Identifying barriers to take-up

Given the low rate of complying development for employment uses, the report sought to understand specific barriers to the take-up of the pathway. Research revealed that for most stakeholders, the challenges are:

- the complexity of the legislation
- a lack of flexibility for certain simple upgrades or building enhancements
- the difficulty in obtaining the necessary information or other approvals from local government or agencies before a CDC can be issued.

Information requirements that block increased use of the code include a need to establish that a current use is lawful before a CDC can be issued for a permitted change of use. In many cases, the existing development approval may be very old. Applicants can undergo lengthy council enquiry processes which can result in no records being found due to the age of the building or the archiving of historic applications. This issue is a major barrier for private certifiers in taking on projects that would otherwise qualify for a CDC.

Development pipeline

To understand future opportunities for complying development, industry participated in a market sounding focused on the future development pipeline and planned capital spending. Other sources, such as the Cordell Connect database, were used to find out more about commercial and industrial development projects across NSW.

The market sounding estimates the total employment land use investment pipeline in NSW at \$20.4 billion. This comprises projects within the

commercial, industrial and retail sectors. Table 1 shows the total pipeline value of each sector and average project value.

The average floor space of projects was also analysed. For the industrial sector, most projects across the state were less than 5,000 m²; however, most of the additional floor area in the development pipeline is within the 5,000 m² to 50,000 m² range. Most new commercial projects range from 1,000 m² to 10,000 m².

Development sector	Total pipeline value (\$ billion)	Average project value (\$ million)
Commercial	10.7	4.9
Industrial	7.9	2.3
Retail	1.8	1.7

Table 1
Value of the NSW development pipeline.

Industrial and warehousing

The market sounding established that strong demand and an investment pipeline exist for industrial development and warehouses. The sector is particularly buoyant due to the continuing rise of e-commerce, online retailers and the logistics industries.

Additionally, advances in technology and automation are contributing to changes to standard building requirements. The use of robotics in warehouse facilities is driving a requirement for large bay warehouses as high as 45 metres in certain sectors.

New and more powerful sprinkler systems also require an increase in the height of standard single-level industrial buildings. Industry suggested through the market sounding that when solar, plant and equipment are all included, the common height of standard industrial buildings will increase to approximately 18 metres. There is an opportunity for the Codes SEPP to be updated to better reflect current building requirements, allowing industry to easily adapt to new technologies. The market sounding revealed that uptake of the complying development pathway is likely to reduce if this matter is not addressed.

Changing needs for industrial buildings

In high-value land markets such as metropolitan Sydney, new models of industrial development are emerging. These are larger, higher and denser facilities that need to maximise site efficiency. This is because of the limited availability of vacant and serviced industrial land and rising land values in locations that are part of established and future supply chains or trade gateways.

This development type is consistent with emerging global trends for a new style of innovative multi-storey, mixed-use industrial facilities. These developments generally combine light industrial, modern manufacturing and warehousing with increased ancillary office space, high-quality onsite food and beverage, amenities and advanced sustainability features.



Figure 3

Proposed concept for a multilevel warehouse and distribution centre with internal one-way circular ramp system (proposed by Goodman Group at 1-3 Burrows Road, St Peters; currently at the planning proposal stage). Image copyright GHD Pty Ltd 2020; reproduced with permission.

Commercial and retail development

Commercial development includes land uses such as office buildings; local business premises, such as banks and post offices; as well as retail shops, shopping centres, garden centres and restaurants.

This sector has faced numerous challenges due to COVID-19, including social distancing requirements and people working from home rather than in offices. Office tenants have reviewed space requirements, and owners are having to quickly adapt space to meet the needs of prospective tenants. The retail sector has felt similar impact, with owners facing difficult conditions because of declining consumer spending and the declining relevance of larger anchor tenants, such as department stores.

The market sounding told us that changes to complying development could better enable commercial and retail businesses to reconfigure spaces, backfill tenancies and improve the visual appearance of premises. Including additional uses, such as entertainment facilities and medical centres, and increasing allowances for seats in food and drink premises as complying development will also help medium to large retail and commercial precincts to be more agile and support positive economic impacts.

Healthcare and medical research

Population growth and advances in scientific research are supporting a positive investment environment for specialist health technology companies as well as specialist healthcare fund managers developing property.

Because of the COVID-19 pandemic, domestic companies are expanding investment in medical technology, biotechnology and pharmaceuticals. Planned increases to federal tax offsets for research and development are also fuelling the planned expansion of local biotech companies.

Stakeholders identified that a simplified development pathway, such as a CDC, for these types of developments would provide the industry with certainty and encourage additional investment opportunities.

Business parks and enterprise precincts

Although there is limited projected development activity in the immediate future, there is sustained confidence in the pipeline for commercial and business centre development, particularly in suburban business parks in northwest and western Sydney. Equally, projected investment activity is strong within the regions, particularly the Hunter. The de-centralisation of the office market away from major metropolitan centres to smaller 'satellite hubs' near to people's homes is also driving demand.

Although the current code allows for new builds of up to 20,000 m² for industrial and warehousing development, there is no equivalent new-build pathway for mid-tier office or commercial buildings in business parks or enterprise corridor locations. In many cases, the development outcomes are similar to light industrial zones and perform a similar function in providing local services, jobs and facilities to communities.

The market sounding identified an opportunity for a new-build CDC pathway for zones B5-B7. Industry would like to see an opportunity for new builds in these zones, particularly for offices with ground floor amenities, such as shops, restaurants, medical centres and health studios. The aspiration is for buildings as high as four or five storeys, depending on the zone, local development controls and the character of surrounding development.

Key opportunities and potential investment

The market sounding and insights project proposed solutions to amend and streamline the code to make it more user-friendly and to address current challenges. The solutions were developed with stakeholders and in co-design workshops with industry. The report also modelled the economic impact of the recommended solutions to show direct investment impact as well as quantify time saving and opportunity costs for industry.

Reimagining complying development

Along with the market sounding, the department commissioned an independent report to analyse reform options for complying development (**Attachment C**). The report also reviewed current constraints and opportunities for complying development in employment zones and reviewed the approach to fast-tracked or code-based approvals across Australia and internationally.

Risk-based approach

A key finding of the reform review is that tension exists between achieving greater flexibility and application in complying development controls and increasing standardisation and reducing complexity.

Reform options with potentially greater impact will generally involve more up-front planning and more timely and complex implementation arrangements. These arrangements include additional regulation, new systems or tools, or both.

The report highlighted that because the current reform program aims to implement regulatory reforms to facilitate immediate economic recovery, it is important that we test any options for their level of complexity, ease of implementation and level of potential economic impact.

Focus on achievable reforms

It was recommended as a priority to focus on reforms that we can readily implement. These include a range of reforms that will have positive economic impact, including:

- opening the code to more land uses in business and industrial zones
- simplifying some requirements, such as hours of operation and car parking
- increasing building heights and gross floor area (GFA) limits for industrial and commercial development.

We've also selected to propose a range of selected reforms that were rated medium to high complexity in the report, but have significant value. This includes developing a design guide for new builds in some business zones and a guideline for a proposed masterplan pathway.

Quality-control panel

An independent quality-control panel consisting of two urban planning experts and an accredited certifier, provided high-level, independent oversight of the market sounding and 'reimagining complying development' findings (**Attachment F**).

The panel focused on:

- identifying emerging issues and opportunities
- looking at policy considerations and key risks
- providing detailed feedback and advice on policy reform ideas.

Findings

The panel found that the policy options developed as part of the research for the project would be an achievable set of transformative changes that consider economic impact. It said that although each change may not in itself be substantial, when aggregated together they would improve complying development policy and practice.

Activating neighbourhood centres

Neighbourhood and local centres provide for a range of retail, business, entertainment and community uses for the people who live in, work in or visit an area. A neighbourhood centre is where local communities can access a local café, barber shop or dentist, and shop for daily needs.

Neighbourhood centres often contain a range of small businesses. Research by the Australian Bureau of Statistics on the impacts of the COVID-19 pandemic found that business incurred both a loss of revenue and increased operating expenses. Most businesses also had to modify their operating conditions, such as changing the range of products and services they offered as well as the way they provided these to customers.²

Given these challenges, separate independent research specific to neighbourhood centres was conducted and the opportunities for reform in relation to exempt and complying provisions for these unique centres were explored (**Attachment D**).

The research reviewed land-use zones B1 Neighbourhood Centre and B2 Local Centre to establish the current state of development of small- to medium-scale business and retail. The review sampled zoning, permissible uses and local strategic planning documents relating to commercial and economic development in 30 local government areas across NSW.

The report highlighted that there are specific issues for neighbourhood and local centres that can be addressed by amendments to exempt and complying development pathways to better help business adapt to changing economic circumstances. Specific reform actions to streamline provisions and encourage business agility might include:

- allowing minor works such as shopfront and awning repair on a building in a heritage conservation area or on land on which there is a locally listed heritage item (but not the heritage item itself) remove the requirement to prove lawfulness of the current use from the proponent for complying development in industrial and business zones
- rather than rely on the requirement for a new use to be bound by the consent conditions of an earlier use, development controls will be provided to manage impacts relating to parking, traffic, noise and hours of operation
- allow additional uses within change-of-use provisions that are common in neighbourhood and local centre zones:
 - neighbourhood supermarkets
 - specialised retail premises
 - selected indoor recreational facilities (health studios, squash courts, table tennis centres)
 - selected outdoor recreational facilities (mini golf centres, tennis courts).
- remove a restriction for ancillary complying development to take place on land that adjoins a lane or secondary or parallel road.

