

Department of Planning, Industry and Environment

Building Business Back Better

Consultation and engagement summary

December 2021

The Department of Planning, Industry and Environment acknowledges the Traditional Custodians of the land and pays respect to Elders past, present and future. We honour Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to our society. To that end, all our work seeks to uphold the idea that if we care for Country, it will care for us.

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I About this report

We're sharing the results of our consultation and engagement on the Building Business Back Better reforms to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

This document provides the details of the consultation process and submissions to the Bringing Business Back Better Explanation of Intended Effects (EIE).

This summary explains:

- the program we embarked on to reform complying development
- the consultation activities we hosted
- the opportunities and issues we heard
- our next steps.

The purpose of this summary is to give you an understanding of the diverse feedback we have received, acknowledging key areas of support, concerns and issues, and how we can support our local businesses and industries while managing risks.

Building Business Back Better – our reform program

The Building Business Back Better complying development (Codes SEPP) reform is designed to deliver an urgent, yet highly informed, response to changing economic circumstances. Helping business quickly adapt and accelerate planned capital investment is the key objective of the reforms.

The reforms respond to both the economic impacts of COVID-19 and longer-term economic trends, such as changes in retail and operational requirements in industrial zones.

The department's research shows that complying development pathway reform is a simple and effective way to support industrial and commercial investment in existing employment land zones, unlock opportunities and enable businesses to adapt.

Reforms to complying development will streamline the assessment pathway to protect and create jobs. Complying development is only available where robust development standards can manage impacts.

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. 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.

A snapshot of some of the identified challenges

- Increasing vacancy and the planning system are adding cost and time delays to re-tenanting buildings.
- Centres need a broader range of experience-based land uses to ensure vibrancy and activity and to support more traditional land uses.
- New innovative business models are emerging, but the planning system hasn't kept up.
- Business and industry need to adapt rapidly to new business models to ensure viability given new economic circumstances, but often even simple things are a barrier in the planning system.
- There are new operational requirements in industrial buildings to make them viable and compete with other markets. Without reform, NSW could lose jobs.
- Business has had to adapt quickly to new ways of doing business, such as adopting 'click and collect'. The planning system can create barriers.
- There is locked up capital created by the time taken to approve projects. This delays both construction jobs and employment-generating businesses to start operating.

The reforms being considered, in response to research, are intended to:

- increase land use and business agility, enabling businesses to adapt to new economic circumstances and changing operational requirements
- enable new models of service and product delivery and a mix of land uses in response to longer-term economic changes
- accelerate already-planned capital investment in employment zones, aiding economic recovery.



Figure 1

Productivity acceleration objectives.



Unlocking opportunities in
INDUSTRIAL/COMMERCIAL ZONES

Unlocking opportunities for
REGIONAL COMMUNITIES

Making it easier to
STRENGTHEN INFRASTRUCTURE

Being ready for
EMERGING OPPORTUNITIES

Unlocking opportunities in
NEIGHBOURHOOD CENTRES

Photography

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

Reform program design

Our reform proposals were based on robust market and jurisdictional research. We focused the reforms on those ideas that had most to offer. We consulted widely and deeply on the ideas.

The research identified challenges faced by business and industry due to COVID-19 and longer-term economic changes. It also estimated potential economic benefits of a targeted reform program (outlined at Figure 2). The 10-month program is outlined below.

