

PLANNING SYSTEM

Exempt and Complying Development

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Related	PS 09-016 and PS 13-004

Exempt and Complying Development - changes to the SEPP and other environmental planning instruments

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial Development and Other Matters) 2013 (the amending SEPP) expands the types of exempt and complying development in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the SEPP).

The purpose of this circular is to provide councils, accredited certifiers and the community with advice about the new development types, standards and conditions of approval. The amendments to the SEPP and other State Environmental Planning Policies (SEPPs) commence on 22 February 2014.

Why the amendments have been made

The amending SEPP follows more than two years of public consultation and technical review by the department and key technical experts. The amendments are identified as being required before the new planning system is implemented.

The amending SEPP will introduce new complying development codes for commercial and industrial development, a new fire safety code and two new exempt development codes. Significant amendments to existing development standards for exempt and complying development have also been made.

Repeal and amendments to other instruments

The amending SEPP will repeal four existing SEPPs and exempt and complying development provisions in five other SEPPs, and make consequential amendments to 19 SEPPs.

This will shorten development controls in existing SEPPs by more than 100 pages, as many exempt and complying development provisions will be consolidated into the Codes SEPP.

The amending SEPP transfers development types and standards for temporary structures such as tents, marquees and booths for private and community events, into the SEPP as exempt and complying development. These are currently included within the SEPP (Temporary Structures) 2007.

The SEPP (Temporary Structures) 2007 has been renamed as SEPP (Miscellaneous Consent Provisions) 2007 and contains provisions for temporary structures, subdivision, the demolition of a building or work, certain changes of use and fire alarm link communication works, to be development permissible with consent. These requirements apply only to local environmental plans (LEPs) that have not been made under the standard instrument.

Exempt and complying development provisions will continue to operate under:

- SEPP (Affordable Rental Housing) 2009
- SEPP (Infrastructure) 2007
- SEPP (Mining) 2007, and
- a number of other SEPPs that apply only to specified sites or areas, and
- Council LEPs that specify types of exempt and complying development not dealt with under the SEPP.

New complying development codes

Commercial and industrial development

A complying development code has been introduced for new industrial buildings and additions to existing commercial and industrial buildings, and the existing code for alterations to commercial and industrial buildings has been replaced. The new codes are:

- Commercial and Industrial Alterations Code, and
- Commercial and Industrial (New Buildings and Additions) Code.

The New Buildings and Additions Code allows for construction of new industrial buildings up to 20,000m² in area and additions to existing industrial buildings up to 5,000m² as complying development on industrial zoned land.

The code also allows additions to the rear of existing commercial premises up to 50 per cent of the existing floor area, but no more than 1,000m² for retail uses and 2,500m² for commercial offices and businesses.

Development that requires clearing of more than 1,000m² of native vegetation will not be complying development.

New buildings and additions will be subject to the maximum height limit and the floor space ratio (FSR) specified in the council's LEP, or in cases where these are not specified, subject to a maximum height of 15m and a maximum FSR of 1:1.

Side and rear boundary setback and landscaping requirements apply to buildings and additions that adjoin residential zones. The setback requirements will vary depending on the height and area of the building. Landscaping is also required along street frontages and boundaries with residential and other properties. Conditions are to be imposed to ensure landscaping is maintained.

The Alterations Code allows for a wide range of internal alterations to most existing commercial and industrial uses, and expands the types of changes of use that can occur as complying development. These changes facilitate first use and the initial fit-out of buildings, and construction of minor ancillary development.

Change of use provisions allow for new uses that are of similar or lesser intensity to the current use. Issues such as hours of operation and car parking are determined by the approved development application (DA) for the current use. If the DA does not specify these, the SEPP provides appropriate standards to be met

New projecting wall and freestanding pylon signs are also specified as complying development under this code.

Fire Safety Code

A new Fire Safety Code will enable alterations to hydraulic fire safety systems, other fire safety systems and installation and conversions of fire alarm communication links to be approved as complying development more efficiently and without the need for a fire safety schedule.

Existing provisions in the SEPP for the installation of sprinkler systems in a residential care facility will be relocated to the Fire Safety Code.

Conditions of approval

The amending SEPP revises and standardises the conditions of approval for complying development to minimise impacts on the environment and prevent damage to adjoining areas during construction. Conditions appropriate to the type of development under each complying development code have been specified in separate schedules at the end of the SEPP.