These findings align with the outcomes of the market sounding research, which found that retail premises need to be able to quickly adapt to change. Restrictive operating hours tied to previous consents, parking requirements for change of use and restrictions on minor works in heritage conservation areas and for heritage items were impeding agility needs.

2. www.abs.gov.au/statistics/economy/business-indicators/business-conditions-and-sentiments

Data centres

Data centres are facilities for storing and processing large quantities of electronic data on computer servers. Almost all businesses and governments use data centres, building their own, renting space in co-location facilities or using cloud services that rely on data centres. Each data centre development directly contributes as much as \$1 billion in construction and fit-out costs to the NSW economy and forms critical infrastructure for the information technology (IT) sector.

The need for data centres has been growing since the invention of the internet. Recently, digital trends and technological advancements, such as the Internet of Things, 5G and cloud computing, have driven exponential growth. The COVID-19 pandemic has sped up this demand, with remote working and onshoring trends creating the need for more data storage and processing. The growth in data centres has been particularly evident in the Sydney market, with CBRE research showing capacity growing rapidly by 75% in the year to Q1 2020.³ This is significantly greater than comparable cities in the Asia-Pacific region, such as Singapore and Hong Kong, which saw growth of less than 30%.

Reflecting the growth of the Sydney market, councils and the department have seen a rise in the number of data centre DAs, particularly using the regional development or State significant development pathways.

Most new data centres in NSW are large facilities with floor areas greater than 20,000 m² and heights of more than 25 metres. These large data centres are typically located in the industrial areas of Western Sydney and within business parks closer to the Sydney CBD. A trend of small-scale data centres is also emerging in regional areas of NSW. These are often single storey with floor areas of less than 500 m².

Data centres operate differently to traditional commercial and industrial uses, such as warehouses. They require few onsite staff and have few truck movements, so impact from these activities is minimal. In contrast, data centres require extensive mechanical cooling plant and backup power generators and batteries to cool the computer servers and ensure continuous operation. These systems can have noise and air quality impacts and fuel storage hazards. We have commissioned technical studies to investigate these impacts and ensure development standards can be developed to ensure they are appropriately managed (**Attachments G and H**).

To take advantage of the economic benefits data centres can bring to the NSW economy, we are consulting on a new complying development pathway for data centres that is fit-for-purpose and controlled by strict standards to ensure community protection.

Specifying complying development in master plans

The market sounding report found that there is industry aspiration to simplify approval processes where an established master plan and specific land use and design outcomes are already in place. A masterplan approach could help councils accelerate and promote economic development and investment in their local areas.

We are consulting on an opt-in council-led masterplan pathway for complying development that is subject to a ministerial approval process. CDC's would need to align with the provisions of the approved master plan.

Master plans provide a considered and detailed approach to development within a specified area. They can resolve complex planning considerations up-front, including infrastructure, environmental sensitivity, heritage, hazards, built form and amenity, for a significant amount of land.

3. CBRE Research (2020) *Asia Pacific Data Centre Trends*.

If contentious planning issues are resolved in detail early in the process, there is opportunity to open subsequent individual building approvals under a CDC, provided the certificates are consistent with the approved master plan. This can potentially speed up approvals for a significant amount of development in industrial and commercial zones.

The masterplan pathway would operate within existing land use zones and LEP development standards and can provide a well-considered and detailed development response to an established strategic planning vision. Appropriate locations for this type of approach could include town centres, industrial parks or business parks.

This pathway could potentially unlock opportunity for land uses that would not normally be available under a complying development approval pathway in industrial or commercial zones. These could be new or innovative development concepts, development on certain environmentally sensitive land, or a design that is outside the development standards established in the Codes SEPP.

Encouraging the circular economy

A circular economy changes the way we produce, assemble, sell and use products from a 'take-make-dispose' consumption pattern to one that values resources by getting as much use out of them as possible. It also reduces the amount of waste we generate to minimise environmental impact. This can include using recycled materials in manufacturing, repairing household goods before buying new ones and repurposing items that we no longer use.

Across the world, there are policy shifts towards more waste avoidance, repairing, sharing and a circular economy. Prolonging the life of products will drive new business models that may generate the need to further mainstream this type of activity.

To make it easy to return, repair and re-use products, the community needs access to a range of facilities near where they live and work, similar to community recycling centres and 'return and earn' reverse vending machines.

This requires space for small-scale drop-off facilities and aggregation points for a range of household goods and materials from business and the community. This also needs to provide for operations including collection, storage, re-use, sharing, redistribution, refurbishment, repair, remanufacturing and dismantling.

Many local councils and community organisations already operate small repair and re-use services for toys, bicycles and furniture. These social enterprises play an important role in preventing waste from going to landfill, providing employment opportunities for disadvantaged people and providing low-cost items for people in need.

We have already created complying development pathways to facilitate collection points for the 'Return and Earn' scheme for beverage containers under *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Container Recycling) 2017*.

We are consulting on new facilities to support the development of small scale community circular economy infrastructure as complying development in the Codes SEPP, such as Neighbourhood repair cafes and swap shops and council-run community drop-off centres.

Part B: Land use and business agility

Complying development may only occur if the proposed land use is permitted in the zone applying to the property. The permitted land uses within each zone are mostly set by councils within a Local Environmental Plan (LEP).

The market sounding told us that a series of important reforms to the code can enhance growing business agility needs. These include allowances for a new and expanded range of land uses and to address problems with the current configuration of change of use, first use provisions, and separate listings for uses that are allowed to undertake additions, alterations or a new build.

We propose to include a single list of land uses that can undertake complying development in employment zones. If a land use is permitted within the zone applying to the land, a CDC can authorise a new build, alteration, addition or change of use. If the proposal seeks to undertake a change of use alongside an addition this would also be allowed.

Increasing flexibility for car parking configuration, click and collect facilities, loading and operating hours will also better support business to quickly adapt to changing economic circumstances. This could include an allowance for reduced car parking and loading bays when a change of use warrants less than an existing use, and standard hours of operation that can be approved by a CDC.

The proposed changes will permit building works for a range of land uses like medical centres that have not previously been included in the Codes SEPP. This new level of flexibility will support businesses to be agile in building, upgrading and leasing premises.

Photography

Complying development industrial site, Sydney.

Image courtesy of Salty Dingo, Department of Planning, Industry and Environment.

Expanding land-use opportunities

The Codes SEPP currently permits:

- any permissible land use as a first use of an existing business or industrial premises, other than several high impact land uses like pubs, sex services premises and firearms shops
- a limited range of land use changes for an existing premises, and it requires the existing premises to be one kind of land use before it can be changed to another
- new buildings only for industrial premises, warehouses and distribution centres, and alterations and additions only for commercial premises.

We are consulting on provisions to:

- remove the distinction between first use and change of use, and add new land uses to the existing list of land use that may be complying development including:
 - data centres
 - recreational facilities (indoor)
 - local distribution premises
 - entertainment facility
 - artisan food and drink industry (subject to liquor licence requirements and any LEP floor area requirements)
 - veterinary hospitals
 - depots
 - health manufacturing facilities
 - heavy industry in heavy industry zones.
- allow CDC's to permit a change of use to a permissible land use that is already listed in the Codes SEPP, irrespective of the existing use of a premises

- allow a wider range of land uses access to the building allowances in the Codes SEPP (see Part C Zone based building controls) including:

- the new land uses listed above
- commercial premises in a B5-B7 zone
- function centres
- health consulting rooms
- medical centres
- community facilities
- health manufacturing facilities
- vehicle repair station
- wholesale supplies
- amusement centres
- boat building and repair facilities
- vehicle body repair workshops
- vehicle repair stations
- information and education facilities
- food and drink premises greater than 50 seats
- neighbourhood supermarkets.

No hazardous or offensive land uses, as defined by *State Environmental Planning Policy No. 33 (Hazardous and Offensive Development)* would be allowed through the complying development pathway.

Meeting the needs of business

To allow business to quickly respond to changing economic circumstances, we are consulting on a number of business agility amendments, as follow:

- permit hours of operation from 7 am to 10 pm, irrespective of existing consent requirements (such as the intrusiveness and amenity criteria from the Noise Policy for Industry)⁴
- permit 24-hour operation in industrial zones, irrespective of existing consent requirements
- make it easier to reconfigure site facilities, such as parking, loading bays, and install drive through 'click-and-collect' bays and areas for no contact store pick up facilities (subject to the requirement that no parking, loading and collection occurs on a public road)
- reduce documentation requirements for previous land uses so there is no need to identify old development consents when changing to a use authorised by the Codes SEPP
- reduce duplication of other requirements within the code (for example, references to the Building Code of Australia and other standards).

Protecting amenity with continued operation of planning standards

The Codes SEPP contains planning standards and conditions to manage on-site and amenity impacts such as parking, waste management, site maintenance, drainage, contamination and noise. These will continue to operate under the proposed changes.

