



# environmental defender's office new south wales

## Submission on the NSW Complying Development Planning Codes

4<sup>th</sup> July 2008

### The EDO Mission Statement

*To empower the community to protect the environment through law, recognising:*

- ◆ *the importance of public participation in environmental decision making in achieving environmental protection*
- ◆ *the importance of fostering close links with the community*
- ◆ *that the EDO has an obligation to provide representation in important matters in response to community needs as well as areas the EDO considers to be important for law reform*
- ◆ *the importance of indigenous involvement in protection of the environment.*

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*Submitted to NSW Department of Planning*

## Introduction

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to provide comment on the complying development codes for single storey housing. The EDO is a community legal centre with over 20 years experience specialising in public interest environmental and planning law. In making this comment we rely on our two previous submissions on the current NSW planning reforms.<sup>1</sup> We also acknowledge the assistance of members of the EDO expert register, namely Desiree Lucchese, Manuel Cilia and Matt Pontin from EMF Griffiths.

These comments should not be interpreted as an endorsement of the government's policy to expand complying development to cover 50% of all development in NSW. We echo our previous concerns that uniform state-wide codes are not appropriate for the whole of the state as local government areas vary significantly in their social fabric and environmental profile. Moreover, a uniform code is likely to significantly diminish the individual character of communities. In dense urban communities, a higher rate of complying development approvals is likely to cause neighbourhood conflict as owners try to maximise their land utilisation. Our position is that complying development categories should only be determined at a local level, taking into account the particular character and environmental sensitivity of the area. Lastly, given the absence of merits assessment and community consultation, we submit that complying development should be limited to truly "minor" development. It is difficult to see how newly built homes on lots over 600 sq metres could be considered as a minor development unlikely to impact on neighbours or the environment.

Hence, although we oppose uniform codes, we provide these comments in order to ensure that if the codes are adopted that they encompass best practice and protect the interests of the community and the environment.

This submission provides comment on 5 issues:

1. Key principles
2. Environmentally sustainable design
3. Environmentally sensitive areas
4. Local variations
5. Trial and monitoring of codes

We understand that a number of draft exempt and complying codes are forthcoming. The principles and recommendations discussed in this submission

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<sup>1</sup> *Submission on the Environmental Planning and Assessment Amendment Bill 2008* – 24 April 2008, *Submission on the Discussion Paper: Improving the NSW Planning System* – 8<sup>th</sup> February 2008. These submissions are available at [www.edo.org.au/edonsw](http://www.edo.org.au/edonsw)

should inform and underpin the development of all future exempt and complying codes.

## 1. Key principles

The EDO supports the key principles that are to underpin the code for single storey residential housing developments. We agree that it is important that residential developments do not deleteriously affect the character of neighbourhoods, the amenity and privacy of residents or the integrity of the environment. Also, since there is no merits assessment involved in the granting of a complying development certificate, it is especially crucial that these concerns are inherently protected by the codes. However, although we support the key principles (as listed in the Community Guide, page 7), the extent to which the values that underpin them are achieved may only be determined once the system has been implemented. We discuss ongoing monitoring of the codes in further detail below.

## 2. Environmentally sustainable design

The EDO submits that the provisions in the codes prescribing standards for environmentally sustainable design are insufficient. We note that the two issues chosen for inclusion – solar access and water drainage - are already included in the BASIX tool. Since, compliance with BASIX is an existing legislative requirement for all complying development under the *Environmental Planning and Assessment Regulation 2000*, the codes do not go beyond existing requirements. Although BASIX currently provides construction requirements for water consumption, energy consumption and thermal comfort that lead to 40% less potable water and produce up to 40% fewer greenhouse gas emissions than the average home, the BASIX tool has not been updated since 2004.

