

Item 10.7. Planning Proposal exempt and complying development in the land use zones E4 Environmental Living, RU5 Village and RU1 Primary Production

SUBJECT	Planning proposal to amend provisions relating to exempt and complying development in the PLEP E4 Environmental Living zone, exempt development in the RU5 Village zone and complying development in the RU1 Primary Production zone		
FILE NO.	PROJ0035/11	DIVISION	Planning and Environmental Services

Attachment

1. Planning Proposal, amendment of provisions relating to exempt and complying development in the E4 Environmental Living zone, exempt development in the RU5 Village zone and complying development in the RU1 Primary Production zone

Synopsis

Following the gazettal of the *Palerang Local Environmental Plan 2014*, the provisions relating to exempt and complying development have been reviewed. A planning proposal is proposed to amend the PLEP 2014 to:

- enable additional exempt and complying development opportunities in the E4 Environmental Living zone;
- permit residential type fencing as exempt development in the RU5 Village zone; and
- allow complying development on lots that are smaller than the minimum lot size in the RU1 Primary Production zone if they were created by subdivision through 'averaging' or 'concessional lot' provisions.

Recommendation

Recommended that Council:

1. Refer the planning proposal for the amendment of provisions relating to exempt and complying development in the E4 Environmental Living zone, exempt development in the RU5 Village zone and for complying development on lots less than the minimum lot size created by subdivision in the RU1 Primary Production zone to the Minister for Planning and Environment for a Gateway Determination in accordance with section 56 of the *NSW Environmental Planning and Assessment Act 1979*.

Report

Background

The *Palerang Local Environmental Plan 2014* came into force on 31 October 2014. The completion of this document has provided Council staff with the opportunity to review provisions relating to exempt and complying development.

The review has found that the types of exempt and complying development that are allowable in the E4 Environmental Living land use zone should be expanded. The E4 zone has been used in the PLEP 2014 for areas that were zoned rural residential under previous planning instruments and in the Palerang context the E4 zone functions as a rural residential zone. It is therefore appropriate to allow a broader range of developments as exempt or complying than currently provided for in the

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Exempt and Complying SEPP).

Additionally, staff have concluded that it should be possible to erect a residential type fence in the land use zone RU5 Village as exempt development. Under the Exempt and Complying SEPP the RU5 Village Zone falls within the category of 'rural zone' rather than 'residential zone'. As a consequence the type of fencing that is exempt development in the RU5 Village zone (for example in Captains Flat) is rural style post and rail or post and wire, not the typical residential style paling or colorbond fence. It is considered unnecessary to require a development application for the erection of a typical residential fence in the village zone and it is likely that many fences are currently being erected without consent, in breach of the *Environmental Planning and Assessment Act 1979*.

It is also considered that complying development should be permissible on lots within Zone RU1 that are smaller than the minimum lot size which have been created by subdivision through 'averaging' or 'concessional lot' provisions. The Rural Housing Code within the Exempt and Complying SEPP allows new single storey and two storey dwelling houses as complying development, but only if the lot is not less than the minimum lot size for a dwelling house under the relevant planning instrument. In Palerang we have lots smaller than the minimum lot size that have been created under averaging provisions or concessional lot provisions and on which a dwelling house is permissible. There is no reason to withhold the ability to use complying development on these lots.

Exempt development is minor development (such as a small pergola) that does not require approval from a council or a private certifier provided that it meets all the criteria specified in the relevant planning instrument. All exempt development provisions in the Palerang local government area are contained in the Exempt and Complying SEPP except for farm dams in RU1 Primary Production which are in schedule 2 of the PLEP 2014.

Complying development is a form of development approval (complying development certificate) that can be issued by a council or an accredited certifier. Complying development for residential purposes includes the construction of new single and two storey dwellings and alterations or additions to an existing house. All complying development provisions in the Palerang local government area are contained in the Exempt and Complying SEPP.