Development will still need to comply with other applicable legislation, such as the *Roads Act 1993* and *Local Government Act 1993*, if it relates to the complying development proposal.

In addition, we propose to generally align the existing traffic impact certification process for complying development with the 'traffic generating development' referral requirements in Schedule 3 to *State Environmental Planning Policy (Infrastructure) 2007*.

4. Retail trading hours are currently governed by *Environmental Planning and Assessment (COVID-19 Development Extended Operation) Order 2020* and are permitted 24 hours. We are consulting on this policy proposal for a consistent state wide approach to retail and business trading hours from 7 am to 10 pm to take effect at the conclusion of the Order, or if the Order is extended, after that extended period. Submissions on this matter may address both the policy proposal and the Order.



Photography

A female building certifier inspects scaffolding on a building site. Image courtesy of Christopher Walters, Department of Planning, Industry and Environment.

Part C: Zone-based building controls

Complying development may only occur if the proposed land use is permitted in the zone applying to the property. The permitted land uses within each zone are mostly set by councils within a Local Environmental Plan (LEP).

The industrial, warehousing and logistics sector has the most opportunity for growth, both now and into the future. The department has found that current provisions in the code have not kept pace with the evolving requirements of industry.

Considering this issue, and feedback from industry, we propose to increase the building height in industrial zones to 18 metres (overriding any local industrial zone height control where it is less than 18 metres in an LEP).

For general and heavy industrial zones, we propose a larger allowable building footprint of up to 50,000 m². We will also consider heights up to 45 metres where no local environmental plan (LEP) height limit is in place. This would support an increasing need for high bay

warehouses for logistics and ecommerce. Managing visual and amenity impacts to adjoining residential zones will be through separation distances as far as 150 metres and increased landscaping requirements.

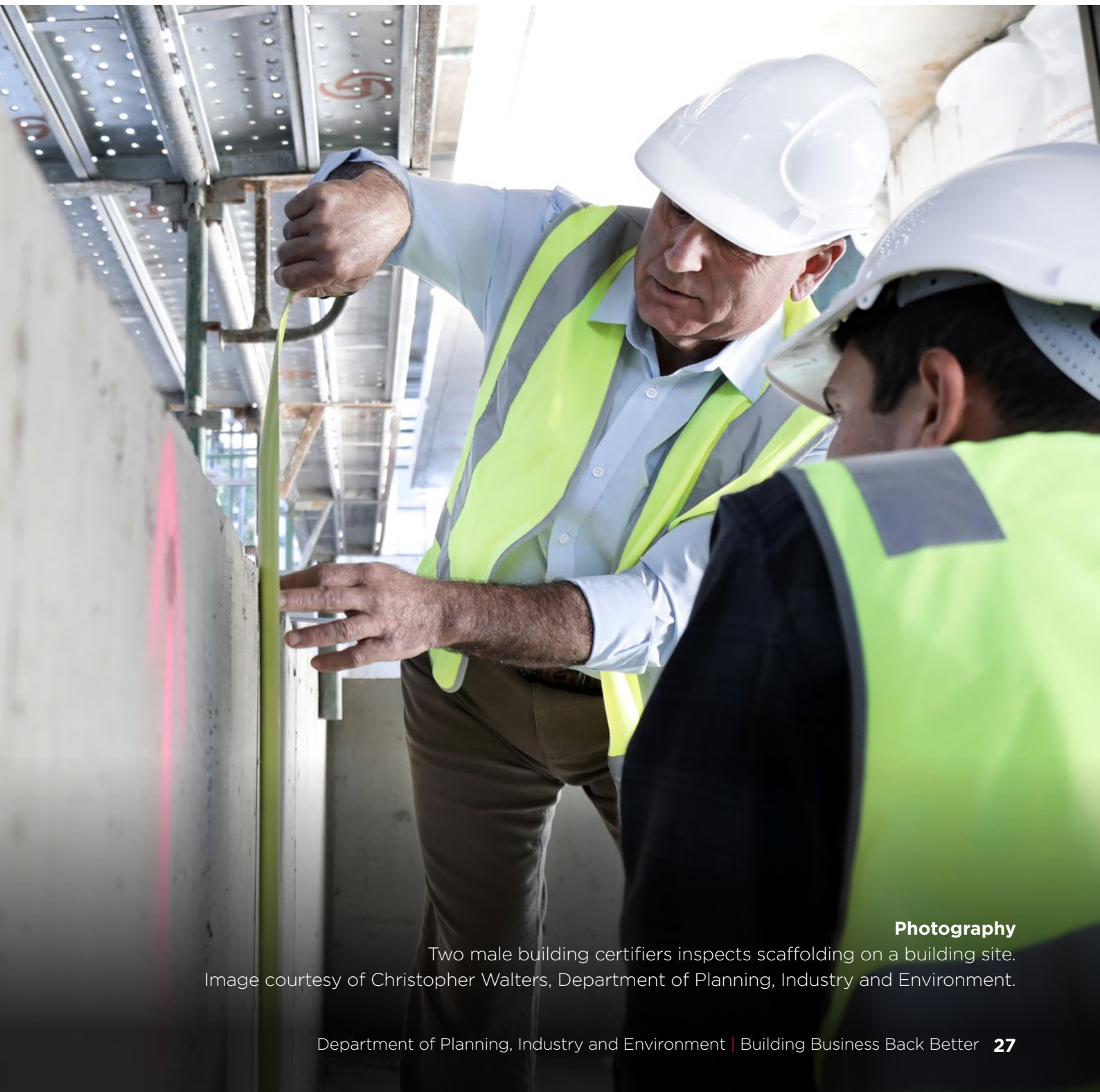
We also propose a new complying development pathway for new-build commercial development in business zones B5–B7. If local planning controls permit, new builds could be possible as high as five storeys and 10,000 m². We are also seeking feedback on a new Business Zone Design Guide and design verification statement process to articulate good site planning, design and amenity in these zones.

SNAPSHOT

The K-26 sprinkler

The K-26 is a new high capacity sprinkler system used in warehouses and industrial buildings. The sprinkler head provides more coverage than older models needs to be mounted on higher ceilings.

It is expected as this newer technology becomes more common it will drive a need to increase the floor to ceiling height of industrial buildings across the State.



Photography

Two male building certifiers inspect scaffolding on a building site. Image courtesy of Christopher Walters, Department of Planning, Industry and Environment.

Revised industrial zone building standards for zones IN1 to IN3

We are consulting on a proposal to:

- increase allowable floor area from 20,000 m² to 50,000 m², subject to existing LEP floor space ratio (FSR) controls or continue to apply an FSR of 1:1 in the code where no FSR control exists
- increase allowable building height in zones IN1, IN2 and IN3 from 15 m to 18 m where the existing LEP height is less than 18 m
- permit a building height up to 45 m where no LEP height limit exists, subject to
 - a new separation distance of up to 150 m to a residential zone boundary—noting there will be no increase where the existing LEP height limit is already 18 m to 45 m
 - a maximum floor area for any part of the building over 18 m of up to 40% of the total floor area of the building
- increase ancillary land uses, such as offices and industrial retail outlets, from 20% to 30% of gross floor area
- increase additions allowance from 5,000 m² to maximum gross floor area, subject to LEP FSR

Additionally, for development on land covered by the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*, we are proposing new standards that align with the policy including requirements for contributions towards the provision of regional transport infrastructure, consideration of a development control plan and consultation with Transport for NSW for development in certain mapped areas with a capital investment value of \$200,000 or more.

Understanding the proposed new separation distance for taller industrial buildings

The code currently applies a 50 metres setback for buildings with a floor area of more than 10,000 m² and up to 20,000 m². For a building from 5,000 m² to 10,000 m², a 20 metres setback, plus a metre for every whole metre the building exceeds 4.5 metres in height, applies. Smaller buildings have a similar approach—those less than 5,000 m² but greater than 1,000 m² have a 5 metre setback, plus 1 metre for every 4.5 metres in height. Buildings less than 1,000 m² apply 3 metres, plus 1 metre for every 4.5 metres in height.

Applying this policy means that a 15 metre high building that is 1,000 m² will be set back 16 metre from an adjoining residential boundary. Figure 4 illustrates the current approach to setbacks under the code.



