

13 October 2021

The Hon. Rob Stokes MP
Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

Via email: office@stokes.minister.nsw.gov.au

Dear Minister

Apparent Anomaly in Subdivisions Code within the SEPP (Exempt and Complying Development Codes) 2008

The Association of Australian Certifiers (AAC) has become aware through its members of a possible anomaly within the *Subdivisions Code of the SEPP (Exempt and Complying Development Codes) 2008* (the SEPP). The anomaly relates to the development standards for strata and Torrens title subdivision of dual occupancies and multi-dwelling housing (terraces).

In Division 1 of Part 6 of the SEPP, Clause 6.2(b)(i) of the Policy specifies a development standard for strata subdivision of a dual occupancy or for multi dwelling housing (terraces) that:

“each dwelling must have lawful frontage to a public road (other than a lane)”

The corresponding clause relating to Torrens title subdivision occurs in Clause 6.4(1)(c), which states:

“each resulting lot must be at least 6m wide (measured at the building line) and have lawful access, and frontage to, a public road”

Whilst the SEPP does not contain a definition for the term “public road”, the *Environmental Planning and Assessment Act 1979* defines the term as having the same meaning as that in the *Roads Act 1993* (Roads Act). A review of the definition of a public road in the Roads Act indicates that a laneway is considered a public road.

Therefore, the interpretation of Clauses 6.2(b)(i) and 6.4(1)(c) of the SEPP is that strata subdivision of the stated type of development cannot be undertaken where the development has frontage to a lane, but the Torrens title subdivision of the same development fronting a lane is permissible.

It is not clear whether this anomaly between the development standards for strata and Torrens title subdivision in the SEPP is intended or the result of a drafting inconsistency, but it creating a situation on some sites where strata subdivision cannot be achieved under the SEPP, but Torrens title subdivision of the same site can be achieved. This precedent is inconsistent with the majority of Council Local Environmental Plans which normally apply more stringent requirements to Torrens title subdivision than they do strata title subdivision, especially when applying to dual occupancies.

It would be appreciated if the Department could review this apparent anomaly and if it is not intended, consider addressing it by removing the lane restriction in Clause 6.2(b)(i) applying to strata subdivision. If the anomaly is intended, could you please provide advice supporting the anomaly, so that we may forward this to our members.

Yours sincerely



Jill Brookfield
Chief Executive Officer