

# Complying development for farm buildings, rural sheds and earthworks

Explanation of intended effects

May 2024





# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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# Introduction

This explanation of intended effects (EIE) has been prepared under section 3.30 of the NSW *Environmental Planning and Assessment Act 1979*. It outlines proposed changes to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

The purpose of the proposed changes is to change existing policy related to:

- the size of sheds and farm buildings
- earthworks provisions and acid sulfate soil restrictions
- the quantity of fill material that may be deposited on a property.

The EIE is presented in 2 parts:

- Part 1 – Background and context which provides an overview of the issues raised by councils with regard to the application of the earthworks, sheds and farm buildings provisions in the Codes SEPP
- Part 2 – Proposed amendments to the Codes SEPP which explain the justification for the proposed amendments.

# Part 1 – Background and context

The Rural Housing Code was released in 2012 to streamline housing in rural areas. It covers councils east of the Great Dividing Range and the unincorporated land in the far west of the state (see **Error! Reference source not found.**). It applies to land zoned RU1, RU2, RU3, RU4, RU6 and R5 and provides complying development controls for housing and outbuildings (including farm buildings).

The Inland Code was subsequently introduced in 2019, with the aim to provide ease of navigation and understanding and reduce the complexity of the Codes SEPP in rural and regional NSW. The Inland Code covers council areas west of the Great Dividing Range and applies to Zones RU1, RU2, RU3, RU4, RU5, RU6, R1, R2, R3, R4 and R5. The Inland Code provides complying development controls for housing, attached and detached development, and farm buildings.

## Rural earthworks

The Department of Planning, Housing and Infrastructure (the department) was approached by councils concerned about the earthworks provisions in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP), including as complying development under the Rural Housing Code. Their main concern was that the current provisions were facilitating extensive earthworks beyond the original intent of the policy and causing unintended environmental and social impacts.

A motion was made at Local Government NSW's 2020 Annual Conference held in November 2020 to request the NSW Government to amend the Codes SEPP to ensure large-scale earthworks on rural properties cannot be undertaken without a full and proper assessment carried out through the development application process. The conference is the policy-making forum of Local Government NSW and provides an opportunity for mayors and councillors across the state to come together to share ideas and debate issues of importance to the sector.

## Farm buildings and rural sheds

Farm buildings and sheds are different development types and have specific standards under the Codes SEPP, the key difference is that farm buildings must be ancillary to agricultural use of the landholding. Councils have told us that size limits for both farm buildings and sheds in the Rural Housing Code need to be introduced to address environmental and amenity impacts.

In response to the concerns, we consulted with the Complying Development Expert Panel to help investigate the issues raised by the councils and develop appropriate policy solutions. The panel is a cross-sector expert advisory body to the department that informs the development of NSW Government policy and initiatives relevant to exempt and complying development.

To ensure that the proposed changes to the Codes SEPP around its earthworks and shed provisions provide the best outcomes, we undertook early consultation with councils impacted by the Rural Housing Codes in August 2021. Thirty-eight councils were contacted to participate in a workshop and 12 councils responded and attended.

In June 2021 we tightened the earthworks provisions in the General Exempt Development Code to restrict fill on rural- and environmental-zoned land to 100 cubic metres on each lot.

This document gives an explanation of the intended effects of the proposals for amendments to the Rural Housing Code for earthworks, farm buildings and outbuildings, which are designed to make sure that the development standards are fit for purpose and consider amenity and environmental impacts.

The maximum size of sheds allowed under the Inland Code is proposed to be increased on larger lots in the R5 zone to align with the proposed shed sizes for the Rural Housing Code. This will increase the useability of sheds under the Inland Code.