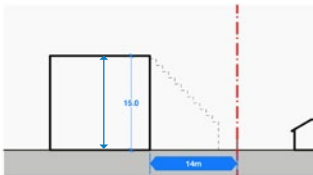
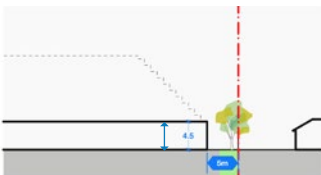
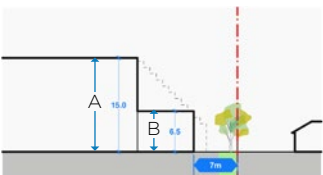


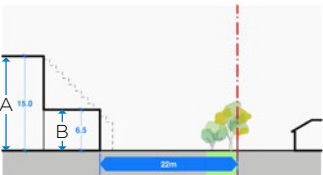

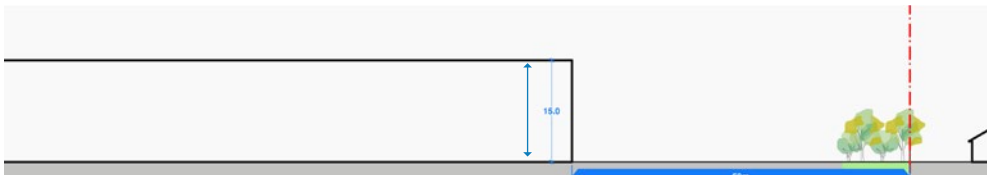
PART 5A.11 (1)	4.5m high building	Building with parts of different heights	Maximum 15 m high building
(a) for a building with a gross floor area of not more than 1,000 m ² —at least 3 m, plus an additional metre for every whole metre by which the building exceeds 4.5 m in height above ground level (existing)	 <p>● 3 m ↕ 4.5 m</p>	 <p>● 5 m ↕ A: 15 m ↕ B: 6.5 m</p>	 <p>● 14 m ↕ 15 m</p>
(b) for a building with a gross floor area of more than 1,000 m ² but not more than 5,000 m ² —at least 5 m, plus an additional metre for every whole metre by which the building exceeds 4.5 m in height above ground level (existing)	 <p>● 5 m ↕ 4.5 m</p>	 <p>● 7 m ↕ A: 15 m ↕ B: 6.5 m</p>	 <p>● 16 m ↕ 15 m</p>
(c) for a building with a gross floor area of more than 5,000 m ² but not more than 10,000 m ² —at least 20 m, plus an additional metre for every whole metre by which the building exceeds 4.5 m in height above ground level (existing)	 <p>● 20 m ↕ 4.5 m</p>	 <p>● 22 m ↕ A: 15 m ↕ B: 6.5 m</p>	 <p>● 31 m ↕ 15 m</p>
(d) for a building with a floor area of more than 10,000 m ² but not more than 20,000 m ² —at least 50 m, with a maximum building height of 15 m above ground level (existing)	 <p>● 50 m ↕ 15 m</p>		

Figure 4

Current setback provisions for industrial adjoining residential development.

Figure 5 shows modelling and massing studies of Figure 4 from the ground level of an adjoining residential lot.

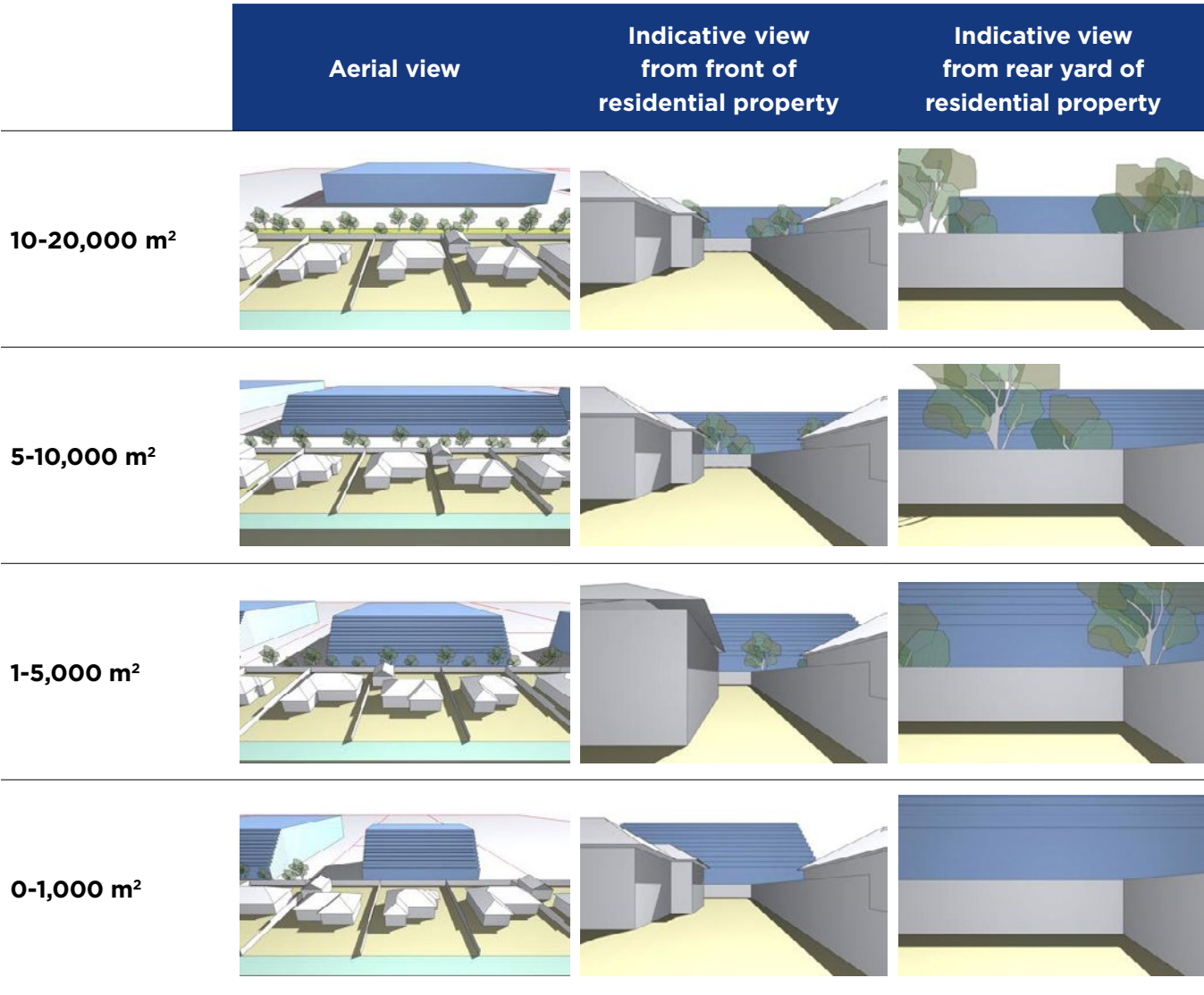
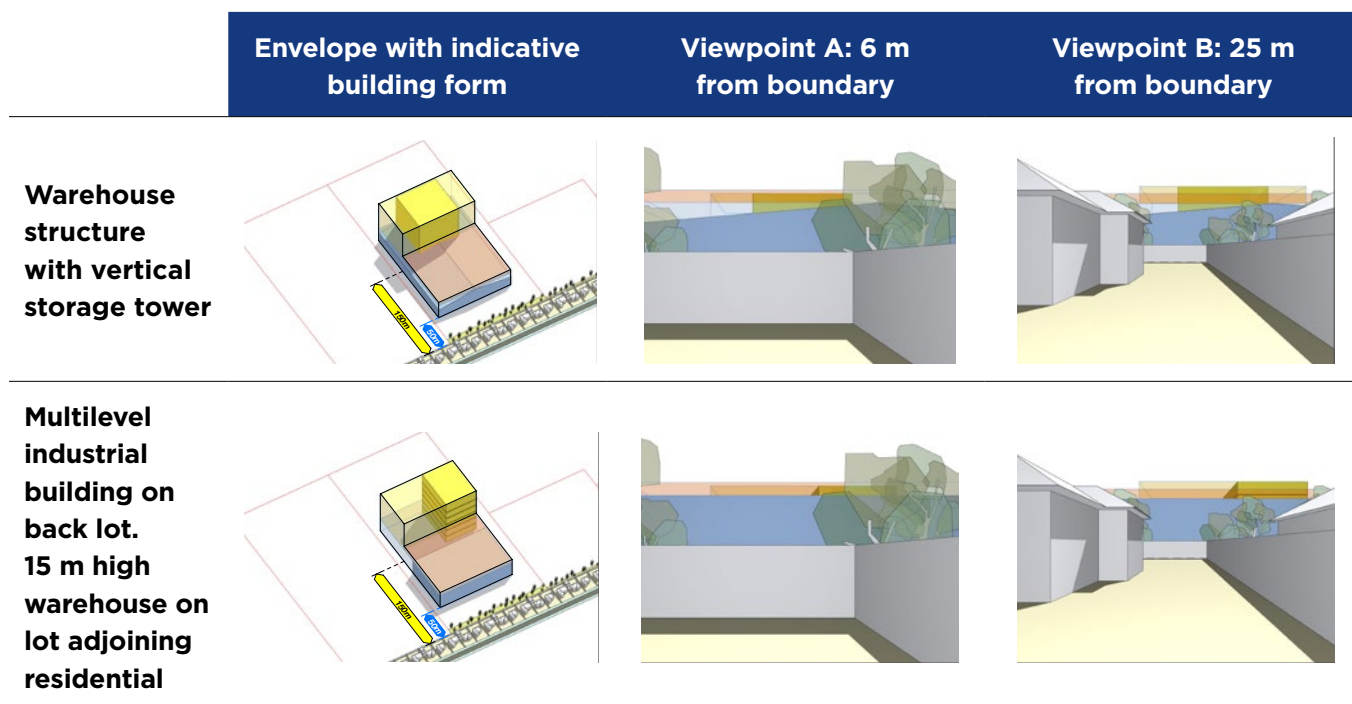


Figure 5
Massing examples of the current code provisions.