To enable the proposed amendments to occur, a planning proposal has been prepared to amend schedules 2 and 3 of the PLEP 2014. An alternative approach would be to amend schedules 2 and 3 of the Exempt and Complying SEPP, but this is not something that Council is able to initiate. If the Department of Planning and Environment decides that amendment of the SEPP is preferred over amendment of the PLEP Council will be advised in the gateway determination, the PLEP amendment will not proceed and the SEPP amendment will be undertaken by the Department. However if, as proposed in this report, the PLEP is to be amended, then the process will be as outlined below:

Proposed amendments

1. Exempt development in E4 Environmental Living Zone

Table 1 summarizes the proposed changes to the exempt development provisions in the E4 zone.

TABLE 1

PROPOSED AMENDMENTS FOR EXEMPT DEVELOPMENT IN E4 ENVIRONMENTAL LIVING ZONE
--

Exempt and complying SEPP provision	Current restrictions for E4 zone	Proposed change for E4 zone
Subdivision 2 Aerials, antennae and communication dishes	Must be located in the rear of the lot	Allow anywhere on lot as in zones RU1 and R5
Subdivision 3A Animal shelters	Must be behind building line	Allow anywhere on lot as in RU1
Subdivision 4 Aviaries	Maximum 10 m ²	Allow maximum 30 m ² as in RU1
Subdivision 6 Balconies, decks, patios, pergolas, terraces and verandahs	Can be built up to 900 mm from lot boundary	Allow no closer than 5 m from boundary as in RU1 and R5
Subdivision 7 Barbecues and other outdoor cooking structures	Must be located behind building line	Allow anywhere on lot as in RU1
Subdivision 9 Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses	Maximum 20 m ² and can be as close as 900 mm from boundary	Allow maximum 50 m ² and no closer than 5 m from boundary as in RU1 and R5
Subdivision 10 Carports	Maximum 25 m ² and can be as close as 900 mm from boundary	Allow maximum 50 m ² and no closer than 5 m from boundary as in RU1 and R5
Subdivision 16 Farm buildings	None are allowed	Allow stockyard up to 0.5 ha as in RU1
Subdivision 21 Fowl and poultry houses	None are allowed	Allow to house up to 10 fowl or poultry as in R5
Subdivision 33 Rainwater tanks (below ground)	None are allowed	Allow as in RU1 and R5
Subdivision 36 Shade structures of canvas, fabric, mesh or the like	Can be built up to 900 mm from lot boundary	Allow no closer than 5 m from boundary as in RU1 and R5
Subdivision 39B Tennis courts	None are allowed	Allow on lots larger than 1 ha as in RU1 and R5

The proposed amendment of the PLEP 2014 would result in the following provisions (or similar as determined by the Parliamentary Counsel) being inserted in schedule 2 of the PLEP 2014. The provisions are based on and follow the format of the Exempt and Complying SEPP

Aerials, antennae and communication dishes

The construction or installation of an aerial, antenna or a satellite communications dish (including any supporting mast).

- (1) The development must not comprise fire alarm communication link works within the meaning of the *Environmental Planning and Assessment Regulation 2000*, and
- (2) if the development is attached to an existing building, either by being mounted on the roof or attached to an external wall of a building:
 - (a) the development must not have a diameter of more than 900mm if the development is installed in connection with the use of a dwelling on the lot, and
 - (b) the development must not have a diameter of more than 1.8m if installed for any other purpose, and
 - (c) the development must not be higher than 1.8m above the highest point of the roof of the building, and
 - (d) if the development is constructed or installed on a heritage item or draft heritage item—the development must only be attached to the rear wall and roof plane of the existing building and must not be higher than the highest point of the roof of the building, and
- (3) if the development is located at ground level (existing), the development:
 - (a) must not have a diameter of more than 1.8m, and
 - (b) must not be higher than 1.8m above ground level (existing), and
 - (c) must be located at least 900mm from each lot boundary, and
 - (d) must be located at the rear of the lot if it is not on land within Zone RU1, RU2, RU3, RU4, RU6 or R5, and
 - (e) must resist loads in accordance with AS/NZS 1170.0:2002 *Structural design actions, Part 0: General Principles* and AS/NZS 1170.2:2011 *Structural design actions, Part 2: Wind actions*, and
 - (f) must be anchored by a concrete slab or footing designed in accordance with AS 3600—2009 *Concrete structures*, and
- (4) if the development is a mast or attached to a mast, the mast:
 - (a) must not have a diameter of more than 100mm, if a solid mast or 500mm if constructed as an open lattice frame, and
 - (b) must not be higher than 10m above ground level (existing) inclusive of the mast and any attachments, and
 - (c) must be located at least 5m from each lot boundary, if the mast is over 5m in height, and 2m from each lot boundary, if the mast is 5m or less in height, and
 - (d) must not be constructed or installed on or in a heritage item or draft heritage item, and
 - (e) must be located at the rear of the lot if it is not on land within Zone RU1, RU2, RU3, RU4, RU6 or R5, and