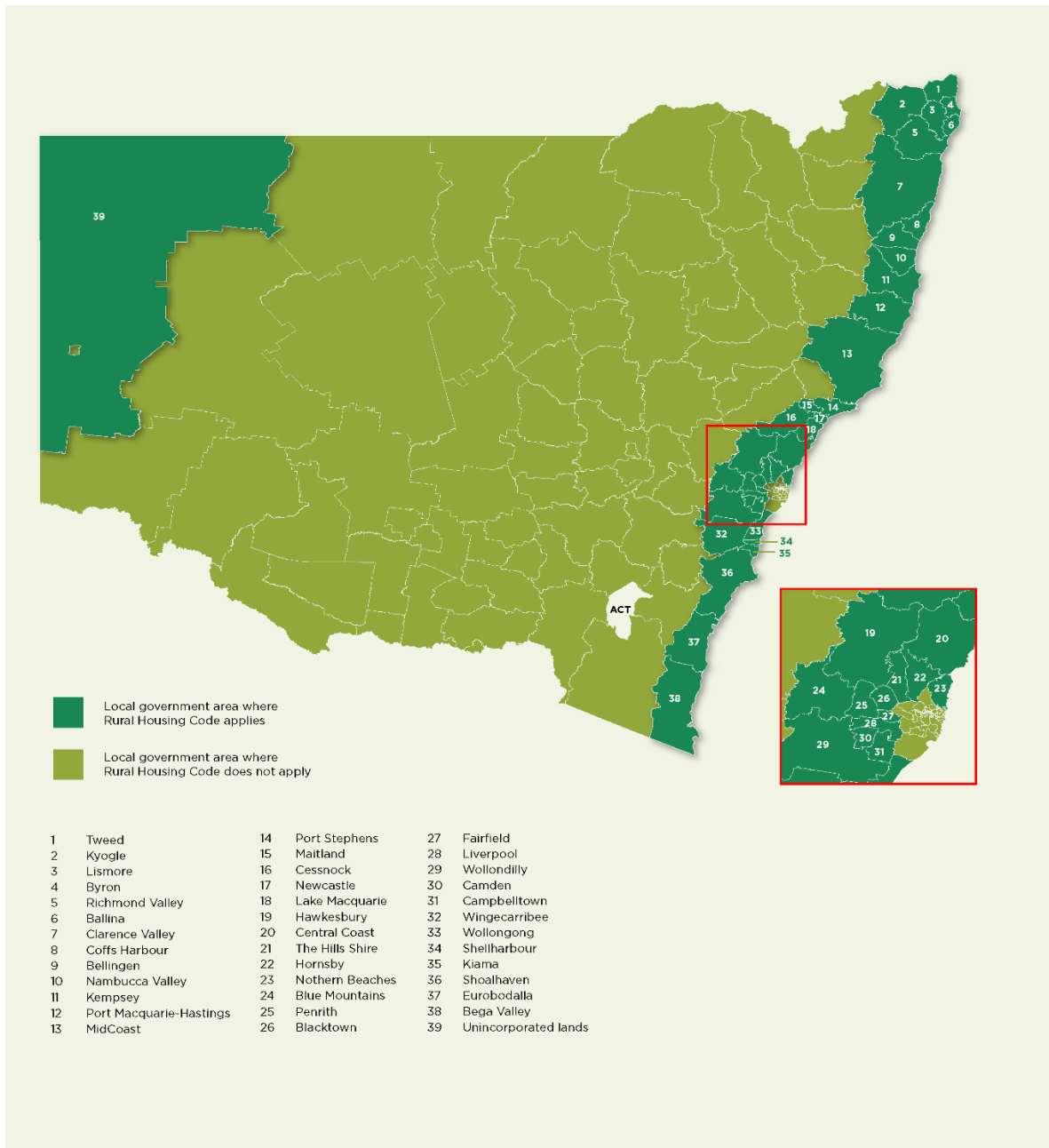


Figure 1

# Part 2 – Proposed amendments to the Codes SEPP

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## Farm buildings and rural sheds

### Maximum floor area and use of farm buildings on rural- and R5-zoned land

Farm buildings are essential to farming operations. The Rural Housing Code does not have specific controls on the maximum floor area of farm buildings in rural zones and only specifies sizes for individual farm buildings on Zone R5 lots less than 4,000 m<sup>2</sup>. This is inconsistent with the controls in the Inland Code.

We have heard from councils that the lack of size controls means that, in some instances, very large farm buildings are being approved that have amenity and environmental impacts.

Councils have told us that farm buildings, specifically in the R5 zone, are out of scale and we have also heard from councils that farm buildings are being used for purposes other than agriculture.

Farm buildings are defined in the Standard Instrument Local Environmental Plan as:

*‘a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling’*

For consistency and for clarity, the farm building size requirements in the Rural Housing Code should mirror those in the Inland Code. This means that RU1, RU2, RU3, RU4, RU6 and R5 land would have the same sized controls for farm buildings as the Inland Code, instead of the current differences for councils on each side of the Great Dividing Range. The maximum size of sheds allowed across both Codes is proposed to be increased slightly to increase the useability of sheds without adverse impacts.

The Rural Housing Code only applies to land zoned RU1, RU2, RU3, RU4 and RU6 with an area over 4,000 m<sup>2</sup> and to any sized R5 land.