The massing examples show that under the current provisions, smaller buildings have the highest visual impacts. They are more prominent and are in the immediate the view corridor of the adjoining residential backyard.

The department has reviewed the potential visual impacts of a 45 metres high industrial building next to residential land. We have also considered a number of setback options.

Figure 6 demonstrates that when applying a 150 metre separation distance, the visual impacts are limited over what is currently permitted. Proposed expanded provisions for deep-soil landscaped areas will also minimise views from residences for this scale of building.



Key:

-  Existing permissible envelope
-  Proposed 45 m height envelope
-  Existing permissible indicative massing
-  Proposed 45 m height indicative massing
-  Proposed 18 m base permissible height

Figure 6

Modelling of a 45 metres building with 150 metres setback from adjoining residential.

New business zone building standards for zones B5 to B7

We are consulting on a proposal to:

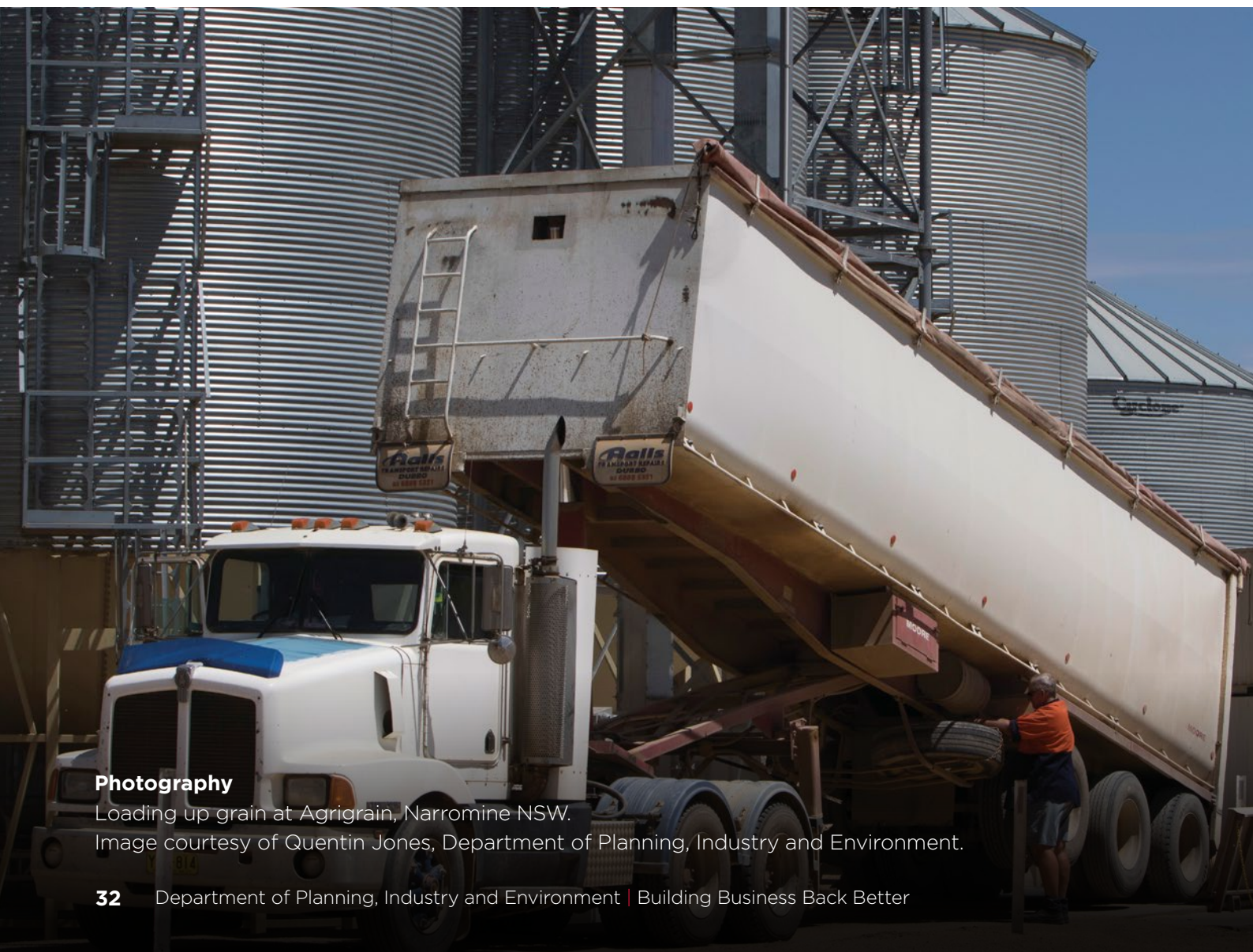
- allow new builds and alterations and additions in business zones up to 10,000 m² and five storeys within the B5, B6 and B7 zones, subject to existing LEP height, FSR and landscaped area controls as complying development
- introduce a new business zone design guide (**Attachment I**) and design verification process to manage site planning, good design and amenity impacts for larger buildings or sites.

It is proposed that the submission of a design verification statement under the proposed design guide will be required by the Environmental

Planning and Assessment Regulation 2000 (EP&A Regulation). This is consistent with the process for the *Low Rise Housing Diversity Design Guide for Complying Development*.

What types of buildings are under consideration in the business zone design guide?

The department commissioned a typology analysis to understand the common types and forms of development within the B5–B7 zones currently in NSW. Looking at factors such as development context and site location (infill or freestanding greenfield site), land use, setbacks, car parking layout and landscaping six main types were identified. These will be the main types of development the proposed design guide will cover.



Photography

Loading up grain at Agrigrain, Narromine NSW.

Image courtesy of Quentin Jones, Department of Planning, Industry and Environment.

Typology A

Main Road Retail



Typical characteristics:

Zones: B5, B6

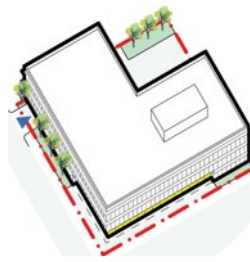
Users: Specialised retail hardware and building supplies business premises

Site type: Free standing

Location: Main road business/light industrial areas

Typology B

1-3 Storey office and business uses



Typical characteristics:

Zones: B5, B6

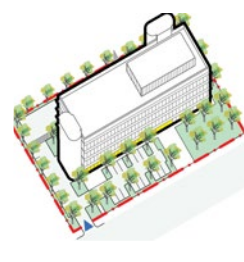
Users: Office premises, business premises, specialised retail hardware and building supplies light industry

Site type: Main road, infill

Location: Main road business/light industrial areas

Typology C

4-6 Storey office building



Typical characteristics:

Zones: B7

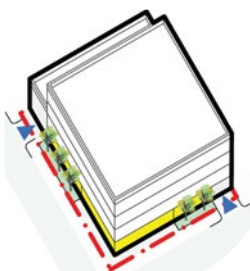
Users: Office premises and business premises

Site type: Free standing, infill

Location: Main road and business park

Typology D

Self storage facility



Typical characteristics:

Zones: B7

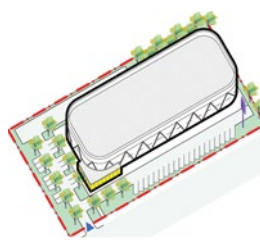
Users: Self storage facility

Site type: Infill

Location: Business park and main road

Typology E

Motor vehicle showroom



Typical characteristics:

Zones: B6, B7

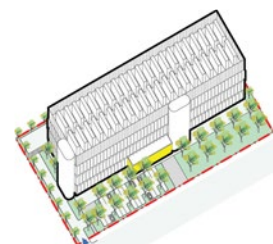
Users: Car showroom

Site type: Free standing, infill

Location: Main road

Typology F

Data centre



Typical characteristics:

Zones: B7

Users: Data centre

Site type: Free standing

Location: Business park

Figure 7

The types of buildings under consideration in the business zone design guide.

How will the guide work?

The guide provides a framework to achieve quality site planning and design outcomes for new-build business zone building types proposed as part of the reform package. It will improve the design quality of buildings in these zones and provide a fast-track approval pathway. It will help developers, planners, urban designers, architects, building designers, landscape architects, builders and other professionals when designing and preparing a complying development proposal for commercial development. The guide also informs the community on what is necessary to achieve good design and planning practice for business zone design guide.

The guide contains a set of design principles supported by objectives and design criteria. A complying development proposal needs to comply with the design criteria relevant to the type of development proposed within a corresponding zone. To get a CDC, a proposed development must satisfy each of the design criteria for the relevant development type. The design verification statement prepared by a building designer or registered architect will be submitted with the application for a CDC. The guide will provide a template checklist and statement.

Development will still need to comply with other applicable legislation, such as the *Roads Act 1993* and *Local Government Act 1993*.

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

No changes are proposed to the existing Code SEPP provisions for commercial alterations and additions within the B1-B4 land use zones.



Part D: Supporting neighbourhood and local centres

Complying development may only occur if the proposed land use is permitted in the zone applying to the property. The permitted land uses within each zone are mostly set by councils within a Local Environmental Plan (LEP).

This part outlines several land use and business agility improvements from Part B that are relevant to neighbourhood and local centres (i.e. B1 and B2 zones). These proposals are repeated here to facilitate consideration of the particular needs of neighbourhood and local centres.