- (f) must resist loads in accordance with AS/NZS 1170.0:2002 *Structural design actions, Part 0: General Principles* and AS/NZS 1170.2:2011 *Structural design actions, Part 2: Wind actions*, and
 - (g) must be anchored by a concrete slab or footing designed in accordance with AS 3600—2009 *Concrete structures*, and
- (5) there must be:
- (a) no more than 3 developments per lot, and
 - (b) not more than 1 mast or antenna located at ground level (existing) on the lot.

Note. There are other existing legislative requirements relating to the clearance of power lines and Obstacle Limitation Surfaces near airport flight paths.

Animal shelters

- (1) The development, when it is not a stable for the keeping of horses, must:
- (a) be associated with a residential use, and
 - (b) not have a floor area of more than 10m², and
 - (c) be not higher than 1.8m above ground level (existing), and
 - (d) be located at least 450mm from each side and rear boundary, and
 - (e) if roofed—be constructed or installed so that roofwater is disposed of into an existing stormwater drainage system, and
 - (f) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials and have an impervious floor, and
 - (g) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material, and
 - (h) if it is constructed or installed on or in a heritage item or a draft heritage item, or in a heritage conservation area or a draft heritage conservation area—be located in the rear yard.
- (2) There must not be more than 2 developments per lot for development referred to in subclause (1).
- (3) The development, when it is a stable for the keeping of horses, must:
- (a) be associated with a residential use, and
 - (b) not have a floor area of more than 50m², and
 - (c) be not higher than 3m above ground level (existing), and
 - (d) be located at least 20m from any road boundary and 5m from every other lot boundary, and
 - (e) be located at least 30m from any dwelling on an adjoining lot, and
 - (f) if roofed—be constructed or installed so that roof water is disposed of on site, without causing a nuisance to adjoining owners, and

- (g) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials, and
 - (h) have an impervious floor, and
 - (i) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material.
- (4) There must not be more than 1 development per lot for development referred to in subclause (3).

Aviaries

- (1) The development must:
- (a) be for residential uses only, and
 - (b) not have a floor area of more than 30m², and
 - (c) be not higher than 3m above ground level (existing), and
 - (d) be located at least 20m from the road boundary and 5m from each other lot boundary, and
 - (e) have an impervious floor, and
 - (f) be constructed or installed so that roofwater is disposed of without causing a nuisance to adjoining owners, and
 - (g) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials, and
 - (h) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material.
- (2) There must not be more than 2 developments per lot.

Balconies, decks, patios, pergolas, terraces and verandahs

The construction or installation of a balcony, deck, patio, pergola, terrace or verandah (whether free standing or attached to the ground floor level of a building, or roofed or unroofed).

The development must:

- (a) not be constructed or installed on or in a heritage item
- (b) have an area of not more than 25m², and
- (c) not cause the total floor area of all such structures on the lot to be more than:
 - (i) for a lot larger than 300m²—15% of the ground floor area of the dwelling on the lot, or
 - (ii) for a lot 300m² or less—25m², and

- (d) not have an enclosing wall higher than 1.4m, and
- (e) be located behind the building line of any road frontage, and
- (f) be located at a distance from each lot boundary of at least 5m, and
- (g) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials, and
- (h) have a floor height not more than 1m above ground level (existing), and
- (i) if it is a roofed structure attached to a dwelling—not extend above the roof gutter line of the dwelling, and
- (j) be no higher than 3m at its highest point above ground level (existing), and
- (k) if it is connected to a fascia—be connected in accordance with a professional engineer's specifications, and
- (l) be constructed or installed so that any roofwater is disposed of into an existing stormwater drainage system, and
- (m) not interfere with the functioning of existing drainage fixtures or flow paths, and
- (n) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material.
- (o) if it is constructed or installed in a heritage conservation area or a draft heritage conservation area—be located behind the building line of any road frontage.