## Proposal 1

We propose to insert the following development controls that limit the size of farm buildings on land zoned RU1, RU2, RU3, RU4, RU6 and R5. These changes will apply to sheds on lots 4,000 m<sup>2</sup> or more in both the Inland Code and Rural Housing Code, and will tighten requirements for lots less than 4,000 m<sup>2</sup> on R5 zoned land in the Rural Housing Code. Farm buildings cannot be constructed as complying development on lots less than 4,000 m<sup>2</sup> on R5 zoned land under the Inland Code given the residential nature of these lots.

### In the Rural Housing Code:

- For land zoned R5 with an area less than 4,000 m<sup>2</sup>:
  - a farm building must not exceed a footprint of 150 m<sup>2</sup>
  - the footprint of all farm buildings on a landholding (other than grain bunkers), including any ancillary office, must not exceed 10% of the area of the landholding.

### In both the Inland and Rural Housing Codes:

- For land zoned RU1, RU2, RU3, RU4 or RU6, or land zoned R5 that has an area of at least 4,000m<sup>2</sup>:
  - a farm building must not exceed the footprints shown in the following table

Farm buildings – maximum size – lots >4,000m <sup>2</sup>			
Landholding area	Inland Code – current max. footprint	Rural Housing Code – current max. footprint	Inland and Rural Housing Codes – proposed max. footprint
4,000m <sup>2</sup> to 40ha	200 m <sup>2</sup>	Included in the overall site coverage standards	250 m <sup>2</sup>
>40ha to 75ha	500 m <sup>2</sup>	Included in the overall site coverage standards	500 m <sup>2</sup>
>75ha to 100ha	500 m <sup>2</sup>	Included in the overall site coverage standards	850 m <sup>2</sup>
>100ha	1,200 m <sup>2</sup>	Included in the overall site coverage standards	1,400 m <sup>2</sup>

- the footprint of all farm buildings on a landholding (other than grain bunkers), including any ancillary office, must not exceed the footprint shown in the following table

Farm buildings – maximum total footprint – lots >4,000m <sup>2</sup>			
Landholding area	Inland Code – current	Rural Housing Code – current	Inland and Rural Housing Codes – proposed
	Max. footprint of all farm buildings (other than grain bunkers) on a landholding		

4,000 m <sup>2</sup> to 4 ha	2.5% of the area of the landholding	Included in the overall site coverage standards	3% of the area of the landholding
>4 ha to 10 ha	1,000 m <sup>2</sup>	Included in the overall site coverage standards	1,250 m <sup>2</sup>
>10 ha	2,000 m <sup>2</sup>	Included in the overall site coverage standards	2,500 m <sup>2</sup>

- In the Rural Housing Code, it is also proposed to mirror the development standards in Division 7 of the Inland Code (clauses 3D.54 to 3D.60) for heights, setbacks and additional development standards.

## Maximum floor area of outbuildings that are not for agricultural use on R5-zoned land

Councils have raised the issue that, in some instances in the Rural Housing Code, outbuildings on R5 zoned lots that are not for agricultural uses are being developed that are oversized and out of scale with the size of the lot and the size of the associated dwelling. This is leading to impacts on landscape values and the amenity of neighbours. Introducing an upper limit to the size of outbuildings in the Zone R5 Large Lot Residential would help to address these impacts. Sheds larger than the proposed maximum footprint sizes under the Codes SEPP could still be built, but they would be subject to a development application and consent from council which would allow potential impacts of large outbuildings in a rural zone to be considered on a case-by-case basis.

### Proposal 2

We propose to limit the size of rural sheds (included under ancillary development – Rural Code and detached development – Inland code) not for agricultural use on lots zoned R5 to be commensurate with the size of the lot on the site. The Inland Code includes development standards in clause 3D.43 which limit the floor area of certain detached development (including sheds) based on lot size. It is proposed to apply these same standards to sheds on lots in Zone R5 that are smaller than 900m<sup>2</sup>, under the Rural Housing Code.

It is also proposed to introduce limits to shed sizes on larger R5 lots under the Rural Housing Code. The same standards would be introduced to the Inland Code, allowing larger sheds than currently permitted on large residential lots in Zone R5.