We are consulting on the following to help enliven small floor-plate building stock including older stock that may not comply with modern parking and loading bay requirements.

Key proposals are:

- allowing a wider range of land uses to be complying development in B1 and B2 zones with development standards for these new land uses to mitigate amenity impacts
- introducing standard hours of operation from 7 am to 10 pm, irrespective of existing consent conditions (subject to noise controls such as the intrusiveness and amenity criteria from the *Noise Policy for Industry*)⁵
- increasing seating allowances for food and drink premises from 50 to 100 seats (subject to maximum floor area occupancy rates set by the Building Code of Australia)
- removing additional parking and loading bay requirements for existing premises that are less than 500 m² (where parking or loading is already absent or below development control plan requirements)
- allowing minor external alterations (such as shopfront and awning repairs and maintenance) to existing buildings in a heritage conservation area and on the site of listed local heritage items (but not the listed heritage item itself)
- making new allowances for neighbourhood circular economy land uses, such as repair-shop cafés and swap-and-re-use centres (see Part G Circular Economy Uses)
- allow ancillary complying development for lots that adjoin a lane or secondary or parallel road, given many centres adjoin these types of roads. The current size limitations for ancillary development would remain.

5. Retail trading hours are currently governed by *Environmental Planning and Assessment (COVID-19 Development Extended Operation) Order 2020* and are permitted 24 hours. We are consulting on this policy proposal for a consistent state wide approach to retail and business trading hours from 7 am to 10 pm to take effect at the conclusion of the Order, or if the Order is extended, after that extended period. Submissions on this matter may address both the policy proposal and the Order.

Land uses

Neighbourhood centres could benefit from additional land uses proposed as part of the land use and business agility changes in Part B. Additional land uses from Part B that are relevant to neighbourhood and local centres may include:

- entertainment facilities
- indoor recreational facilities (such as dance studios)
- function centres
- local distribution premises
- medical and veterinary centres
- health consulting rooms
- amusement centres
- neighbourhood supermarkets.

Continued operation of Codes SEPP standards

The Codes SEPP contains development standards and conditions to manage on-site and amenity impacts such as waste management, site maintenance, drainage, contamination and noise. No changes are proposed to these standards.

Development will still need to comply with other applicable legislation, such as the *Liquor Act 2007*, *Roads Act 1993* and *Local Government Act 1993*, if it relates to any complying development proposal.

SNAPSHOT

Easier heritage upgrades

Simple maintenance, repairs and upgrades to buildings in locally listed heritage conservation areas will be allowed to go ahead as complying development under the proposals. The replacement of a damaged awning with the same colours and materials would be approved as a CDC. Permitting faster approval times for common external upgrades will allow easier improvement to properties so they can be occupied faster and help activate local neighbourhoods.

SNAPSHOT

Streamlined car parking

Small business in NSW will benefit from proposed changes allowing streamlined requirements for car parking in neighbourhood and local centres. No additional parking spaces will be required for an existing building under 500 m² when a change of use is undertaken as a complying development certificate. This means that a business owner changing from an existing beauty salon to a new co-working hub will get a quicker approval and not need to worry about the cost of providing extra parking.

Part E: Masterplan pathway

Complying development may only occur if the proposed land use is permitted in the zone applying to the property. The permitted land uses within each zone are mostly set by councils within a Local Environmental Plan (LEP).

We are consulting on a council-led (opt-in) pathway to allow a council to specify complying development on identified industrial or business zoned land in a masterplan.

Under this masterplan pathway, local councils would undertake up-front planning for the purposes of specifying complying development in a masterplan. Councils could partner with developers or landowners in order to carry out the land use studies necessary to use this pathway.

We propose a number of key features to the masterplan pathway, including:

- a guideline that specifies the land use and technical studies that will be necessary to support the complying development requirements in the masterplan (**Attachment J**)
- council endorsement and Government approval processes
- a public notification of a masterplan
- a sunset period with an option to review and extend the operation of the masterplan
- publication of the endorsed and approved masterplan on the NSW Planning Portal.

The pathway would be available for industrial and business zones only and would not be available for residential development as complying development.

Any provision of a masterplan would need to extend existing operation of the Codes SEPP (and not reduce the complying development).

We propose that the following existing Codes SEPP restrictions should continue to apply to any complying development specified in a masterplan, including:

- compliance with development standards in a LEP
- compliance with the Building Code of Australia
- no remediation work within the meaning of *State Environmental Planning Policy No 55 (Remediation of land)*
- exclusion of certain environmentally sensitive land
- exclusion of land clearing (except as already provided for in the Codes SEPP)
- application of the conditions in Schedule 8 to the Codes SEPP to any CDC issued under the masterplan.

Councils could use the pathway to develop complying development schemes as part of a town centre revitalisation strategy or to assist attracting emerging industries and economic development to industrial areas. The pathway would be simpler, and in addition to the existing arrangements that allows councils to specify complying development under their LEPs.

SNAPSHOT

Master plans

Local investment attraction strategies will be strengthened by a new pathway for Council's to identify specified complying development in master plan precincts for land uses and development standards outside the Codes SEPP. As part of a broader planning process, Councils will be able to set additional localised complying development rules for any type of employment generating development. This could include a new recycling and processing facility, specialised innovation or logistics precincts or a local commercial centre. Once the plan is endorsed, a quicker approval process will speed up investment and new local jobs to the area.



Photography

Owner of MSM Milling discusses plans in Manildra, NSW.
Image courtesy of Quentin Jones, Department of Planning, Industry and Environment.

| Part F: Data centres

Where are data centres permitted?

Data centres are already permitted in the following zones under *State Environmental Planning Policy (Infrastructure) 2007*:

- B5 Business Development
- B6 Enterprise Corridor
- B7 Business Park
- IN1 General Industry
- IN2 Light Industry
- IN3 Heavy Industry.

Complying development pathway

We are consulting on a complying development pathway for data centres in the Codes SEPP, as well as a range of technical standards to govern their impacts. Complying development for data centres would need to be designed so that they do not trigger the threshold criteria for:

- ‘potentially hazardous development’ in *State Environmental Planning Policy No 33 (Hazardous and Offensive Development)*
- designated development in the EP&A Regulation
- an environmental protection licence in the *Protection of the Environment Operations Act 1997*.

Land use definition

Data centres are a storage premises under *State Environmental Planning Policy (Infrastructure) 2007*. We propose to support the complying development pathway with a new definition for data centres that would be added to the *Standard Instrument—Principal Local Environmental Plan*. This new definition will help accredited certifiers to easily characterise a data centre in a CDC.

Building controls

Data centres would rely on the proposed zone-based building controls outlined in Part C (above). This includes built-form standards, such as floor area, building height and setbacks. A data centre in an industrial zone would need to comply with the industrial zone building standards, while a data centre in a business zone would need to comply with the business zone development standards, including compliance with the Business Zone Design Guide.



Technical standards – noise

We have commissioned an acoustic engineering consultancy to study the noise of data centres and to develop standards to control the impact in a complying development context. We have commissioned an acoustic engineering consultancy to study the noise of data centres and to develop standards to control the impact in a complying development context (**Attachment G**).

Based on the consultant's recommendations, we propose an online noise assessment tool. This tool would produce a noise-compliance certificate that would need to be submitted to the accredited certifier with a complying development application for a data centre.

The tool uses a standard process for determining noise impacts in line with the *Noise Policy for Industry*. However, it would not require the input of an acoustic engineer.

The tool considers the following factors:

- predetermined amenity criteria based on the *Noise Policy for Industry*
- manufacturer-certified sound power level of all plant and equipment, including any noise-reduction measures installed on the equipment
- noise-reduction measures located between the plant/equipment and affected properties, such as internalising the plant within the building and acoustic walls
- the predicted noise at the nearest residential and non-residential properties, based on a standard noise-loss-over-distance formula.

If the tool confirms noise compliance, then the developer would receive a noise-compliance certificate to submit with the complying development application. Changes to the EP&A Regulation would mandate this requirement for the submission of the compliance certificate.

We also propose operational requirements to manage noise impacts for backup generator use. We propose limiting the number of hours backup generators can run to 200 hours per year and restricting their testing and maintenance to daytime hours only.

Technical standards – air quality

We have commissioned an air science consultancy to study the air quality impacts of data centres and to develop standards to control the impact in a complying development context. Once this study is complete, we will consult directly with key stakeholders on its details.

Based on the consultant's preliminary recommendations, we propose an air emissions compliance table or graph that would determine minimum separation distance to sensitive receivers. The table or graph will be developed using:

- predetermined air quality impact limits and distance to sensitive receivers
- manufacturer-certified air emissions all plant and equipment, including any emissions-reduction measures installed on the equipment
- the predicted air emissions at the nearest residential and non-residential properties.

It is expected that an accredited certifier will be able to determine and certify the required distance between backup diesel generators and residential homes and other sensitive land uses as part of certification and will not be required to review any technical information in relation to air emissions.

Technical standards – fuel and batteries

We commissioned a hazards expert to investigate the hazards and risks that fuel and battery systems could present and prepare standards to ensure community safety (**Attachment H**).

