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## Codes SEPP 2008 – Additional Codes

The State Environmental Planning Policy (Exempt and Complying Development Codes) Additional Codes 2010 (the Codes SEPP) is an integral component in simplifying the NSW planning system. The Codes SEPP is designed to allow low-impact, low-risk development to be carried out as complying development within appropriate areas. When the Codes SEPP was first introduced in 2008 it was made clear the policy would be expanded to cover additional low-risk and low-impact development types across the State.

This amendment increases the range of development types that can be undertaken as either exempt or complying development. This circular provides councils, accredited certifiers and the community with advice about these amendments and additions to the Codes SEPP, as well as associated amendments to the Environmental Planning and Assessment Regulation (2000).

### Introduction

State Environmental Planning Policy (Exempt and Complying Codes) Additional Codes 2010 (the Codes SEPP) expands and simplifies a number of existing Codes in the Codes SEPP. These are:

- Part 2 – General Exempt Development Code
- Part 3 – General Housing Code
- Part 4 – Housing Alterations Code.

In addition, a number of new Codes have been introduced to the Codes SEPP. These are:

- Part 3A – Rural Housing Code
- Part 4A – General Development Code
- Part 7 – Demolition Code.

These amendments introduce new forms of exempt and complying development, clarify definitions and make amendments to existing development standards to accommodate new lot sizes and development types. In addition, changes have been made to the land based exclusions to allow for exempt and complying development to be carried out in additional locations. Part 1 – General of the Codes SEPP has been substantially amended as a result of these changes.

A series of fact sheets are available on the Department's Housing Code website to assist council's and industry stakeholders to understand the changes.

Fact sheets are linked from this circular and are also available from:

<http://housingcode.planning.nsw.gov.au>

### Why the amendments have been made

The Codes SEPP allows for exempt and complying development in appropriate locations across all 152 councils in NSW, subject to compliance with appropriate standards. Exempt and complying development results in real time and cost savings for home owners and small business.

The Codes SEPP has been significantly expanded to encourage the further uptake of exempt and complying development across the State for low-risk and low-impact development.

To expand these benefits, the Codes SEPP has been amended to:

- include additional types of low-risk and low-impact developments as complying development
- reduce the number of lots that are excluded from the Codes SEPP
- make amendments to existing development standards to accommodate the new lot size.

### Overview of the amendments

State Environmental Planning Policy (Exempt and Complying Development Codes) Additional Codes 2010 (the SEPP amendment) amends and expands the Codes SEPP. It has been drafted in response to feedback, discussions with key stakeholders, submissions on discussion papers, and review of council exempt and complying development controls. The SEPP amendment

provides new Codes or amends existing provisions for the following sections:

## Part 1 – General

Part 1 – General of the Codes SEPP relates to the administrative and general requirements for lots under the Codes SEPP.

The following key changes, have been made to Part 1 of the Codes SEPP:

- the Codes SEPP now applies to:
  - Bathurst LGA and Warringah LGA
  - land to which the *Orana Regional Environmental Plan – No 1 Siding Springs* applies – excluding land within 18km of land owned by the Australian National University at Siding Spring
- changing the definition of *excluded land*, to vary the locations where exempt and complying development can take place
- extending the transition period for council's exempt and complying controls until 1 September 2011
- requiring the approval of the Mine Subsidence Board before lodging a Complying Development Certificate (CDC) in Mine Subsidence Areas
- removing minimum lot size requirements under an Environmental Planning Instrument (EPI) for the General Housing Code. This is retained for the Rural Housing Code
- clarifying that in 25 ANEF affected land, only new dwelling houses and additions are required to meet the construction requirements relating to noise attenuation
- allowing complying development on the part of the lot not affected by a land based exclusion under the Rural Housing Code
- allowing limited complying development in heritage conservation areas (not heritage items)
- allowing complying development to be carried out on low risk bush fire prone land
- allowing complying development to be carried out on low risk flood prone land
- excluding land from the Codes SEPP that is subject to a bio-banking agreement
- expanding the restriction on carrying out complying development on unsewered land within a drinking water catchment

Further details on all changes to Part 1 are set out in [Fact Sheet – General](#).

Councils will need to update s.149 certificates to reflect the changes that have been made to the Codes SEPP. The process for this is detailed in [Fact Sheet 12 – s.149 Certificates](#).

## Part 2 – General Exempt Development Code

Nine new exempt development forms have been introduced.

These development types are:

- emergency works and temporary repairs
- filming
- fuel tanks and gas storage
- solar hot water systems
- solar electricity generating systems
- minor subdivision works
- temporary structures and temporary alterations or additions to buildings or works, solely for filming purposes
- tennis courts
- tents or marquees used solely for filming purposes

These exempt development types have been included following community feedback and discussion with local government.

Standards for 12 exempt development types have been amended. These changes aim to protect the amenity of adjoining properties, provide minor increases in the size and types of exempt development, and increase the standards for rural zoned properties.

Bed and breakfast accommodation has been removed from the General Exempt Development Code. It is now a complying development type under the new Part 4A – General Development Code (See [Fact Sheet 6 – General Development Code](#)).