Amendments to existing complying development controls

Dwelling houses and ancillary development

Significant changes to the General and Rural Housing Codes as well as some changes to the Housing Alterations Code have been made. These amendments include: ‘

- Substantially improved privacy protection by requiring privacy screens on the edge of balconies and other outdoor areas when they are located close to adjoining property boundaries at certain heights.
- Windows in elevated habitable rooms will require privacy screens if they are close to the boundary, and these can be in the form of translucent glass. Privacy screens will not be required on bedroom windows less than 2m² in area.
- Removal of trees up to 8m in height that are not on a significant tree register will be allowed if the proposal is for a new dwelling house. However, new buildings will require a 3m separation to trees that are required to be retained, and new tree protection measures will be required for the period of construction.
- Excavation to a maximum depth of 3m will be permitted for the provision of a basement or basement garage, which is to be counted as a storey. Excavation will require a setback from property boundaries depending on the depths proposed and the construction of retaining walls or structural supports to ensure there is no impact on adjoining sites.
- Built to boundary standards have been revised to allow dwellings to be built to one side boundary for lots between 10m and 12.5m with a maximum 10m length for a wall on that boundary, and for boundary walls on other smaller built to boundary lots to be 20m or 50 per cent of the lot's depth.
- Detached studios are allowed in connection with a dwelling house up to a maximum size of 35m² on lots more than 350m², and to a maximum size of 20m² on lots between 200m² and 350m². Studios must not be more than 3.6m in height or 6m if located adjacent to a rear lane.
- Existing maximum floor area standards have been amended to specify that the floor area calculation must include the area of the dwelling house and any secondary dwelling, detached studio or basement that is on the lot.

Other residential complying development

Amendments have been made to allow additional types of works as complying development to other forms of residential accommodation such as residential flat buildings. These works include:

- Internal alterations to the common areas of residential buildings such as building foyers or communal areas, and
- Minor external alterations to the first three habitable storeys of residential buildings (not including any new balconies), but not to buildings in a draft heritage conservation area or heritage conservation area, and
- Alterations for the provision of services and utilities, which must be within the height restrictions of the relevant LEP.

Other new types of complying development

Home businesses that manufacture food and also meet the requirements of the NSW Food Authority can now be approved as complying development.

Repair, replacement and maintenance work to lawful waterway structures, including the removal or replacement of damaged piles, is made complying development. Strict design guidelines and protection measures for the waterway are required.

Subdivision

Strata subdivision of certain developments where there are several dwellings at ground level (multi-dwelling housing) is now specified as complying development.

Exempt development

Advertising and signage

The new advertising and signage exempt development code will enable building identification signs and five types of common building and business identification signs to be erected without approval. These include wall signs, fascia signs, under awning signs, top hamper signs and window signs.

Signage will be appropriately managed with not more than three signs for a building with a single commercial tenant and no more than six signs for any building. The locations for signs on buildings are clearly specified, and development standards limit the size of signs and avoid potential impacts on adjoining residential properties, or on the public footpath or roadway.

Other common types of signage are also specified as exempt development if specific standards are met. These include internal signs, replacing existing signs, community notices and public information signs, temporary event signs, illuminated real estate signs and election signs.

Temporary uses and structures

The new temporary uses and structures exempt development code includes existing development types and standards currently in the General Exempt

Development Code, the SEPP (Major Development) 2005 and the SEPP (Temporary Structures) 2007.

The SEPP also provides practical flexibility for councils and other public authorities erecting temporary structures for events on land they manage.

New temporary development types include:

- 24-hour trading for unlicensed retail premises in a business zone for the two weeks preceding Christmas Day, and
- Extended trading hours for licensed premises, but only when special local, state or national events take place, and when extended hours are authorised under the Liquor Act 2007.

Changes to General Exempt Development Code

There have been significant changes to the General Exempt Development Code adding more development types.

- Outdoor dining on footpaths for food and drink premises and mobile food and drink outlets. These still require an approval from a council as the relevant roads authority and/or an approval under the Local Government Act 1993. Outdoor dining associated with a pub or small bar is not exempt development and mobile outlets on any private land are subject to restrictions on hours and other standards, and must comply with any relevant conditions of consent.
- Charity bins operated by an authorised entity under the *Charitable Fundraising Act 1991* where the bins are associated with commercial premises or a place of public worship with a limit of three bins per lot.
- Sculptures and artworks in specific locations that have approval from the owner of the land or under the *Roads Act 1993* or as long as they are not higher than 6m, or 3m in a residential zone.