The proposed standards for storing hazardous materials are:

- the total quantity of diesel storage must be less than 2,000 tonnes
- the total quantity of acid electrolyte in lead-acid batteries (classified as Class 8 dangerous goods under the Australian Code for the Transport of Dangerous Goods by Road and Rail (“the ADG Code”)), must be less than:
 - 50 tonnes if the batteries are assigned Packing Group III in the ADG Code
 - 25 tonnes if the batteries are assigned Packing Group II in the ADG Code.
- the total quantity liquified petroleum gas must be less than 10 tonnes if the storage tank is above ground or less than 40 tonnes if the storage tank is underground or mounded.

The proposed standards will ensure that complying development of data centres do not trigger key hazards and risk thresholds, such as those in *State Environmental Planning Policy No 33—Hazardous and Offensive Development* and the *Protection of the Environment Operations Act 1997*. We also propose provisions that will ensure the design, construction and handling of hazardous materials will comply with Australian Standards.

Car parking

Data centres operate with few onsite staff and so require relatively few car parking spaces to service their needs. Most of the floor area in a data centre comprises data halls and service areas, with staff occupying a relatively small office component.

We proposed a minimum on site car parking standard of 1 space per 450 m² gross floor area, which is based on parking rates in recently approved data centre development applications.

Hours of operation

Data centres must operate 24 hours a day to provide continuous data storage and processing services. Night-time staffing operations are typically limited to a few critical technical staff and security personnel, with main staffing occurring from 9 am to 5 pm. We propose an allowance for 24-hour operation in both business and industrial zones.

Part G: Circular economy uses

Council-run community recycling drop-off centres

Through the NSW Environmental Trust, the NSW Environment Protection Authority has established more than 90 community recycling centres across the state since 2013. Community recycling centres are permanent drop-off centres for common household problem wastes such as paints, oils and batteries that council kerbside waste and recycling collection services cannot collect. NSW householders can drop off problem wastes at these centres year-round, free of charge.

The EPA's program has faced issues around setting up new community recycling centres, including finding suitable sites in Sydney. One barrier has been different interpretations of community recycling centres, including as designated development which requires more rigorous planning approvals.

We propose a complying development pathway for council run community recycling centres on any public land. As complying development, these facilities would need to operate below the tonnages that trigger the need for an environmental protection licence from the Environment Protection Authority under the *Protection of the Environment Operations Act 1997*. These thresholds are currently:

- the activity must not involve having onsite at any time more than 1,000 tonnes or 1,000 cubic metres of waste
- the activity must not involve processing more than 6,000 tonnes of waste per year
- 50% or more by weight of the total amount of waste received per year must not require disposal after processing.

We also propose to amend Schedule 3 to the EP&A Regulation to clarify that these facilities are not designated development and do not require an Environmental Impact Statement.

Community circular economy facilities

We propose a complying development pathway for community circular economy facilities. These facilities would be a building or place that is for the collection, repair, refurbishment, dismantling, sharing and redistribution (by swap, sale or lease) of household goods. They may also include collection, repackaging and redistribution of food items (excluding cooking) and have ancillary uses, such as a cafés (where permissible), office space, loading areas, refrigeration and storage. The facilities would not be permitted to process or remanufacture waste.

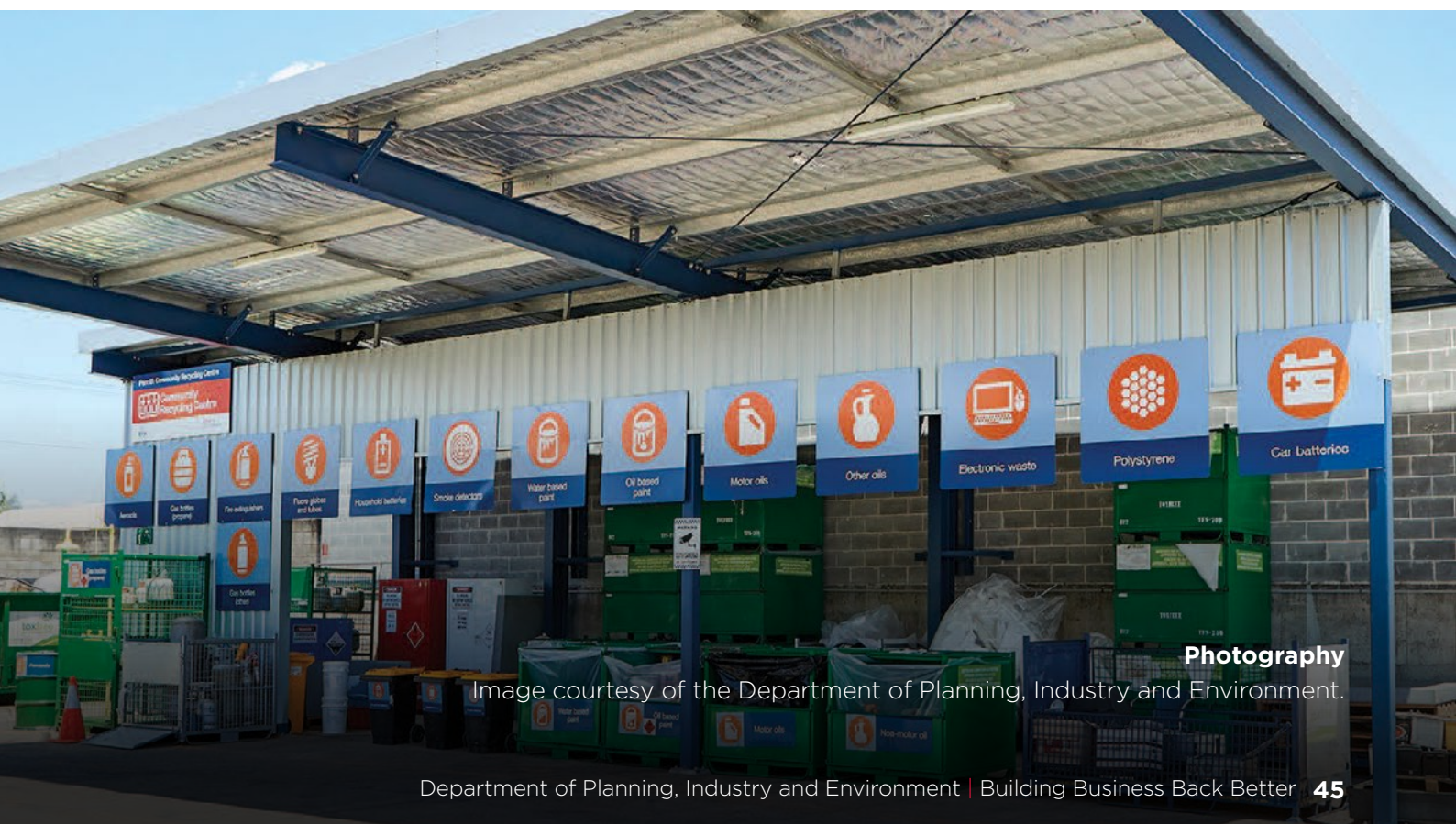
We propose that as complying development, these facilities would only receive a limited range of items and materials such as textiles, clothing, shoes, household and office furniture, domestic appliance, household electrical and batteries, tools, books, toys, soft plastics and edible food.

The facilities would need to be operated below the tonnages that trigger the need for an environmental protection licence under the Protection of the *Environment Operations Act 1997*.

The facilities would be subject to the zone-based hours of operation, and the zone-based building controls. This means they would need to comply with the industrial zone building standards in an industrial zone, the business zone building standards (including the Business Zone Design Guide) in a business B5-B7 zone, and the alterations and additions standards in a B1-B4 zone.

We propose to permit these facilities under the Codes SEPP in any industrial zone, as well as wherever retail premises are permitted under LEP.

We also propose to amend Schedule 3 to the EP&A Regulation to clarify that these facilities are not designated development and do not require an environmental impact statement.



Photography

Image courtesy of the Department of Planning, Industry and Environment.

CASE STUDY

The Bower Reuse and Repair Centres

The Bower is an award-winning environmental charity that pioneers programs to reduce the amount of waste entering landfill. Located at a passive solar design warehouse, the resource reuse and repair centre has been championing sustainable living in Sydney for more than 20 years.

The Bower achieves sustainability by reclaiming household items for re-use, repair and resale at affordable prices, and by encouraging communities to repurpose preloved goods. Household items include

some electrical items, building materials, gardening equipment, paint and plumbing supplies, along with furniture and industrial items. All items are assessed or tested to ensure they're suitable and safe for resale. By avoiding the need to replace the product, they extend the original products life cycle and minimise the carbon footprint.

The Bower also operates additional reuse and repair centres including Woodworks, Paramatta Women's Shed and The Bower Banga electrical workshop.