Comment

Include E4 Environmental Living in clause 2.12(f). This would mean that the provisions for E4 Environmental Living are the same as for the land use zone RU1 Primary Production and R5 Large Lot Residential.

Barbecues and other outdoor cooking structures

The development must:

- (a) not have an area of more than 4m², and
- (b) be not higher than 1.8m above ground level (existing), and
- (d) be located at least 450mm from each lot boundary, and
- (e) not be used for commercial purposes.

Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses

The construction or installation of a cabana, cubby house, fernery, garden shed, gazebo or greenhouse is development specified for this code if it is.

- (1) The development must:

- (a) not be constructed or installed on or in a heritage item or a draft heritage item, or in an environmentally sensitive area, and
 - (b) not have a floor area of more than 50m², and
 - (c) be not higher than 3m above ground level (existing), and
 - (d) be located at a distance from each lot boundary of at least 5m, and
 - (e) not be a shipping container, and
 - (f) be constructed or installed so that roofwater is disposed of without causing a nuisance to adjoining owners, and
 - (g) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials if it is located on land in a residential zone, and
 - (h) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material, and
 - (i) if it is constructed or installed in a heritage conservation area or a draft heritage conservation area—be located in the rear yard, and
 - (j) if it is located adjacent to another building—be located so that it does not interfere with the entry to, or exit from, or the fire safety measures contained within, that building, and
 - (k) be a Class 10 building and not be habitable, and
 - (l) be located at least 1m from any registered easement.
- (2) There must not be more than 2 developments per lot.

Carports

(1) The development must:

- (a) not be constructed or installed on or in a heritage item or a draft heritage item, and
- (b) not result in a building classified under the *Building Code of Australia* as class 7a, and
- (c) not have a floor area more than 50m², and
- (d) be not higher than 3m above ground level (existing) or, if attached to an existing single storey dwelling, be not higher than the roof gutter line, and
- (e) be located at least 1m behind the building line of any road frontage, and
- (f) be located at a distance from each lot boundary of at least 5m, and
- (g) have 2 or more sides open and not less than one-third of its perimeter open, and
- (h) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials, and

- (i) not involve the construction of a new driveway or gutter crossing unless the consent of the relevant road authority for each opening of a public road required for the development has been obtained under the Roads Act 1993, and
 - (j) be constructed or installed so that any roofwater is disposed of into the existing stormwater drainage system, and
 - (k) if it is connected to a fascia—be connected in accordance with a professional engineer's specifications, and
 - (l) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material, and
 - (m) be located so that it does not reduce vehicular access to, or parking or loading or unloading on, or from, the lot.
- (2) There must not be more than 1 development:
- (a) per lot if there is a dwelling on the lot, or
 - (b) per lot or per each separate occupation of premises on the lot, whichever is the greater, in any other case.

Farm buildings (stockyards)

The construction or installation of a farm building that is a stockyard used for the purpose of an agricultural activity.

The development must:

- (a) not be constructed or installed on or in a heritage item or a draft heritage item or in an environmentally sensitive area, and
- (b) not have an area of more than 0.5ha, or
- (c) be located at least 20m from the primary road frontage of the lot and at least 10m from the other lot boundaries, and
- (d) not be constructed or installed within 50m of a dwelling on an adjoining property, and
- (e) be located at least 50m from a waterbody (natural).

Fowl and poultry houses

(1) The development must:

- (a) not be constructed or installed on or in a heritage item or a draft heritage item, and
- (b) be not higher than 3m above ground level (existing), and
- (b) not have a floor area of more than 15m², and
- (c) be located in the rear yard, and
- (d) not house more than 10 fowl or poultry, and
- (e) be located at least 3m from each lot boundary, and

- (f) if it houses fowls (including guinea fowls) only—be located at least 4.5m from any dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food, and
 - (g) if it houses other types of poultry—be located at least 30m from any dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food, and
 - (h) be enclosed to prevent the escape of poultry, and
 - (i) be constructed or installed so that roofwater is disposed of without causing a nuisance to adjoining owners, and
 - (j) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials if it is located on land in a residential zone, and
 - (k) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material, and
- (2) There must not be more than 1 development per lot.