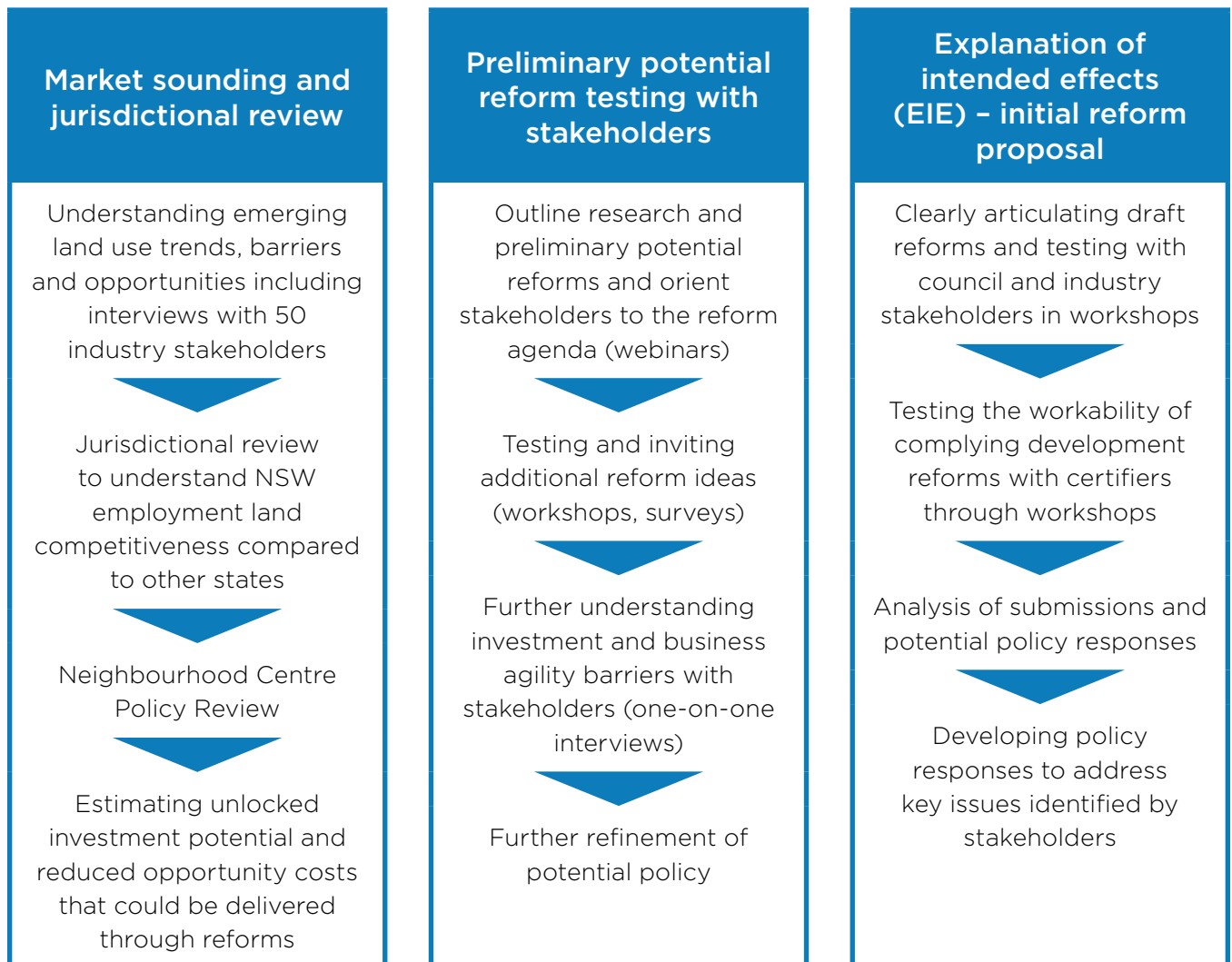
This research informed a comprehensive engagement program to test potential policy settings that could promote adaptability in employment zones, unlock opportunity and balance risks.



Figure 2
Estimated potential economic impact.

Figure 3

An overview of the reform program



This will be followed by:



Engagement program and official submissions

Our engagement covered specific themes to ensure focus and best use of our stakeholders' valuable time. It was also adapted for COVID-19 conditions.

Elton Consulting supported the department with engagement and consultation services. The comprehensive engagement program was delivered in a compressed timeframe in response to the economic circumstances and targeted councils, industry and certifiers. The department undertook community engagement separately as well as key stakeholder engagement regarding data centres.

From 31 March until 9 May 2021, the NSW Government publicly exhibited an explanation of intended effect (EIE) for the Building Business Back Better changes to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. In the EIE, we shared our intent to deliver a SEPP that would allow a streamlined assessment process for industrial and commercial development that could unlock as much as \$4.85 billion of annual economic benefit in investment.

The targeted engagement approach divided the reforms into 3 themes based on the outcomes of the market sounding. The themes were:

- **improving land use and business agility** so that business and industry can adapt to new economic circumstances
- **accelerating investment in new builds and alterations** to tap into planned investment
- **promoting the activation of neighbourhood and local centres**, capitalising on the identified trend of experience-based land uses to support the vibrancy and viability of centres.

The potential for a masterplan pathway (now called a **local enterprise code**) was canvassed with stakeholders as a way to deliver investment opportunity and reduce the burden of assessment on councils, and has the potential to apply across all 3 modules.