Ancillary and detached development – other than farm buildings			
Landholding area	R5 Inland Code – current	R5 Rural Housing Code – current	R5 Inland and Rural Housing Code – proposed
	Maximum footprint for sheds (other than a farm building)		
Up to 900m <sup>2</sup>	As existing – cl. 3D.43: <ul style="list-style-type: none"> <li>• For lot size 200-300m<sup>2</sup>, maximum floor area 36m<sup>2</sup></li> <li>• For lot size 300-600m<sup>2</sup>, maximum floor area 45m<sup>2</sup></li> <li>• For lot size 600-900m<sup>2</sup>, maximum floor area 60m<sup>2</sup>.</li> </ul>	100m <sup>2</sup>	<ul style="list-style-type: none"> <li>• For lot size 200-300m<sup>2</sup>, maximum floor area 36m<sup>2</sup></li> <li>• For lot size 300-600m<sup>2</sup>, maximum floor area 45m<sup>2</sup></li> <li>• For lot size 600-900m<sup>2</sup>, maximum floor area 60m<sup>2</sup>.</li> </ul>
>900m <sup>2</sup> to 4,000 m <sup>2</sup>	100m <sup>2</sup>	100m <sup>2</sup>	150m <sup>2</sup>
>4,000 m <sup>2</sup> to 4 ha	100m <sup>2</sup>	Included in the overall site coverage standards	250m <sup>2</sup> limit on sheds
>4 ha to 10 ha	100m <sup>2</sup>	Included in the overall site coverage standards	350m <sup>2</sup> limit on sheds
>10 ha	100m <sup>2</sup>	Included in the overall site coverage standards	450m <sup>2</sup> for the first 10 ha, then an additional 25 m <sup>2</sup> for every hectare thereafter

Under the Rural Housing Code, clause 3A.10 currently permits a maximum site coverage of 30% for all development on R5 zoned land under 4,000 m<sup>2</sup>. Under the Inland Code, clause 3D.58 limits the maximum footprint of farm buildings on a land holding. These maximum coverage/footprint controls would remain in place, in addition to the above proposed controls.

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## Rural earthworks

### Maximum amount and depth of fill on a site under the Rural Housing Code

Currently the amount of fill that can be imported onto a site under the Rural Housing Code is capped by clause 3A.29, which allows for the maximum height of fill under a dwelling or outbuilding as well as the depth of fill allowed on the landscaped area of a lot. Currently fill that is higher than 150mm above ground level (existing) and is outside a building footprint is limited to 50% of the landscaped area of the lot.

The impact of this on large landholdings is that the amount of imported fill can be excessive under the current provisions.

### Proposal 3

To replace the fill and excavation requirements (clause 3A.29) in the Rural Code to be consistent with the Inland Code (clause 3D.61) – see Appendix A.

The new provisions will, in addition to the current provisions of clause 3A.29:

- Restrict excavation in class 3, 4 or 5 acid sulfate soil areas
- Require a geotechnical report to support excavation greater than 1 metre
- Limit fill that is not wholly contained within the footprint of a dwelling house or ancillary development to 25% of the landscaped area (consistent with the provisions in the Inland Code).

### Ensuring the quality of imported fill

An environmental protection licence (EPL) is generally required under the NSW *Protection of the Environment Operations Act 1997* (POEO Act) where materials other than virgin excavated natural material (VENM) is received from off site and applied to land. Development that requires an EPL cannot be carried out as complying development under the Codes SEPP.

We have heard from councils that it is difficult to establish whether material imported onto a site is VENM, without documentary evidence. This makes any compliance action challenging. Councils have suggested requiring a chain of evidence for imported fill under the Rural Housing Code.

We have also had feedback that the requirement for VENM needs to be highlighted earlier in the Codes SEPP, as it is currently only included as a condition of consent (issued with a complying development certificate), rather than in the development standards. Schedule 6 of the Codes SEPP provides standard conditions of consent for complying development certificates issued under the Housing Code, the Rural Housing Code, the Greenfield Housing Code, and the Inland Code. Standard

condition 10 relates to earthworks, retaining walls and structural support. Clause 10(1)(c) requires all fill brought to the development site to contain only VENM as defined in Part 3 of Schedule 1 of the POEO Act.

We propose to add the requirements for VENM fill as a development standard for the earthworks and drainage provisions in the Rural Housing Code.

Given the requirement for fill to be VENM applies across a number of development types within the Codes SEPP, the investigation on sources and application of documentary evidence of VENM be carried out during a broader review of the Codes SEPP.

## **Proposal 4**

Insert a development standard into the fill requirements of clause 3A.29, reflecting standard condition 10 of schedule 6, stating that fill is required to be VENM. This will help to ensure that the requirement for VENM material is known prior to the development occurring and that the requirements for fill are being adhered to.