Rainwater tanks (below ground)

- (1) The development must:
- (a) not be constructed or installed on land that is identified on an Acid Sulfate Map as being Class 1–5, and
 - (b) not be constructed or installed on land that is identified as an environmentally sensitive area, and
 - (c) be fitted with a first-flush device that causes initial run-off rainwater to bypass the tank, and
 - (d) have a sign affixed to it stating the water in it is rainwater, and
 - (e) be constructed or installed to prevent mosquitoes breeding in it, and
 - (f) have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners, and
 - (g) if it is constructed or installed on or in a heritage item or a draft heritage item—be located in the rear yard.
- (2) Pumps attached to the development must be housed in an enclosure that is soundproofed.

Shade structures of canvas, fabric, mesh or the like

The development must:

- (a) not have an area more than
 - (i) if for residential uses—20m², or
 - (ii) if it is constructed or installed for the purposes of any other use—30m², and

- (b) not cause the total area of all such structures on the lot to be more than 15% of the ground floor area of all buildings on the lot, and
- (c) not be higher than 3m from ground level (existing), and
- (d) be located at a distance from each lot boundary of at least 5m, and
- (e) be located behind the building line of any road frontage, and
- (f) to the extent it is comprised of metal components—be constructed of low reflective, factory pre-coloured materials, and
- (g) if it is connected to a fascia—be connected in accordance with a professional engineer's specifications, and
- (h) not interfere with the functioning of existing drainage fixtures or flow paths, and
- (i) if it is located on bush fire prone land and is less than 5m from a dwelling—be constructed of non-combustible material, and
- (k) if it is constructed or installed on or in a heritage item or a draft heritage item or in a heritage conservation area or a draft heritage conservation area—be located in the rear yard.

Tennis courts

- (1) The development must:
 - (a) not be constructed or installed on or in a heritage item, a draft heritage item, a heritage conservation area or a draft heritage conservation area or in an environmentally sensitive area
 - (b) be for residential uses only and associated with a dwelling, and
 - (b) be located behind the building line of any road frontage, and
 - (c) not have lighting, and
 - (d) not require cut or fill more than 600mm below or above ground level (existing), and
 - (e) have a setback from a side or rear boundary of at least 5m.
- (2) There must not be more than 1 development per lot.

2. Complying development in E4 Environmental Living

Clause 3.1 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* lists the land use zones that the Rural Housing Code (the erection of one and two storey dwellings and ancillary development such as swimming pools and outbuildings in rural areas) applies to. The land use zones in the Palerang local government area that the Rural Housing Code applies to are RU1 Primary Production and R5 Large Lot Residential. However, it should be noted that clause 3A.2(2) states that a dwelling cannot be erected under the Rural Housing Code if the lot is less than the minimum lot size for the erection of a dwelling under the *Palerang LEP 2014*. It is considered that the Rural Housing Code provisions are suitable for the land use zone E4 Environmental Living as

Palerang Council has used the E4 Environmental Living zone in the *Palerang PLEP 2014* for land that has traditionally been referred to as 'rural residential' due to the absence of a standard instrument land use zone that is directly equivalent to the repealed *Yarrowlumla LEP 2002* 1(d) Rural Residential zone and the repealed *Tallaganda LEP 1991* 1(c) Rural Small Holdings zone.

It is recommended that the erection of new single and two storey dwellings within building envelopes be complying development. If the lot does not have a building envelope a development application will be necessary. This will assist in managing lots that may contain areas of native vegetation, Aboriginal cultural heritage and areas that should be avoided such as watercourses.