Summary: key elements of the engagement



3 webinars introducing the intent and preliminary proposed reforms to councils and industry

Neighbourhood centres webinar (63 attendees)

Land use and business agility webinar (57 attendees)

New builds/alteration webinar (39 attendees)



9 one-on-one interviews with industry and council stakeholders



2 workshops with certifiers

Certifier workshops (9 attendees)



Survey about land use and business agility reforms

14 respondents (approximately 30% peak body/industry, 64% council and 5% anonymous)



4 discussions with peak bodies

Approximately 20 participants



6 round one workshops with industry and councils

Workshops were attended by more than 100 stakeholders



Analysis of official submissions to the explanation of intended effects (EIE)

82 submissions



6 round two workshops with councils and industry

Workshops were attended by more than 90 stakeholders

Overview of what we heard

Our focus is to ensure that the perspectives and feedback of the stakeholders inform the design of the final SEPP.

We heard:

- **There was support for making it easier to setup a new business or grow an existing one.**
- **It was important to get the policy settings right so that impacts to the community are appropriately managed and that complying development continues to complement other reforms.**

Areas that were supported

There was strong support for the suite of reforms from industry and peak bodies, and many councils expressed support for enabling a more agile planning system.

Local enterprise codes were also strongly supported by many councils as a mechanism to deliver strategic outcomes on a range of issues, while delivering a more efficient system.

Key concerns

The department observed in early online workshops that many stakeholders:

- misunderstood that complying development does not change the land uses that are allowed (many people thought complying development would override a local environmental plan (LEP) land use table – it does not)
- thought that complying development is inherently at risk of non-compliance issues.

We agree that it is important to ensure that **policy settings manage impacts, particularly with regards to noise and other amenity compliance issues**. We also agree that business owners need to be thoroughly aware of their responsibilities.

We have divided the remainder of this summary into the key themes raised:

1. strategic alignment
2. trends and innovation
3. amenity and enforcement
4. streamlining and risk control
5. certifier responsibilities and standards.

1. Strategic alignment

What we heard

There was support from business, industry, and councils for **making it easier to set up** a new business or grow an existing one, and for enabling approval of a **wider range of land uses** where impacts can be managed.

There was concern that it is difficult to **assess combined impacts** of broader employment land and other reforms and complying development reform – this may undermine strategic planning.

There was concern about the appropriate mix of land uses in some zones, especially those not well serviced by public transport.

Industry and many councils were **supportive of the innovative place-based design guidelines for B5-B7 zones** and the approach of referencing council controls. Some councils were concerned about the maintaining the local **character of B5-B7 zones** and questioned if this could be achieved through the design guide and design verification process.

Some councils misinterpreted the **height limit for commercial new builds in the B5-B7 zones**. The LEP height is proposed to prevail. Only buildings with a height of 21 metres or less can be approved through a complying development process.

Some councils suggested a more conservative approach regarding the **building size**, while others were concerned about ensuring **exclusions** remain to protect the environment, for example acid sulphate soil zones.

What we need to consider

Complying development reform sits alongside other strategic policy directions such as the broader employment zone reform and the Design and Place SEPP. **Strategic planning** should be a principal consideration within and across these reforms.

Business and industry need support to adapt to **new economic circumstances**. This needs to be balanced with other considerations.

Exclusions within the Codes SEPP are an important element of risk mitigation as is their assessment and reporting. Guidance material will be a key component in ensuring the reforms are understood, and the requirements are complied with.

Height limit arrangements should be reiterated and communicated to stakeholders. This could potentially include a graphic illustration as provided for the proposed industrial height limits.

We should consider a **review process for B5-B7 zone built form** under complying development at an appropriate timeframe.

Moving forward, we will:

- ensure our policy settings for the **reform proposals are functional** to realise the benefits
- align the policy proposals with the **employment zone reform project** and monitor as it rolls out; making necessary adjustments to ensure the integrity of local strategic planning
- ensure the Codes SEPP continues to call up **local land use permissibility and density requirements**, working with councils to maintain permissibility and local density and floor area controls
- consider the appropriateness of existing **exclusions and local height and density settings** while recognising concerns about the size of buildings



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.

2. Innovation and trends

What we heard

There was high-level support for **local enterprise codes** (formerly termed a masterplanned pathway) from industry and many councils. This included ideas from some councils about application beyond built-form such as providing a framework for noise-generating activity. Further clarification is needed on how the **local enterprise codes** could apply and the processes for having one prepared and approved.

Many councils supported the **circular economy initiatives** to assist the sector and promote innovative business models, noting these should be separate from more onerous approval requirements of circular economy activities that have much greater impact. There was some concern about unintended consequences such as dumping of goods.