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## **Acid sulfate soils**

### **Complying development on Class 2 acid sulfate soil land**

Currently clause 1.19(1)(c) excludes land identified on an Acid Sulfate Soils Map as being class 1 or class 2 as being complying development under the following Codes:

- Part 3 Housing Code
- Part 3A Rural Housing Code
- Part 3B Low Rise Housing Diversity Code
- Part 3C Greenfield Housing Code
- Part 3D Inland Code
- Part 9 Agritourism and Farm Stay Accommodation Code.

Acid sulfate soils in a class 1 area are likely to be found on and below the natural ground surface. Given the potential presence of acid sulfate soils on the ground surface in class 1 land, complying development is not considered appropriate in these areas. In class 2 areas, acid sulfate soils are likely to be found below the natural ground surface, but not at the ground surface level. A complying development pathway is considered appropriate under these codes on land identified on an Acid Sulfate Soils Map as being class 2 in the following instances, based on limited environmental risk where it can be proven that:

- acid sulfate soils will not be disturbed by a development, or

- soil disturbance will be limited so as not to trigger the need for an acid sulfate soils management plan under best practice guidance<sup>1</sup>.

## Proposal 5

We will amend clause 1.19 to state that subclause 1.19(1)(c) does not apply to class 2 land if a Preliminary Soil Assessment is carried out by a suitably qualified expert certifies that an acid sulfate soil management plan is not required – see Appendix B. This would mean that complying development could be undertaken for certain proposals on class 2 acid sulfate soil land, where there would be no or low impact on acid sulfate soils.

We will also include requirements for undertaking the Preliminary Soil Assessment and make a consequential amendment to the Environmental Planning and Assessment Regulation 2021 for the required contents of an application for complying development certificates.

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## Other farm building provisions

### Detached studios in existing farm sheds

The development of a detached studio built within the walls of an existing farm shed has been raised. Specifically, there is concern amongst some councils that a studio contained within a farm building may be illegally converted into a separate dwelling. It is not unreasonable to expect that farm workers may need a separate place for a bathroom/office/rest area that is separate from the main dwelling.

The Rural Housing Code, under clause 3A.33A, provides development standards for detached studios with a floor area limited to 35 m<sup>2</sup>. Detached studios can be used for purposes that are ancillary to a dwelling house, such as for a home office or entertainment area.

Current definitions in the Codes SEPP that would potentially apply to studios in farm buildings include detached studio, detached and detached development.

We would like to understand from all stakeholders what issues arise, if any, with separate studio areas within farm buildings under current provisions of the Rural Housing Code, and whether policy change should be considered for detached studios in existing farm sheds.

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<sup>1</sup> See Table 4.4 in Section 4.3 of the *Acid Sulfate Soils Assessment Guidelines*, Acid Sulfate Soils Management Advisory Committee, August 1998, NSW. <https://www.environment.nsw.gov.au/resources/soils/ASS-Manual-2-Assessment-Guidelines.pdf>

## Water supply to farm buildings

We aim to ensure the Codes SEPP is easy to understand and to use. From time to time, we need to clarify certain aspects of the code. One such aspect is Part 2 Exempt Development Codes, Subdivision 16 Farm buildings.

While the code is currently silent on whether a farm building undertaken as exempt development is permitted to connect to a water supply, the intent is to allow this to occur with the relevant authority's approval.

### Proposal 6

We will amend clause 2.32 to include a development standard advising that if a farm building contains plumbing fixtures, they must be connected to an approved wastewater treatment device or an approved connection to the sewer.

# Have your say

We look forward to receiving your feedback, which will help us ensure the final amendments meet the needs of rural landowners.

To have your say on the proposed amendments, please visit the [NSW Planning Portal](#) and submit your feedback via the submission form.

The exhibition closes on Friday 14 June 2024 at 5pm.