It is proposed to insert the following provisions in schedule 3 of the PLEP 2014:

New single storey and two storey dwelling houses

- (1) The erection of a new single storey or two storey dwelling house is development specified for this code if the development is erected on a lot in Zone E4 wholly within a building envelope created under section 88B of the *Conveyancing Act 1919*.
- (2) This clause does not apply if the size of the lot is less than the minimum lot size for the erection of a dwelling house under the environmental planning instrument applying to the lot except if the lot is a lot resulting from a subdivision for which development consent (or equivalent) was granted before the *Palerang Local Environmental Plan 2014* commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement or if the lot is a lot created as a result of clause 4.1A of the *Palerang Local Environmental Plan 2014* and on which the erection of a dwelling is permissible.

Alterations or additions to existing single storey and two storey dwelling houses

- (1) Alterations or additions to an existing single storey or two storey dwelling house or the addition of a second storey to an existing single storey dwelling house is development specified for this code if the development is erected on a lot in Zone E4.
- (2) Subclause (1) does not include development specified in the Housing Alterations Code.

Ancillary development

- (1) The erection of new ancillary development, or alterations or additions to existing ancillary development, is development specified for this code if the development is ancillary to a dwelling house and erected on a lot in Zone E4.
- (2) Subclause (1) does not include development specified in the Housing Alterations Code.

Maximum heights of dwelling houses and outbuildings

- (1) The height of a dwelling house or the alterations and additions to an existing dwelling house on a lot in Zone E4 that has an area of at least 4,000m² must not be more than 10m above ground level (existing):
- (2) The height of an outbuilding, or of the alterations and additions to an existing outbuilding, must not be more than:
 - (a) if the outbuilding is located on a lot in Zone E4 that has an area of at least 4,000m² and the outbuilding is not a farm building or shed—4.8m above ground level (existing), or
 - (c) if the outbuilding is a farm building or shed—7m above ground level (existing).
- (3) The highest point of a dwelling house or the alterations and additions to an existing dwelling house referred to in subclause (2) must be at least 5m below the highest ridgeline of any hill within 100m of the dwelling or alteration

3. Exempt development in RU5 Village

The aim of the amendment is to have the same effect as would be achieved by amending the Exempt and Complying SEPP to include RU5 Village zone in clause 2.33 of the SEPP. In the SEPP the RU5 Village land use zone is considered a rural land use zone and consequently the rural fencing clauses 2.35 and 2.36 apply. However, it is suggested that clauses 2.33 and 2.34 are more appropriate for the RU5 Village land use zone. For example clause 2.36(1)(c) only allows post and wire or post and rail fences as exempt development whereas the clauses relating to residential land use zones provides opportunity for the use of fencing materials that are common in residential areas.

It is proposed to insert in schedule 3 of the PLEP 2014 clauses similar to the residential fencing clauses of the Exempt and Complying SEPP

Fences (RU5 Village zone)**Specified development**

The construction or installation of a fence on land within Zone RU5, is development specified for this code if it is not constructed or installed:

- (a) on a lot, or along a common boundary of a lot, that contains a heritage item or a draft heritage item, or
- (b) along the boundary of, or within the setback area of, a primary or secondary road within a heritage conservation area or draft heritage conservation area, or
- (c) on a flood control lot, or
- (d) on land that is identified as being in a foreshore area.

Note. If the fence is a dividing fence, the *Dividing Fences Act 1991* also applies.