Standards for existing exempt development types have also been amended to provide more flexibility in the application of the relevant standards:

- Standards for aerials, antennae and communication dishes have been consolidated into the SEPP. The new clause allows for a maximum of three aerials or antennae on any site, but only one free-standing antenna or mast which will be subject to maximum height and boundary setbacks standards.
- Changes of use have been expanded to cater for a wider range of uses including one type of place of public worship to another. Existing conditions related to hours of operation, car parking, traffic generation and waste management must be met for the new use.
- The realignment of boundaries in residential zones is restricted to a maximum 10 per cent change in the area of any lot. Existing provisions remain for rural/environmental zones.
- Provisions for fences, pathways and paving, hardstand spaces and earthworks have been

substantially rewritten to achieve more appropriate outcomes through:

- provisions that are easier to understand
 - more stringent requirements requiring drainage, soil erosion and runoff, and
 - protection of adjoining sites for earthworks and retaining walls
- Standards for exempt development types such as ATMs, awnings and security screens have been changed to allow more flexibility regarding location and other criteria.

Changes to where exempt and complying development can be carried out

Covenants, agreements and instruments

The amending SEPP introduces a clause suspending covenants, agreements and instruments that require compliance with standards more stringent than those in the SEPP. Covenants required by councils that seek to ensure development complies with its DCP controls will no longer apply. Other covenants imposed by a former owner for their benefit will still apply.

Protection of easements

The amending SEPP also introduces development standards for new dwelling houses or additions to existing dwelling houses, new commercial buildings or additions to existing commercial buildings and other types of ancillary development.

Heritage

On a site with a heritage item that does not encompass the entire site but is specifically mapped or described on the State Heritage Register in an environmental planning instrument, development may still be undertaken on those parts of the site that are not identified as the heritage item.

Additionally, some exemptions that apply under Section 57 of the *Heritage Act 1977* and allow minor development to occur on State Heritage Items will also be allowed under the Codes SEPP, where the development meets the development standards of either exempt or complying development.

Land based exclusions

The exclusion on exempt development being undertaken in environmentally sensitive areas has been removed as most exempt development involves only minor additions or changes to existing buildings. The exclusions on some specific development types being undertaken in environmentally sensitive areas has been retained for larger structures such as farm buildings or development such as driveways and tennis courts that may involve earthworks.

For other land-based exclusions where lots are only partially affected by the exclusion, the Codes SEPP will allow exempt and complying development on the parts of the lot that are not affected.

Local exclusions and variations

A number of requests from councils for local exclusions and variations have been included in the SEPP. These include requests from Bathurst, Bega, Lake Macquarie, Port Macquarie-Hastings, Singleton, Tamworth and Holroyd councils. Requests from Clarence Valley, Eurobodalla, Port Macquarie-Hastings, Sutherland, Warringah and Willoughby councils have also been addressed by new development types through changes to the development standards or terminology in the SEPP.

Equivalent zones

If a council's draft Standard Instrument local environmental plan has been exhibited for community consultation, the zoning in that plan is taken to be the equivalent zone for complying development under:

- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Infrastructure) 2007, and
- SEPP (Affordable Rental Housing) 2009

Savings provisions

Applications for complying development not determined when the amending SEPP is made must be determined as if the amendments had not commenced, and must include the relevant conditions in the unamended SEPP, and the amended EP&A Regulation.

For a development application for a secondary dwelling or group home made but not yet finally determined, under the savings provisions for the SEPP (Affordable Rental Housing) 2009, the consent authority to determine the application with respect to the new equivalent zone provisions as stated above.

Further information

Information about the changes to the Regulation, SEPP and other environmental planning instruments, including information sheets on specific changes, is available on the department's website at www.planning.nsw.gov.au/exemptandcomplying

For further information, please contact the NSW Department of Planning & Infrastructure's information centre on 1300 305 695. NSW Department of Planning & Infrastructure circulars are available from www.planning.nsw.gov.au

Authorised by:

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