Many stakeholders agreed that there was a trend to experience-based land uses supporting more traditional land uses in centres. Industry and many councils supported many of the **increased range of land uses** proposed as complying development. Some land uses that could have significant amenity or environmental impacts were opposed.

There was strong industry support for the recognition of change in **height requirements in industrial buildings** and the significant risk of industrial estates becoming obsolete for core uses without reform. Some councils suggested **controls to minimise impacts** such as deep soil zones and landscaping requirements.

Concern was expressed about potential **amenity impacts**, particularly for the 45-metre height limit where there is no LEP height limit.

Industry suggested a number of other reforms that may be required to make the **industrial building allowances** workable, including revision of retaining/earthworks provisions, tank provisions and glass façade proportions.

What we need to consider

We need to clarify how the **local enterprise code** may be applied across a range of planning issues. This could include examples and case studies as well as technical details for implementation. However, as the aim of the code is agility and adaptability to council needs and plans, it is not feasible to test all possible scenarios and the department should support councils in the development of their codes.

The types of **circular economy activities** that can be undertaken as complying development should be considered carefully to minimise the potential risk of harm while allowing scope for innovative proposals where those risks can be appropriately managed, including controls to prevent dumping.

Size thresholds and other controls for some land uses such as function centres, entertainment facilities and food and drink premises are an important consideration.

Some **amenity and environmentally sensitive land uses** such as vehicle body repair and boat building may need to be carefully considered due to their potential impacts.

Further investigation of the 45 metre height where no council height limit is in the LEP.

Moving forward, we will:

- develop the exhibited **local enterprise code (LEC)** guideline and ensure it is clear on the processes that it requires and includes case studies on the ways in which it might be used
- ensure the **pathways to encourage the circular economy** are fit for purpose, noting increases to EPA licencing thresholds to facilitate development of these council facilities. We will consider **guidance on these development types** that crosslink with the EPA's waste initiatives, particularly illegal dumping
- consider if some **land uses our stakeholders were concerned about** should be limited in scale and extent
- consider the appropriateness of the **45-metre industrial height limits** where local environmental plans don't identify height restrictions or consider a delayed timeframe
- consider additional allowances for **earthworks and fire-fighting tanks** to support the proposed new building allowances
- continue to recognise the importance of the **18-metre industrial base building height** to industrial land productivity and competitiveness, and that complying development can be more than 18 metres if an LEP allows it
- consider **developing guidance to help business understand their obligations** to comply with noise and other statutory requirements for preserving amenity
- be clear in our policy settings and education material that **local LEP controls for building height and density prevail** (except for industrial building height to 18 metres). We will consider suggested alternative floor area caps against our evidence base.



Photography

Complying development industrial site, Sydney.
Image courtesy of Salty Dingo, Department of Planning, Industry and Environment.



Photography

Central Park at dusk, Sydney, Australia.

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

3. Amenity and enforcement

What we heard

Industry and many councils were in favour of the **hours of operation proposals**, particularly council stakeholders working in economic development who identified this factor as a major barrier.

Other councils expressed concerns about:

- an additional complaints and compliance burden due to the increased range of land uses and proposed hours of operation
- noise, with specific mention of the cost and difficulty of enforcement
- parking and traffic-generating activity
- light spill.

What we need to consider

Development standards and conditions in the complying development framework should be reviewed to ensure the risk of potential impacts from non-compliance can be managed.

Checking and reporting of the controls and exclusions requirements for complying development are as important to the process as the requirements themselves. They should be considered to ensure a robust system is in place.

It is imperative to support the growth of economic activity in the appropriate zones and in turn, business and industry **must be aware of their responsibilities** in complying with controls.

Councils must be supported to use the **appropriate legislative tools** to manage non-compliance.

For some industrial uses, it may be appropriate to consider a **trial period for setback requirements** from sensitive receivers.

Moving forward, we will:

- consider how an education program may target particular areas of concern so that businesses are informed of their **obligations for compliance** with the standards in the Codes SEPP
- consider the possibility of floor area or other **limitations on the land uses** of most concern to our stakeholders and assess if setback requirements for some industrial uses from sensitive receivers is appropriate or consider a potential **trial period**
- ensure that these issues are considered as part of our continual **review and Codes SEPP update program**.