# Definitions and categorisations

Table 1. Definitions for terms in the Standard Instrument—Principal Local Environmental Plan (2006)

Term	Definition
Earthworks	Excavation or filling
Excavation	The removal of soil or rock, whether moved to another part of the same site or to another site, but does not include garden landscaping that does not significantly alter the shape, natural form, or drainage of the land
Fill	The depositing of soil, rock or other similar extractive material obtained from the same or another site, but does not include: <ul style="list-style-type: none"> <li>(a) the depositing of topsoil or feature rock imported to the site that is intended for use in garden landscaping, turf or garden bed establishment or top dressing of lawns and that does not significantly alter the shape, natural form, or drainage of the land, or</li> <li>(b) the use of land as a waste disposal facility</li> </ul>
Farm building	A structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling
Rural industry	The handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following: <ul style="list-style-type: none"> <li>(a) agricultural produce industries</li> <li>(b) livestock processing industries</li> <li>(c) composting facilities and works (including the production of mushroom substrate)</li> <li>(d) sawmill or log processing works</li> <li>(e) stock and sale yards</li> <li>(f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise</li> </ul>

Table 2. Definitions for terms in the Codes SEPP

Term	Definition
Ancillary Development	In Parts 1, 2, 3A and 4, means any of the following that are not exempt development under this Policy— <ul style="list-style-type: none"> <li>(a) access ramp</li> <li>(b) awning, blind or canopy</li> <li>(c) balcony, deck, patio, pergola, terrace, or verandah that is attached to a dwelling house</li> <li>(d) basement</li> <li>(e) carport that is attached to a dwelling house</li> </ul>

	<ul style="list-style-type: none"> <li>(f) detached studio</li> <li>(g) driveway, hard stand space, pathway, or paving</li> <li>(h) fence or screen</li> <li>(i) garage that is attached to a dwelling house</li> <li>(j) outbuilding</li> <li>(k) rainwater tank that is attached to a dwelling house</li> <li>(l) retaining wall</li> <li>(m) swimming pool or spa pool and child-resistant barrier</li> </ul>
Outbuilding	<p>Any of the following class 10a buildings under the <i>Building Code of Australia</i>:</p> <ul style="list-style-type: none"> <li>(a) balcony, deck, patio, pergola, terrace, or verandah that is detached from a dwelling house</li> <li>(b) cabana, cubby house, fernery, garden shed, gazebo or greenhouse</li> <li>(c) carport that is detached from a dwelling house</li> <li>(d) farm building</li> <li>(e) garage that is detached from a dwelling house</li> <li>(f) rainwater tank (above ground) that is detached from a dwelling house</li> <li>(g) shade structure that is detached from a dwelling house</li> <li>(h) shed</li> </ul>
Detached	In relation to a building or structure that is complying development, detached means more than 900 mm from another building or structure
Detached development	<p>Any of the following, if it is situated more than 900 mm from a building that is residential accommodation to which it relates and is not exempt development under this policy:</p> <ul style="list-style-type: none"> <li>(a) access ramp</li> <li>(b) awning, blind or canopy</li> <li>(c) deck, patio, pergola, terrace, or verandah</li> <li>(d) cabana, cubby house, fernery, garden shed, gazebo or greenhouse</li> <li>(e) carport</li> <li>(f) detached studio</li> <li>(g) driveway, hard stand space</li> <li>(h) garage or hard stand space</li> <li>(i) pathway or paving</li> <li>(j) rainwater tank (above ground)</li> <li>(k) retaining wall</li> <li>(l) screen</li> <li>(m) shade structure</li> <li>(n) shed</li> </ul> <p>and any fence, swimming pool or spa pool and child-resistant barrier that is not exempt development under this policy.</p>
Detached studio	A habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and:

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"><li>(a) is established in conjunction with a dwelling house</li><li>(b) is on the same lot of land as the dwelling house</li><li>(c) is separate from the dwelling house</li><li>(d) is not used as a separate dwelling house</li><li>(e) does not contain any cooking facilities</li></ul> |
|--|---|

