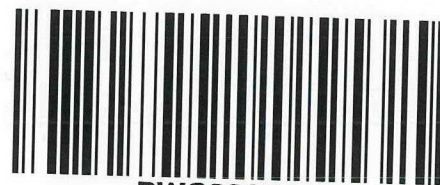


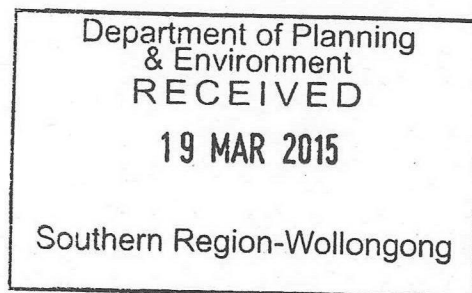
# PALERANG COUNCIL



Contact Person: Sue Robb  
File: PROJ0035/11

10 March 2015

Mr Brett Whitworth  
General Manager, Southern Region  
NSW Department of Planning and Environment  
PO Box 5475  
Wollongong NSW 2520



Dear Mr Whitworth

**Re: PLANNING PROPOSAL - EXEMPT AND COMPLYING DEVELOPMENT IN THE LAND USE ZONES E4 ENVIRONMENTAL LIVING, RU5 VILLAGE AND RU1 PRIMARY PRODUCITON**

At its meeting of 5 March 2015, Council resolved to:

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*.

The planning proposal and report to Council are attached. The minutes of Council's meeting are not yet available but I can advise that the recommendation was carried unanimously.

If you wish to discuss this matter please contact Sue Robb of Council's Planning and Environment Division on 6238 8111 or at [sue.robbs@palerang.nsw.gov.au](mailto:sue.robbs@palerang.nsw.gov.au).

Yours sincerely

**John Wright**  
Director of Planning and Environmental Services

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## Attachment 1: Planning Proposal

### 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**

The planning proposal concerns the amendment of provisions relating to exempt and complying development in the land use zone E4 Environmental Living, exempt development in land use zone RU5 Village and complying development in RU1 Primary Production.

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.

A review of the exempt and complying provisions 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, 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.

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 cannot be undertaken in any land use zone where the land is critical habitat, a wilderness area that is identified under the *Wilderness Act 1987*, where there is an item listed on the State Heritage Register (if it is mapped on the part not affected by the listing), is the subject of an interim heritage order under the *Heritage Act 1977* or is a heritage item listed in the *Palerang Local Environmental Plan 2014*.

To enable the proposed amendments to occur, it is necessary to amend schedules 2 and 3 of the *Palerang Local Environmental Plan 2014*.

### **Summary of proposed amendments** (see Attachment 1 for details)

#### ***E4 Environmental Living exempt development***

- Aerials, antennae and communication dishes
- Animal shelters
- Aviaries
- Balconies, decks, patios, pergolas, terraces and verandahs
- Barbecues and other outdoor cooking structures
- Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses
- Carports
- Farm buildings (stockyards)
- Fowl and poultry houses
- Rainwater tanks (below ground)
- Shade structures of canvas, fabric, mesh or the like
- Tennis courts

#### ***E4 Environmental Living complying development***

- New single storey and two storey dwelling houses
- Alterations or additions to existing single storey and two storey dwelling houses
- Ancillary development

- Maximum heights of dwelling houses and outbuildings

### ***RU5 Village exempt development***

- Fences in residential zones

### ***RU1 Primary Production complying development (houses and ancillary development)***

- Small lots created through subdivision using 'averaging' or 'concessional' lot provisions

## **Part 1 Intended outcome**

There are three intended outcomes of this planning proposal:

- to allow a wider range of land uses to be exempt and complying development in E4 Environmental Living. This includes the erection of new one or two storey dwellings as complying development
- to allow residential type fencing as exempt development in the land use zone RU5 Village
- to allow the erection of new one or two storey dwellings and ancillary development as complying development on lots created by subdivision for residential purposes

## **Part 2 Explanation of provisions**

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* allows a range of exempt development and the erection of new one or two storey dwellings and ancillary development associated with a dwelling as complying development in RU1 Primary Production and R5 Large Lot Residential land use zones (provided the minimum lot size requirements are met) but not the land use zone E4 Environmental Living. To allow a greater range of exempt and complying development in the land use zone E4 Environmental Living either the *Palerang LEP 2014* or the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* will need to be amended.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* does not permit the erection of residential type fences in the land use zone RU5 Village as exempt development. To allow residential type fencing in RU5 Village it is necessary to amend the *Palerang LEP 2014* or the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

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*. To allow complying development on lots less than the minimum lot size that have been created for residential purposes by subdivision it is necessary to amend the *Palerang LEP 2014* or the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.



Refer to Attachment 1 for more detail on the proposed amendments.

### **Part 3 Justification**

#### **Section A                Need for the planning proposal**

##### **Question 1    Is the planning proposal a result of any strategic study or report**

The planning proposal is not part of a strategic study or a report.

##### **Question 2        Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way**

The planning proposal is the only means available to Council to achieve the intended outcomes, but amendment of the SEPP (Exempt and Complying Development Codes) 2008 by the Department of Planning and Environment is an alternative.

#### **Section B                Relationship to strategic planning framework**

##### **Question 3        Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy**

The planning proposal does not relate to a regional or sub-regional strategy.

##### **Question 4(a)    Is the planning proposal consistent with a council's local strategy or other local strategic plan**

Palerang Council does not have a local strategic plan.

##### **Question 4(b)    Is the planning proposal consistent with the local council's community plan, or other local strategic direction**

The planning proposal does not relate to the Palerang Community Strategic Plan 2013-32.