The changes to the General Exempt Development Code are detailed in [Fact Sheet 2 – General Exempt Development Code](#).

## Part 3 – General Housing Code

Significant amendments have been made to the General Housing Code. These changes allow:

- a new house, or alterations and additions to an existing house on lots greater than 200m<sup>2</sup> and with a lot width greater than 6m, and associated new development standards for these lots
- building walls to boundaries on lots less than 10 metres wide under certain conditions ([see Fact Sheet 9 – Built to boundary](#))
- building detached studios to rear laneways
- detached outbuildings in heritage conservation areas ([see Fact Sheet 8 – Heritage Conservation Areas](#))

A number of other amendments have been introduced. They include new methods of calculating the required side and rear setbacks,

new standards for garages and amendments to landscaped areas.

The amendments to the landscape area standards are consistent with the recommendations following a review of local council landscape area provisions for complying development. A copy of the landscape area review paper is available on the Department's Housing Code website.

For built to boundary walls, important protection measures have been introduced to protect the adjoining properties during excavation and construction.

All of the changes to the General Housing Code are detailed in [Fact Sheet 3 – General Housing Code](#).

### Part 3A – Rural Housing Code

A new Rural Housing Code has been introduced. This gives landowners in rural zones the option to erect new dwelling houses, as well as carrying out alterations and additions to existing dwellings, as complying development. Many of the standards developed are similar to those within the General Housing Code.

The Rural Housing Code is separated into two categories. The first is for R5 zoned lots smaller than 4000m<sup>2</sup>, for which the standards are consistent with those under the General Housing Code for lots over 1500m<sup>2</sup>. The second category is for lots above 4000m<sup>2</sup>. The key standards for these lots are as follows:

- the lot must meet the minimum lot size under the applicable EPI
- Maximum building height of 10m
- If located adjoining an intensive land use, such as intensive agriculture or a quarry, then a buffer of 250m is required between the property boundary of the intensive land use and the proposed complying development

This new code is detailed in [Fact Sheet 4 – Rural Housing Code](#).

### Part 4 – Housing Alterations Code

Changes have been made to the Housing Alterations Code. This includes a rename from the Housing Internal Alterations Code to the Housing Alterations Code. The code has been expanded to include minor external works to an existing dwelling house as complying development.

The main types of development covered by this code are:

- changes to an external wall, such as a door or window, as long as there is no increase in overall floor area
- attic conversions
- dormer windows or rear roof windows

Consistent with previous controls, no works can be undertaken on a draft or existing heritage item. However, minor external works can now be carried out on an existing dwelling in a draft or existing heritage conservation area.

These works must be at the rear of the dwelling house and at ground floor level, except where they are for an attic conversion or rear roof windows. In this case, any opening for an attic conversion must be located to the rear of the roof line and must be mounted flush with the roof.

External alterations can only be carried out on a dwelling house, whilst internal alterations can be undertaken on any dwelling type.

These changes are detailed in [Fact Sheet 5 – Housing Alterations Code](#).

### Part 4A – General Development Code

The General Development Code has been introduced to cover development types that can be undertaken as complying development, but do not fit under the other codes.

Only one development type, bed and breakfast accommodation, is currently included in this code. It has been removed as exempt development in order to allow a suitably qualified person to consider the requirements of the Building Code of Australia relating to the health and safety of occupants. This approach is consistent with the majority of local councils and under SEPP 60. This new code is detailed in [Fact Sheet 6 – General Development Code](#).

### Part 7 – Demolition Code

The existing demolition standards from individual codes have been transferred to a new Demolition Code. This code will allow the demolition of any development permissible under the Codes SEPP as complying development.

Demolition will be able to be carried out on a wider range of properties. Special controls have been developed for demolition in heritage conservation areas to ensure demolition work is limited to the extent necessary to undertake the new works allowed under the Codes SEPP.

The Demolition Code reinforces previous changes to the Codes SEPP which were implemented to protect the community during the demolition of asbestos affected properties. Further requirements have been added to notify adjoining properties of potential asbestos, and to provide copies of receipts to the principal certifying authority demonstrating that the asbestos has been disposed of to an approved facility. This new code is detailed in [Fact Sheet 7 – Demolition Code](#).

## Low Risk Bush Fire Prone Land

The changes to the Codes SEPP allow complying development to be carried out on low risk bush fire prone land – BAL - Low through to BAL - 29. A suitably qualified professional is required to assess the level of risk to the lot, which will determine whether complying development is permissible.

Consistent with these changes, the new Section 79BA of the *Environmental Planning and Assessment Act 1979* which was introduced in 2008 has also commenced. It encourages councils, or suitably qualified professionals, to undertake the majority of bushfire risk assessments on bush fire prone land when considering development applications.

These changes are detailed in [Fact Sheet 10 – Bush Fire Prone Land](#), and [Fact Sheet – Section 79B - Facilitating councils assessing low risk and low impact development applications on bush fire prone land](#).

## Low Hazard/Low Risk Flood Prone Land

Changes to the Codes SEPP allow for complying development to be carried out on some low risk flood prone land. A suitably qualified professional is required to assess the level of risk to the lot, which will determine whether complying development can be carried out.