# Appendix A

Table 3 Clause 3A.29 changes

Proposed new clause under the Rural Housing Code	Existing – clause 3A.29 Earthworks, retaining walls and structural support
<p>(1) Excavation Excavation for the purposes of development under this code must not exceed a maximum depth, measured from ground level (existing), of –</p> <p>(a) if located not more than 1m from any boundary – 1m, or</p> <p>(b) if located more than 1m but not more than 1.5m from any boundary – 2m, or</p> <p>(c) if located more than 1.5m from any boundary – 3m, or</p> <p>(d) if carried out wholly within the footprint of a building or any ancillary development – 3m.</p> <p>(2) Subclause (1) does not apply to excavation for the purposes of a footing associated with development that is a farm building, unless the development is on land that is identified for the purposes of an environmental planning instrument as Class 3, 4 or 5 on an Acid Sulfate Soils Map, or on land that is identified for the purposes of an environmental planning instrument as Class 2 on an Acid Sulfate Soils Map and is supported by a preliminary soil assessment.</p> <p>(3) Despite subclause (1), the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is within 40m of a waterbody (natural), is identified as Class 3, 4 or 5 on an Acid Sulfate Soils Map or is identified for the purposes of an environmental planning instrument as Class 2 on an Acid Sulfate Soils Map and is supported by a preliminary soil assessment.</p> <p>(4) Before an excavation exceeding a maximum depth, measured from ground level (existing), of 1m is carried out on a lot –</p> <p>(a) a geotechnical investigation report for the lot must be obtained, and</p> <p>(b) the report must show –</p>	<p>(1) Excavation Excavation for the purposes of development under this code must not exceed a maximum depth, measured from ground level (existing), of –</p> <p>(a) if located not more than 1m from any boundary – 1m, and</p> <p>(b) if located more than 1m but not more than 1.5m from any boundary – 2m, and</p> <p>(c) if located more than 1.5m from any boundary – 3m.</p> <p>(2) Despite subclause (1), the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).</p> <p>(3) Fill Fill must not exceed a maximum height, measured from ground level (existing), of –</p> <p>(a) if the fill is for the purposes of the erection or alteration of, or an addition to, a dwelling house under this code – 1m, and</p> <p>(b) if the fill is for any other purpose under this code – 600mm.</p> <p>(4) Despite subclause (3), the height of fill is not limited if the fill is contained –</p> <p>(a) wholly within the footprint of a dwelling house or ancillary development, or</p> <p>(b) by a drop edge beam.</p> <p>(5) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a dwelling house or ancillary development is limited to 50% of the landscaped area of the lot.</p> <p>(6) The ground level (finished) of the fill must not be used to measure the height of any</p>

Proposed new clause under the Rural Housing Code	Existing – clause 3A.29 Earthworks, retaining walls and structural support
<p>(i) no groundwater is present on the part of the lot where the excavation is to be carried out, or</p> <p>(ii) groundwater is present on the part of the lot but is below the level of the excavation.</p> <p>(4A) The geotechnical investigation report required under subclause (4) must –</p> <p>(a) be prepared by a professional engineer specialising in geotechnical engineering, and</p> <p>(b) be prepared in accordance with AS 1726:2017, Geotechnical site investigations.</p> <p>(5) Fill must not exceed a maximum height, measured from ground level (existing), of –</p> <p>(a) if the fill is for the purposes of the erection or alteration of, or an addition to, a dwelling house under this code – 1m, and</p> <p>(b) if the fill is for any other purpose under this code – 600mm.</p> <p>(6) Despite subclause (5), the height of fill is not limited if the fill is contained –</p> <p>(a) wholly within the footprint of a building or any ancillary development, or</p> <p>(b) by a drop edge beam.</p> <p>(7) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a building or any ancillary development is limited to 25% of the landscaped area of the lot.</p> <p>(8) The ground level (finished) of the fill must not be used to measure the height of any building or any ancillary development under this code.</p> <p>(9) <b>Retaining walls and structural supports</b> Support for earthworks more than 600mm above or below ground level (existing) must take the form of a retaining wall or other structural support that –</p> <p>(a) a professional engineer has certified as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load, and</p>	<p>dwelling house or ancillary development under this code.</p> <p><b>(7) Retaining walls and structural supports</b> Support for earthworks more than 600mm above or below ground level (existing) must take the form of a retaining wall or other structural support that –</p> <p>(a) a professional engineer has certified as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load, and</p> <p>(b) has been designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and</p> <p>(c) has adequate drainage lines connected to the stormwater drainage system for the site, and</p> <p>(d) does not have a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and</p> <p>(e) is separated from any other retaining wall or structural support on the site by at least 2m, measured horizontally, and</p> <p>(f) is installed in accordance with any manufacturer’s specifications, and</p> <p>(g) if it is an embankment or batter – has a toe or top that is more than 1m from any side or rear boundary.</p> <p>(8) (Repealed)</p> <p><b>Note 1 –</b>  <b>Excavation, fill and ground level (existing)</b> have the same meanings as they have in the Standard Instrument.</p> <p><b>Note 2 –</b>  Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30.</p>

