



PLANNING SYSTEM

State environmental planning policies

Circular	PS 09-006
Issued	27 February 2009
Related	PS 09-004; 09-005, LEP practice note PN 09-001

SEPP (Exempt and Complying Development Codes) 2008 – Amendment No. 1

The purpose of this circular is to advise councils, accredited certifiers and the community of the matters that have been identified as needing to be changed since the gazettal of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 on 12 December 2008 and which have been addressed in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No. 1).

Introduction

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) was gazetted on 12 December 2008 and commences on 27 February 2009. A number of matters have been identified as needing to be changed since the Codes SEPP was gazetted. These matters have been addressed in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No. 1), which is being published on the NSW legislation website on 27 February 2009 so that the changes are incorporated in the Codes SEPP from its commencement.

Planning Circular PS 09-004 provides advice on the Codes SEPP. It outlines:

- the relationship between the Codes SEPP and council's existing exempt and complying local environmental plans (LEPs) and development control plans (DCPs)
- the local exclusions and variations process
- equivalent zones
- implications of the Codes SEPP on LEPs prepared using the Standard Instrument for Principal LEPs
- implications for comprehensive LEPs and the effect of the Codes SEPP after 27 February 2009 on councils' exempt development provisions
- changes to the Local Development Performance Monitoring program to monitor the effectiveness of the Codes SEPP

- the education and training program for practitioners, councils and the community
- future amendments to the Codes SEPP.

Planning Circular PS 09-005 outlines the provisions of the *Environmental Planning and Assessment Act 2008* and the Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009 that commenced on 27 February 2009.

In addition LEP Practice Note PN 09-001 sets out what changes are required to Standard Instrument LEPs that will be published on the NSW legislation website after the Codes SEPP commences.

Amendments to the Codes SEPP

Amendments that have been made which are addressed in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No. 1) are identified below.

Foreshore Building Line

The Codes SEPP will restrict development of certain nominated exempt development types, for example cabanas, cubby houses, decks, patios and pergolas, forward of the foreshore building line. In addition, complying development will not be permitted on land affected by a foreshore building line referred to in an environmental planning instrument, or in a DCP (adopted prior to 12 December 2008).

Equivalent zones

The Codes SEPP relies on the land use zones established under the Standard Instrument for LEPs. However in circumstances where council has not yet made a LEP in accordance with the Standard Instrument, the Codes SEPP provides that complying development can be carried out in an equivalent zone.

The Codes SEPP includes a guide to determining the equivalent zones and a new provision is being introduced to allow the Director-General to certify that a zone in an environmental planning instrument is or is not an equivalent zone for the purposes of the Code SEPP.

Tables listing the equivalent zones, by local government area, will be made publicly available on the Department of Planning's website until such time as councils LEPs are prepared in accordance with the Standard Instrument. The Department welcomes feedback from councils on the information contained in the tables by **Friday, 13 March 2009**.

Development around the Siding Spring Observatory

Currently the local government areas of Coonamble, Warrumbungle, Gilgandra and Dubbo within Orana Regional Environmental Plan No 1—Siding Spring (REP) are excluded from the application of certain parts of the Codes SEPP due to impacts of light emissions on the operations of the Observatory. As a result of representations made by the Australian National University who own the Observatory, affected local councils and practitioners, changes to the Codes SEPP will mean that exempt and complying development will not apply in the area 18 kilometres around the Observatory within the Coonamble, Warrumbungle, Gilgandra and Dubbo local government areas. Exempt development (other than skylights and roof windows) under the Codes SEPP can be carried out within the remaining parts of the REP.

Complying development cannot be carried out under the Codes SEPP within the remaining parts of the Coonamble, Warrumbungle, Gilgandra and Dubbo local government areas. However, complying development can be carried out under councils' existing complying development provisions (which contain provisions which seek to reduce light emissions).

Further consultation with all stakeholders will be undertaken with the view to amending the Codes SEPP to achieve exempt and complying development standards of the Codes SEPP within the remaining areas of Coonamble, Warrumbungle, Gilgandra and Dubbo local government areas whilst maintaining the emission standards required by the Observatory.

Warringah local government area excluded

The land to which the Warringah Local Environmental Plan 2000 applies has been excluded from the Codes SEPP. The change is necessary because the Warringah LEP 2000 is unique in that it does not zone land, and this therefore creates legal uncertainty about the operation of the Codes SEPP across the entire Warringah local government area.

Revised definition of building height

Feedback from the NSW Housing Code Implementation Workshops in February 2009 indicated that the definition of building height in the Standard Instrument was unclear for a large number of practitioners. A new definition of building height will therefore be introduced. The new definition makes it clear that the height of a building is measured from a point from existing ground level to the highest point of the building immediately above.

Removal of trees

The new provision clarifies that where complying development involves the removal of a tree, a permit (under a tree preservation order) or development consent, which is under a LEP, must be obtained prior to the issuing of a complying development certificate.

Environmentally sensitive areas

The definition of 'environmentally sensitive area' has been extended to cover all land reserved under the *National Parks and Wildlife Act 1974*, including land that has been acquired under Part 11 of that Act. This change has previously been agreed with the Department of Environment and Climate Change.

Changes to the development standard for exempt development

A number of development standards for exempt development types have been amended to reduce the potential for environmental impact. These include reducing the height of detached balconies, decks and pergolas and requiring that retaining walls be located at least 50 metres from a waterway.

Insulation

The new provisions allow the installation of insulation to be carried out on existing dwellings as exempt development. The standards for insulation are determined by the Building Code of Australia. These provisions support the Commonwealth Government's initiatives in relation to energy efficiency.

Solar water heaters and photovoltaic systems

The provision relating to exempt development has been removed. State Environmental Planning Policy (Infrastructure) 2007 already allows for solar water heaters and photovoltaic systems to be installed as either exempt or complying development. (See clauses 37 and 39 of that Policy.)

Drainage

New provisions have been introduced to deal with the situation where stormwater drainage does not require an approval under section 68 of the *Local Government Act 1993*. The provision requires that the stormwater drainage must be constructed in accordance with council's DCP for stormwater drainage.

Cut-and-fill construction

Changes have been made to clarify and remove onerous restrictions which apply to cut-and-fill construction as complying development under the Codes SEPP. These changes have been carried out to more easily enable slab-on-ground method of

construction as complying development under the Codes SEPP.

Other minor matters

The proposed amendments to the Codes SEPP correct a number of incorrect cross-references and other minor drafting anomalies in the Codes SEPP. Examples include an incorrect reference to an Australian Standard for the construction of off-street car parking and street set back and to land zoned RU5 in the General Housing Code.

Further information

A copy of the Codes SEPP and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No. 1), *Guide to complying development for detached housing*, facts sheets, frequently asked questions, education and training presentations, specific practice notes and planning circulars relevant to the Codes SEPP, tables of equivalent zones in all local government areas and the nominations forms for local exclusions and variations may be accessed on the Department's website at www.planning.nsw.gov.au/housingcode

For further information about the Codes SEPP, please email planningreform@planning.nsw.gov.au or call the Department of Planning's Information Centre on Freecall 1300 305 695 or 02 9228 6333.

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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