4. Streamlining and risk control

What we heard

Industry and most councils supported **reduced documentation** requirements for complying development. Industry was especially supportive of not having previous conditions transfer to new builds. Many councils supported the requirement to meet current standards, such as parking requirements, for new builds under the complying development framework.

The controls associated with complying development need to be reviewed and strengthened to manage impacts and **ensure appropriate exclusions are maintained.**

Some existing requirements are poorly understood such as the Transport for NSW certification process and infrastructure contributions, and that increased council resources may be needed to ensure these requirements are met.

The 500 square metre threshold for **parking upgrade exemption for change of land use for existing premises** concerned some councils as entire town centres would be exempt and developers of new premises could propose the lowest possible carparking land uses and then use the complying development provisions to be exempt from additional parking requirements.

There was support for **increasing the proportion of allowable ancillary use** for commercial and industrial premises where it is qualified by a cap on ancillary floorspace to ensure the integrity of industrial zone objectives. This was in response to the significant new build allowances proposed for industrial zones.

New build allowances under complying development attracted strong support from industry, particularly where new builds are untied from previous conditions of consent and aligned with updated requirements and current planning controls. It was acknowledged that this could bring forward significant investment.

What we need to consider

Reforms should ensure legislative amendments are robust so that current **risk management requirements** are met.

We must balance employment-generating development to promote **new job opportunities and investment** with community concerns.

The **exempt car parking threshold** for existing premises should be carefully evaluated to balance the needs of small business by reducing start-up costs and potential impacts of reduced parking.

We will consider if there needs to be a **cut-off date for the definition of existing premises** for complying development purposes in order to prevent potential unintended consequences.

We will consider an appropriate **floorspace cap** on ancillary development in industrial zones.

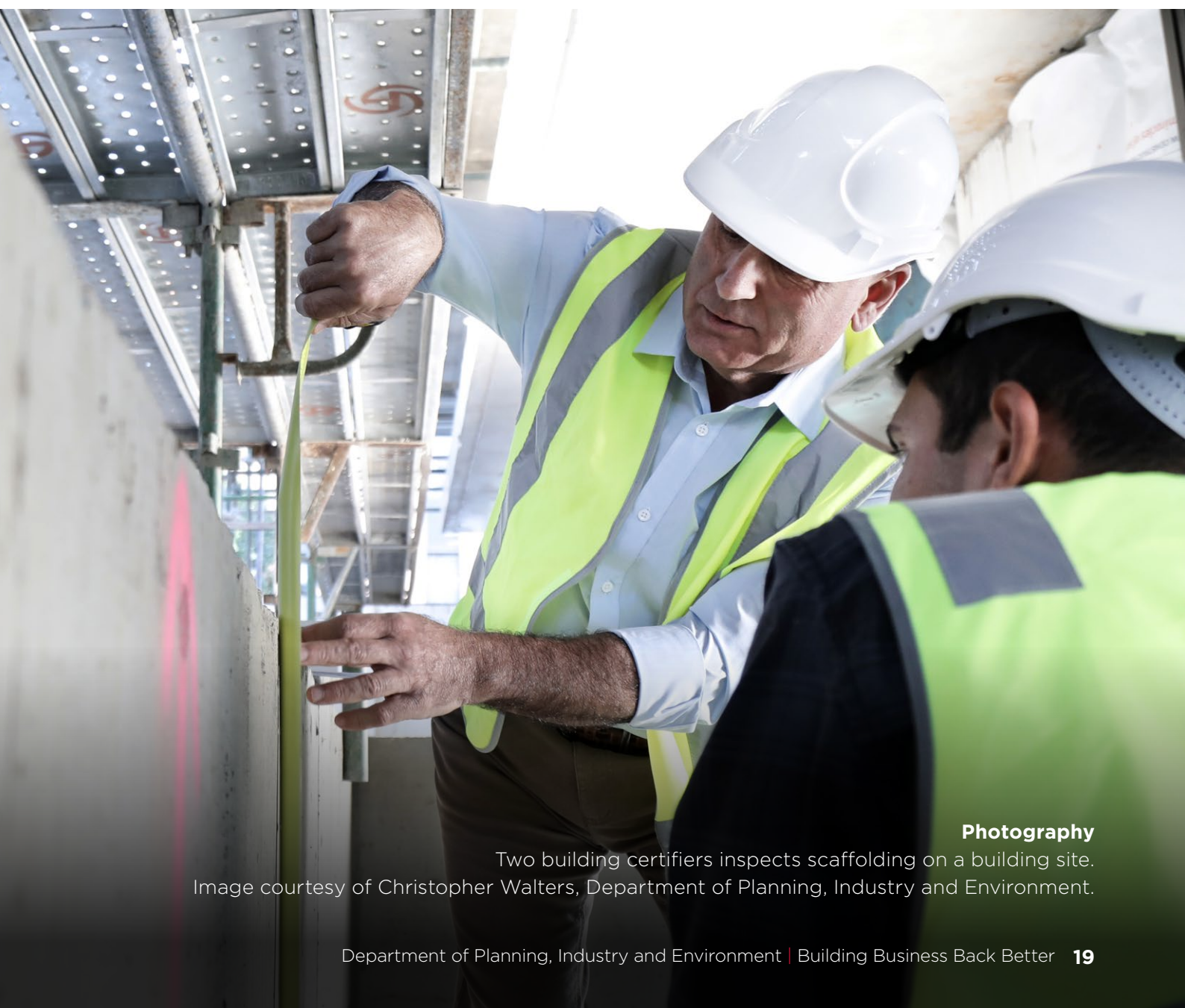
A Codes SEPP review process may be considered within a relevant timeframe for **new build/alterations.**