There are currently several practical environmentally sustainable design features available that exceed BASIX's requirements. We submit that at a time when the development sector is attempting to shift its focus towards ecologically sustainable development (ESD) and where higher emissions reduction targets are being discussed at Federal and state levels, it is important that the housing code should set higher benchmarks. The lack of new benchmarks in the code therefore represents a significant opportunity missed for the NSW government to implement mandatory, best practice environmentally sustainable housing standards.

The EDO submits that the following innovations should have been considered for incorporation into the codes in addition to current BASIX requirements:

- greater heating & cooling requirements (linked to enhanced energy performance);
- mechanical or natural ventilation;

- Indoor Environmental Quality (IEQ), such as the minimization of volatile organic compounds (VOCs) and Formaldehyde<sup>2</sup>;
- Use of ecologically sustainable building materials such as sustainable timber, recycled content of materials such as concrete and steel, and PVC minimisation;
- geothermal systems for heating and cooling<sup>3</sup>; and
- sustainable landscape architecture standards.

### 3. Environmentally sensitive areas

The EDO has emphasised throughout the reform process that complying development should not be extended to environmentally sensitive and heritage conservation areas. We therefore welcome the exclusion of these areas from the draft codes that have been completed. However, we still have significant concerns about the long-term protection of these areas. Our concern is that provisions in codes can be changed easily, without the need to go through a formalised parliamentary process. Therefore, although we welcome the exclusion of environmentally sensitive areas in the draft codes released thus far, we believe that long term conservation of these areas can only occur through a legislative prohibition on complying development in these areas. Given their sensitivity, development in these areas must be subject to development consent, comprehensive merits review and environmental assessment. We note that there are plans to develop specific codes for environmentally sensitive and heritage conservation areas in the near future. We strongly oppose such a move.

### 4. Local variations

The codes allow for potential variations for particular local government areas. If certain councils believe that the codes are insufficient for their areas, they can submit potential local variations to the Complying Development Expert Panel. Any variations are to be added to Schedule 1 of the codes.

In our previous submission, we stated that state-wide complying development codes were inappropriate, because local government areas in NSW vary greatly in terms of their character, diversity, locality, social pressures and environmental sensitivity. In this vein, we agree that local variations may be warranted in some local government areas, but only to impose *stricter* standards. Where a particular council area would like more relaxed standards, then these developments should go through the development assessment process. Furthermore, the local variation process must be a transparent one. Where a local council proposes a variation, this variation should be publicly exhibited, community submissions should be invited,

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<sup>2</sup> This would allow for reduced ventilations rates which will have an effect on the overall energy improvement of the home.

<sup>3</sup> Residential developments on lots over 600 sq metres are highly suitable for geothermal heating systems. These save on long-term maintenance costs and reduce water usage, while providing indoor thermal comfort.

and a duty imposed on the Complying Development Expert Panel to consider these submissions prior to accepting the variation.

#### 5. Trial and monitoring of codes

In our previous submission, we agreed with the Local Government and Shires Association recommendation that if complying development codes were to be adopted, then these should be trialled prior to implementation.<sup>4</sup> We once again emphasise this point. It is fundamental to ensure that a new system which will have far-reaching consequences across the state is adequately trialled to determine its applicability and workability prior to its commencement.

Moreover, the EDO submits that there should also be a short term assessment/audit of the codes once they are adopted across the state, preferably after one year. Since community consultation rights will no longer exist for most residential developments, it is essential that concerns such as privacy, amenity and environmental sustainability are intrinsically protected in the codes. As a result, there should be a short term review of the codes to determine whether they are consistent with the key principles underpinning the codes. This review must go beyond a simple economic and bureaucratic analysis to one that examines the real impact of these codes on the character and amenity of communities and the integrity of the environment.

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<sup>4</sup> Local Government and Shires Association of NSW: Submission on the Discussion Paper: Improving the NSW Planning System. Found at: [http://www.lgsa.org.au/resources/documents/discussion-paper\\_planning-reform\\_010208.pdf](http://www.lgsa.org.au/resources/documents/discussion-paper_planning-reform_010208.pdf)