##### **Question 4(c)    If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided**

There are no interests to be extinguished.

##### **Question 4(d)    the concurrence of the landowner, where the land is not owned by the relevant planning authority**

Not applicable

**Question 5 Is the planning proposal consistent with the applicable State Environmental Planning Policies**

The planning proposal is consistent with the State Environmental Planning Policies.

**Question 6 Is the planning proposal consistent with applicable Ministerial Directions**

	<i>Name of direction</i>	<i>Consistent with the direction</i>
1.2	Rural Zones	Yes. The planning proposal is not rezoning land and will not increase the density of land
1.5	Rural Lands	Yes. The planning proposal is consistent with the <i>State Environmental Planning Policy (Rural Lands) 2008</i> as it does not affect the viability of agricultural or environmental land and is not amending the minimum lot size.
2.1	Environmental Protection Zones	Yes. The planning proposal does not reduce the environmental protection standards for the affected land.
2.3	Heritage Conservation	Yes. The <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> contains provisions relating to the management of heritage
2.4	Recreation vehicle areas	Yes. The planning proposal does not enable recreation vehicles to be used in an environmental protection zone.
3.2	Caravan Parks and Manufactured Home Estates	Yes. The Planning Proposal does not involve any land use zone amendment in relation to a caravan park or manufactured home estates
3.3	Home Occupation	Yes. The Planning Proposal does not impact on the ability to undertake a home occupation
4.3	Flood Prone Land	Yes. The <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> contains provisions relating to the management of flood planning land
4.4	Planning for Bushfire Protection	Yes. The <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> contains provisions relating to the management of bush fire prone land
5.1	Implementation of Regional Strategies	Yes. The planning proposal is consistent with the Sydney-Canberra Corridor Regional Strategy
5.2	Sydney Drinking Water Catchment	Yes. <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>



6.1	Approval and Referral Requirements	Yes. There will be no requirement for concurrence, consultation or referral of a development application to a government agency
6.2	Reserving Land for Public Purposes	Yes. The Planning Proposal does not the reservation of land for a public purpose

## **Section C Environmental, social and economic impact**

### **Question 7 Is there any likelihood that critical habitat or threatened species populations or ecological communities or their habitats will be adversely affected as a result of the proposal**

There is no critical habitat as listed in NSW legislation in the Palerang local government area. Through the proposed requirement that dwellings be erected within building envelopes, the risk of an adverse impact on native flora and fauna is decreased. Additionally, the *State Environmental Planning Policy (Exempt and Complying Development Codes)* includes provisions relating to exempt development and the removal of trees and vegetation (clause 1.16(3)(b)).

The *State Environmental Planning Policy (Exempt and Complying Development Codes)* contains provisions (clauses 1.17A-1.19) in relation to heritage, natural assets, ANEF contours 25 and higher and unsewered land in drinking water catchments.

### **Question 8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed**

No

### **Question 9 Has the planning proposal adequately addressed any social and economic effects**

It is suggested that the opportunity for some residential development to be undertaken as exempt or complying development may reduce the cost of development, for example the need to pay development application fees to council for exempt development.

## **Section D State and Commonwealth interests**

### **Question 10 Is there adequate public infrastructure for the planning proposal**

Not applicable

**Question 11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination**

The NSW or Commonwealth public authorities have not been consulted.

The Planning Proposal will be referred to the NSW Rural Fire Service.

**Part 4 Mapping**

There will be no mapping required.

**Part 5 Community consultation**

The Planning Proposal will be exhibited for 28 days as it affects a large area of land.

**Part 6 Project timeline**

<i>stage</i>	<i>completion date</i>
Anticipated commencement date (date of Gateway Determination)	Early April 2015
Anticipated timeframe for government agency consultation	end of May 2015
Anticipated commencement and completion dates for public exhibition period	end of June 2015
Anticipated timeframe for consideration of submissions	mid July 2015
Anticipated date of report to Council	Early August 2015
Anticipated date of submissions and Council report and recommendation to the NSW Department of Planning and Environment to finalise the draft local environmental plan	Mid October 2015
Amended local environmental plan gazetted	Mid November 2015



## ATTACHMENT 1 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**

<b>PROPOSED AMENDMENTS FOR EXEMPT DEVELOPMENT IN E4 ENVIRONMENTAL LIVING ZONE</b>		
<b>Exempt and complying SEPP provision</b>	<b>Current restrictions for E4 zone</b>	<b>Proposed change for E4 zone</b>
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 <sup>2</sup>	Allow maximum 30 m <sup>2</sup> 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 <sup>2</sup> and can be as close as 900 mm from boundary	Allow maximum 50 m <sup>2</sup> and no closer than 5 m from boundary as in RU1 and R5
Subdivision 10 Carports	Maximum 25 m <sup>2</sup> and can be as close as 900 mm from boundary	Allow maximum 50 m <sup>2</sup> 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 10m<sup>2</sup>, 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 50m<sup>2</sup>, 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 30m<sup>2</sup>, 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 25m<sup>2</sup>, 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 300m<sup>2</sup>—15% of the ground floor area of the dwelling on the lot, or
  - (ii) for a lot 300m<sup>2</sup> or less—25m<sup>2</sup>, 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.

### **Barbecues and other outdoor cooking structures**

The development must:

- (a) not have an area of more than 4m<sup>2</sup>, 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 50m<sup>2</sup>, 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 50m<sup>2</sup>, 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 15m<sup>2</sup>, 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—20m<sup>2</sup>, or
  - (ii) if it is constructed or installed for the purposes of any other use—30m<sup>2</sup>, 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 4,000m<sup>2</sup> 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 4,000m<sup>2</sup> 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 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.