Proposed new clause under the Rural Housing Code	Existing – clause 3A.29 Earthworks, retaining walls and structural support
<p>(b) has been designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and</p> <p>(c) has adequate drainage lines connected to the stormwater drainage system for the site, and</p> <p>(d) does not result in a retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and</p> <p>(e) is separated from any retaining wall or structural support on the site by at least 2m, measured horizontally, and</p> <p>(f) if the retaining wall is erected on a lot with an area greater than 4,000m<sup>2</sup> –</p> <p>(i) is not more than 10m (measured horizontally from the point of the retaining wall that is furthest from the dwelling house) from the dwelling house and from any ancillary development that is within 900mm of the dwelling house,</p> <p>(ii) is not more than 5m (measured horizontally from the point of the retaining wall that is furthest from the ancillary development) from any ancillary development greater than 900mm from the dwelling house, and</p> <p>(g) has been installed in accordance with any manufacturer’s specifications, and</p> <p>(h) if it is an embankment or batter – has a toe or top that is more than 1m from any side or rear boundary.</p> <p>(10) In this clause –  <b>footprint</b> has the same meaning as it has in Division 7.  <b>Note 1 –</b>  <i>Excavation, fill</i> and <i>ground level (existing)</i> have the same meanings as they have in the Standard Instrument.  <b>Note 2 –</b></p>	

Proposed new clause under the Rural Housing Code	Existing – clause 3A.29 Earthworks, retaining walls and structural support
<p>Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30.</p> <p><b>Note 3 –</b></p> <p>Preliminary Soil Assessment is required for certain complying development in clause 1.19.</p>	

# Appendix B

Table 4 Clause 1.19 changes

Proposed new clause	Existing clause
<p>Insert new sub-clause after clause 1.19 (1) (c) subclause (c) does not apply to land identified on an Acid Sulfate Soils Map as being Class 2 if a Preliminary Soil Assessment carried out by a suitably qualified expert certifies that an Acid Sulphate Soil management plan is not required.</p> <p><b>Preliminary Soil Assessment</b></p> <p>The Preliminary Soil Assessment shall:</p> <ul style="list-style-type: none"> <li>• Be prepared in accordance with Acid Sulfate Soils Manual and Assessment Guidelines</li> <li>• Be prepared by a suitably qualified professional specialised in environmental soil science and experienced in acid sulfate soils management</li> <li>• Include investigation tests to assess the likelihood of potential acid sulfate soils: <ul style="list-style-type: none"> <li>○ Soil sampling is to provide comprehensive coverage of the area and should include a minimum number of sample holes, as follows: <ul style="list-style-type: none"> <li>▪ 4 sample holes for lots less than 1 hectare</li> <li>▪ 6 sample holes for lots 1-2 hectares</li> <li>▪ 8 sample holes for lots 2-3 hectares</li> <li>▪ 10 sample holes for lots 3-4 hectares</li> <li>▪ 2 sample holes plus 2 sample holes per hectare for lots greater than 4 hectares</li> </ul> </li> <li>○ Sample depths are to exceed 1m beyond the depth of the</li> </ul> </li> </ul>	<p>1.19 Land on which complying development may not be carried out</p> <p>(1) Specific land exemptions for Housing Code, Inland Code, Low Rise Housing Diversity Code, Rural Housing Code, Agritourism and Farm Stay Accommodation Code and Greenfield Housing Code To be complying development specified for the Housing Code, the Inland Code, the Low Rise Housing Diversity Code, the Rural Housing Code, the Agritourism and Farm Stay Accommodation Code or the Greenfield Housing Code, the development must not be carried out on—</p> <p>(a) land within a heritage conservation area or a draft heritage conservation area, unless the development is a detached outbuilding, detached development (other than a detached studio) or swimming pool, or</p> <p>(b) land that is reserved for a public purpose by an environmental planning instrument, or</p> <p>(c) land identified on an Acid Sulfate Soils Map as being Class 1 or Class 2, or</p> <p>(c1) significantly contaminated land, or</p>



<p>proposed excavation/disturbance or 2m below existing ground level (whichever is greater).</p> <ul style="list-style-type: none"> <li>○ Standard methods for laboratory analysis per AS4969-2008/2009 Analysis of Acid Sulfate Soils</li> <li>• Identify if acid sulfate soils will not be disturbed. If so, an Acid Sulfate Soils Management plan is not required</li> <li>• Identify if soil disturbance will involve acid sulfate soils with a pH&lt;5 in concentrations exceeding the action criteria in the Table 4.4 of the Acid Sulfate Soils Guidelines (see note). If so, an Acid Sulfate Soil Management Plan is required and complying development is not permitted.</li> </ul> <p><b>Note:</b> Acid Sulfate Soils Assessment Guidelines NSW - Acid Sulfate Soils Management Advisory Committee, August 1998</p>	
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