CASE STUDY

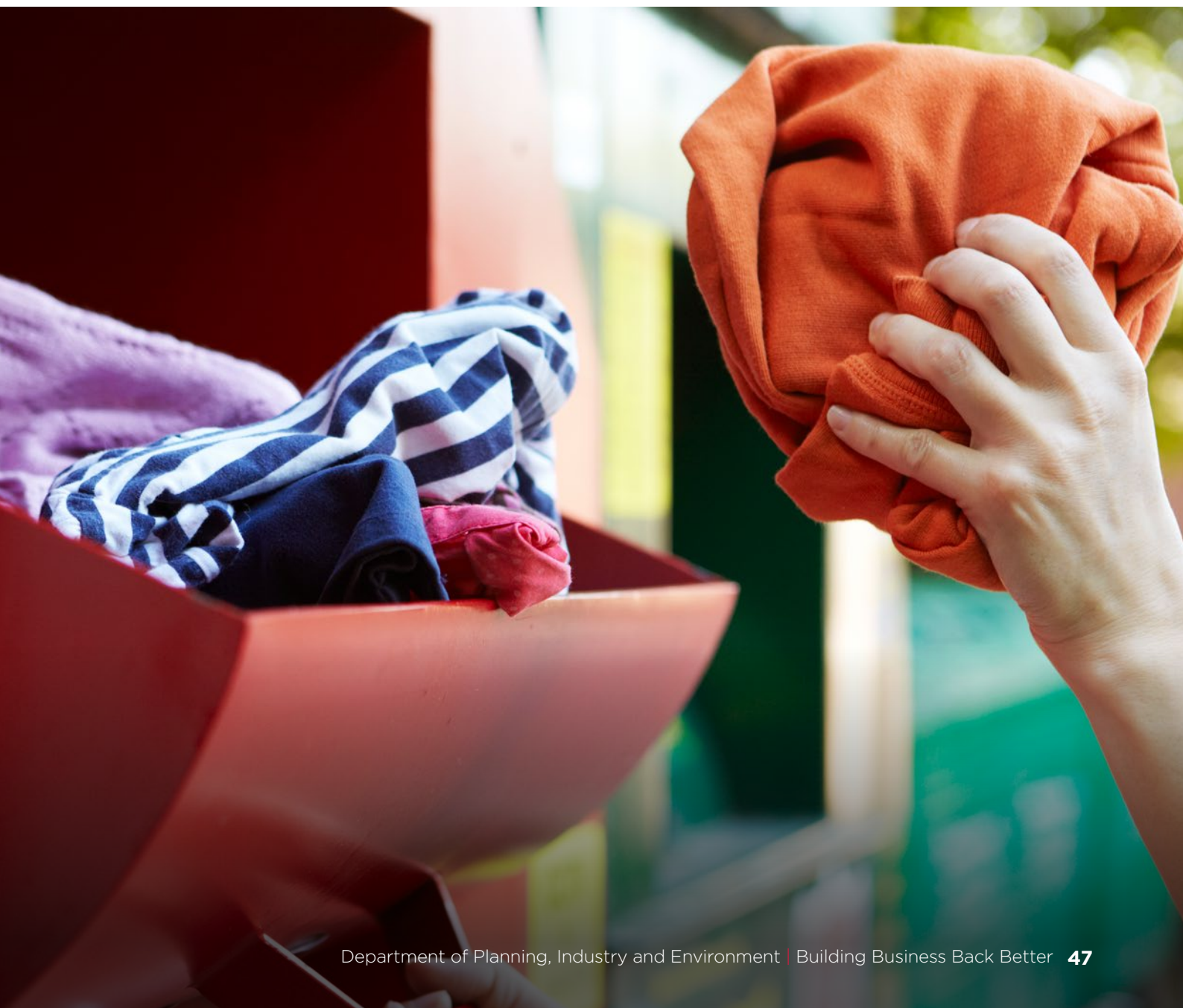
Bathurst clothing trial

In what was likely a first for regional NSW, Bathurst Regional Council partnered with Textile Recyclers Australia (TRA) for a three-month trial to reduce clothing going into landfill.

Recycling bins supplied by TRA were set up at the Bathurst Waste Management Centre and collected 1.6 tonnes of used textiles in just one month. Clothing, bedding, curtains

and other textiles collected will be re-used as clothing in developing nations, cut up for rags for cleaning, or broken down into fibres through innovative recycling processes for re-creation into new fabrics.

The trial was planned to wrap up in March 2021, but due to its success, Council expects this to be extended.



Part H: Consequential amendments

The proposed reforms to the Codes SEPP would require amendments to regulations and planning instruments to enable them. They would also require savings and transitional provisions.

EP&A Regulation

We propose to introduce the following requirements into the EP&A Regulation:

- a noise-compliance certificate must be submitted with a complying development application for a data centre
- a design verification statement must be submitted with a complying development application for certain new buildings and additions in business zones
- a master plan for complying development must be endorsed by the council before the minister considers it
- specified documentation that must be submitted with a complying development application under a master plan for complying development
- amendments to Schedule 3 to clarify that certain circular economy land uses are not designated development.

Standard instrument

We propose to introduce a definition for data centres into the *Standard Instrument—Principal Local Environmental Plan*.

ISEPP

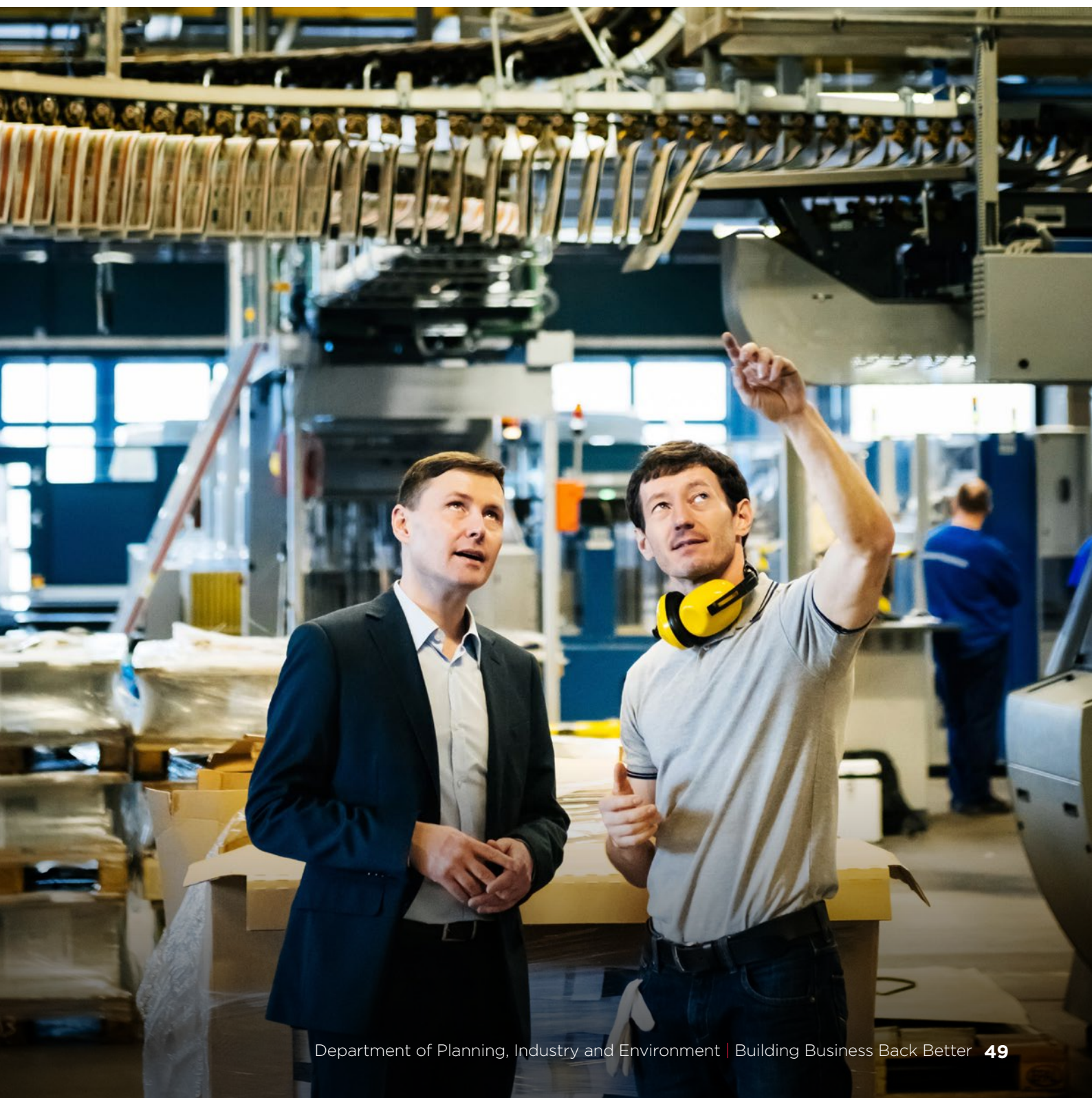
We propose to update Division 3 'Data Storage' of the ISEPP to align with the proposed definition for data centres.

Savings and transitional provisions

We propose to include savings and transitional provisions in relation to the proposed amendments to the Codes SEPP. These provisions would ensure that any current complying development application made under Part 5, Part 5A and Part 5B can either be determined as if the changes had not yet been made, or determined under the new code.

| How to get involved

This document is being exhibited in line with the department's Community Participation Plan. To make a submission on the amendments proposed in this document please go to www.planningportal.nsw.gov.au/draftplans/on-exhibition and complete the submission form.





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