



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:DH1b1563499

18 July 2018

Director, Codes and Approval Pathways
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

Proposed housekeeping amendment: State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (“Codes SEPP”)

The Law Society of NSW appreciates the opportunity to comment on the proposed housekeeping amendment to the Codes SEPP. The Law Society’s Environmental Planning and Development Committee contributed to this submission.

The Law Society welcomes the clarification provided by the proposed amendment, particularly in relation to a number of definitions, at least one of which has previously been the subject of litigation.¹ However, we are concerned about the practice of publishing lengthy “Explanation of Intended Effect” documents in place of the amending legislation.²

We consider that proper consultation requires publication of and consultation on the actual legislation. In our view it is not possible to give full and appropriate feedback, which includes comments relating to unintended consequences or perceived drafting errors, unless the consultation includes scrutiny of the proposed legislation itself.

We look forward to the publication of any amending legislation, in conjunction with the explanatory materials, in all future consultations.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,

Doug Humphreys OAM
President

¹ The definition of ‘pathway’ was in dispute in *Ku-ring-gai Council v Antony Comanos* [2018] NSWLEC 24.

² We note, for example, the recent consultations on proposed amendments to the Mining SEPP, available at: http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=8905 and the Remediation of Land SEPP, available at: http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=9068.