Development standards

- (1) The standards specified for that development are that the development must:
 - (a) not be higher than 1.8m above ground level (existing), and
 - (b) not be of masonry construction to a height that is more than 1.2m above ground level (existing), and
 - (c) if it includes an entrance gate—not have a gate that opens outwards, and
 - (d) if it is located in a core koala habitat or potential koala habitat within the meaning of *State Environmental Planning Policy No 44—Koala Habitat Protection* or in a movement corridor used by koalas—be constructed or installed in accordance with any relevant council policy or guideline under that Policy, and
 - (e) if it is located on bush fire prone land—be constructed of non-combustible materials or hardwood, and
 - (f) if it is constructed of metal components—be of low reflective, factory pre-coloured materials, and
 - (g) not be an electrical fence or use barbed wire.
- (2) Despite subclause (1), any fence located along the boundary of, or within the setback area to, a primary or secondary road must:
 - (a) not be more than 1.2m above ground level (existing), and
 - (b) be open for at least 20% of the area of the fence that is more than 400mm above ground level (existing), with any individual solid element of the fence above this height being no more than 350mm in width with a minimum aperture of 25mm.
- (3) If a lot has a frontage to a secondary road or roads, subclause (2) only applies to 50% of the length of all contiguous secondary road boundaries, measured from the corner with the primary road boundary.
- (4) Subclause (2) (b) does not apply to the part of the fence along the side boundary and within the setback area to the primary road.
- (5) Despite subclauses (1) and (2), if the fence is erected on a sloping site and stepped to accommodate the fall in the land:
 - (a) a fence that is required to be not more than 1.2m above ground level (existing), must not be more than 1.5m above ground level (existing) at each step, and
 - (b) a fence that is required to be not more than 1.8m above ground level (existing), must not be more than 2.2m above ground level (existing) at each step.

4. Complying development in RU1 Primary Production

Clause 3A.2(2) of the *State Environmental Planning Policy (Exempt and Complying Development Codes)* only allows the erection of new single and two storey dwellings on lots that meet the minimum lot size of the *Palerang LEP 2014*. The ability to erect a

dwelling on a lot zoned RU1 Primary Production may occur through either the lot meeting the minimum lot size requirements, the lot having been created by subdivision for residential purposes (either through the use of an 'averaging' or the former 'concessional' lot subdivision provision) or by being a local environmental plan 'holding'. Where lots with an ability to erect a dwelling exist because of the last two provisions they will commonly be smaller (for example 8 hectares) than the minimum lot size required to erect a dwelling. It is suggested that complying development be permissible on lots that have been created by subdivision where they have a building envelope. However, it is considered inappropriate to allow complying development on lots that have the ability to erect a dwelling on them through a local environmental plan 'holding' as it can be difficult to determine if a 'holding' exists and generally Council assistance is required. As outlined above in relation to building envelopes and the E4 land use zone, the erection of a dwelling within a building envelope will minimise undesirable impacts on natural resources and Aboriginal cultural heritage.

The planning proposal process

A planning proposal is a document that explains the intended effect of the proposed local environmental plan or amendment, provides the justification for making it and facilitates the process. The intention of the gateway process is to allow the proposal to be reviewed at an early stage so that a decision whether to proceed can be made; before significant resources are committed. The process is outlined below:

- Council determines whether it supports the planning proposal
- If the planning proposal is supported, it is forwarded to the Minister of Planning and Environment for a Gateway Determination
- If the Gateway Determination permits the planning proposal to proceed, the planning proposal will be sent to relevant government agencies for comment and exhibited for the period stated on the Gateway Determination
- Submissions from the exhibition will be considered by Council and the Department of Planning and Environment

Further information on the process can be found in the NSW Department of Planning and Infrastructure documents *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Only the planning proposal and supporting documents are exhibited. The written legal instrument (draft amending local environmental plan) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister or her delegates. The local environmental plan takes effect when it is published on the NSW government legislation website.

It is possible under the *NSW Environmental Planning and Assessment Act 1979* for Council to undertake much of this process under delegation. The Department of Planning and Environment will advise Council whether the process is to be undertaken under delegation.

Financial considerations

Council staff have prepared the planning proposal and the report to Council. If the proposal is supported by Council and it receives a Gateway Determination, staff will be required to manage the consultation with government authorities, public exhibition and legislative process associated with preparing the local environmental plan.

Policy implications

The Palerang Council *Community Strategic Plan 2014-2024* Focus Area 2 – Local Economy lists one of Council's roles as being to improve planning processes to facilitate the local economy. It is suggested that reducing the need for a development application for minor types of development will encourage development which in turn may provide opportunities for local business.

Social implications

Exempt development does not require the payment of development application fees, this will be a saving for business and households. This has social implications as the savings made by individuals and households can be used for other purposes.

Environmental considerations

There is a small risk that native vegetation, water courses and sediment management will not be considered when exempt and complying development is being undertaken as it is the responsibility of those undertaking the work to assess these rather than Council who may place conditions of consent in relation to the management of these assets on a development application.