Complying development may only occur if the proposed land use is permitted in the zone applying to the property, usually established by councils through their LEP. 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.

We have heard that we would need to ensure all these standards are right and are well understood by business.

Moving forward, we will:

- ensure the robustness of reference to current council standards in lieu of **previous consent conditions**
- ensure the **Codes SEPP standards and conditions** cover all the necessary requirements for the land uses that we propose, for example traffic referrals for the new land uses
- **communicate the obligations** that are necessary to comply with these requirements
- consider concerns about **parking in centres**, recognising the potential for future development to take advantage of it, and consider limiting it to premises that exist now and not in the future. This policy is important to the vitality of local and neighbourhood centres
- consider what an appropriate balance might be between the need for **ancillary land uses** in a contemporary industrial land use economy and our stakeholders' concerns about ensuring **industrial zones are preserved** for more traditional industrial land use economies
- ensure our policy settings reflect feedback to refine the exhibited policy options where appropriate.



Photography

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

5. Certifier responsibilities and standards

What we heard

Industry and many councils supported a complying development pathway to **reconfigure site facilities**.

Some councils expressed concern about **safety and other amenity considerations** being overlooked in the certification process.

Certifier expertise in **assessing heritage requirements** for works in heritage conservation areas was raised as an issue, especially considering the fast-tracked approval process many councils already have in place (in the form of Clause 5.10 in local environmental plans).

There was concern regarding the risks in the certification process, particularly regarding expertise in **assessing planning requirements (B5–B7 Design Verification)** and the impartiality of certifiers. This included concern from some certifiers regarding interpreting and checking planning controls.

What we need to consider

The complying development certification process should continue to uphold **robust compliance** with the relevant standards through appropriate assessment and reporting.

We will consider exempting councils with a fast-tracked approval process with regards to **heritage conservation areas**.

We will consider providing a delayed implementation timeframe to **enable councils to put Clause 5.10 arrangements** in place or consider the appropriateness of the proposed reforms.

We will look at the suggestion by some certifiers of a mandatory role for **planning professionals in the design verification process** as a check and balance in the process.

Moving forward, we will:

- ensure the Codes SEPP refers to up-to-date **Australian Standards** on the engineering requirements for site configuration and communicate the obligations that are necessary to comply with these standards
- consider if there is any additional benefit to our proposed reform over the effective and efficient **exemption program for heritage works under Clause 5.10 to assess heritage impacts operated by councils**. We will encourage councils to communicate their programs to businesses to help address the issues we discovered with heritage conservation area approvals in our market sounding
- **review our design guidelines** to ensure they are unambiguous in their requirements for quality design. We will consider an appropriate level of **design qualifications for a design verification process**. We will ensure that design professionals are responsible for design aspects, and that certifiers are responsible for certifier aspects.

| The way forward

The department will further consider the issues raised in the submissions. We will use this input to progress the development of our proposed reforms for complying development in employment zones. The final policy settings will seek to address stakeholder feedback and the needs of business.

We will continue to develop the local enterprise code and business zone design guide. The department will continue to explore guidance for businesses to comply with their obligations in protecting local amenity, supporting councils with compliance, and to help industry, businesses and certifiers use the complying development provisions with confidence.



Photography

Mechanic and manager talking below a big printing machine.

Image: istock



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