These changes are detailed in [Fact Sheet 11 – Flood Prone Land](#) -.

## Changes to Environmental Planning and Assessment Regulation 2000

Amendments have been made to the Environmental Planning and Assessment Regulation 2000. These amendments are:

*Concurrent erection of new single dwellings* – Clause 126 – The concurrent erection of multiple single dwelling houses on existing adjoining lots, where there is only one dwelling house per lot, can now take place under one CDC.

*Bush fire documentation to council and Rural Fire Service* – Clause 130A

This clause requires a copy of the complying development certificate and associated documentation to be forwarded to the council and the Rural Fire Service at the issuing of a CDC.

*Removal of asbestos* – Clause 136E –

This new condition of complying development requires proof to be provided to the principal certifying authority that asbestos was deposited at the nominated landfill site.

*Professional engineers report – built to boundary wall* – Schedule 1 forms –  
Where works or demolition is proposed within 0.9m of an adjoining neighbour's wall a professional engineer's report is required outlining the proposed method of supporting that wall.

*Requirements for complying development* – Schedule 4 Planning certificates – Clause 1.17A of the Codes SEPP now covers matters previously outlined in section 76(A) of the EP&A Act. Schedule 4 clause 3 also now includes a reference to clause 1.17A alongside clause 1.19 of the Codes SEPP where complying development cannot be undertaken on certain land.

*Savings and transitional provisions for requirements for complying development* – Clause 21A – Introduces savings provisions for a reference to section 76A(5) in any environmental planning instrument that reference is now taken to mean a reference to clause 1.17A of the Codes SEPP.

## Section 149 Certificates

A number of changes are required to s.149 certificates prepared by councils. This includes noting that complying development may be able to be carried out on bush fire (BAL – LOW to BAL - 29) and low risk flood prone land, and noting the changes to other land based exclusions, amongst others.

Councils will be required to update their information prior to the amended Codes SEPP coming into effect. Details of these changes are detailed in [Fact Sheet 12 –Section 149 Certificates](#).

An amendment has been made to the Codes SEPP (clause 1.19(5)) which clarifies that for rural properties, only the part of the land affected by the land based exemption is excluded from the application of the Codes SEPP.

When councils issue s.149 certificates under the Rural Housing Code, the answer to clause 3(1) of Schedule 4 for a lot which is affected by a land based exemption under clause 1.19 should be: *“No – unless complying development is carried out on the part of the lot to which clause 1.19 or 1.17A of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 does not apply.”*

## Extension of the Transition Period

The transition period for turning off existing council complying development controls has been extended until 1 September 2011.

The Department reviewed council complying development controls to determine when the Codes SEPP is sufficiently comprehensive to justify switching off council's complying development controls. This is to ensure that home owners and small businesses are not disadvantaged when existing controls are switched off.

The review considered all councils who responded to the Department's request to identify land development types, and development standards not included in the Codes SEPP, and the controls of the 10 councils with the largest proportion of CDCs issued against development applications.

The report highlighted the need for:

- Making this amendment to the Codes SEPP and Stage 2 of the Commercial and Industrial Code, before any local complying development controls are switched off
- Allowing councils to nominate additional development types for their LGA (see local inclusions below).

This extension of the transition period is to ensure there is no decline in complying development prior to the next amendments to the Codes SEPP which will include Commercial and Industrial Stage 2 and advertising and signage.

The extension of this period is detailed in [Fact Sheet 13 –Extension to the Transition Period](#) .

## Nominations for Local Exclusions

In light of these changes to the Codes SEPP the Minister for Planning agreed with a request from the Local Government & Shires Association for a second round of nominations for local exclusions relating to new areas where the Codes SEPP now applies.

Councils will be invited to nominate areas they consider should be excluded from the application of the new areas of the Codes SEPP.

Nominations put forward by councils will be considered by an expert panel consisting of representatives from:

- Local Government and Shires Association
- Planning Institute of Australia
- Department of Planning
- Industry

The Department will call for these nominations in February 2011. The call will include details on:

- The criteria under which councils can nominate an area to be excluded
- The timing for lodgement of nominations and the completion of consideration of all requests
- An outline of the process of consideration of each local council's nomination for exclusion.

The Department will also request councils to nominate additional local development types for inclusion. For example, the following councils allow the following as complying development types:

- Orange LGA – rural and residential subdivision
- Sutherland LGA - Seawalls (repair or replacement)
- Port Macquarie Hastings LGA – Jetties and boating structures

The Department will call for local inclusions in February 2011. At that time further detail on criteria, timing and outline of the process will be provided.

## Timing of changes

The Codes SEPP amendments have been gazetted and will come into effect on 25 February 2011.

## Further information

Information about the changes that have been made to the Codes SEPP and the EP&A Regulation, including fact sheets is available on the Department's website at <http://housingcode.planning.nsw.gov.au>

For further information, please contact [codes@planning.nsw.gov.au](mailto:codes@planning.nsw.gov.au) or call the Department of Planning's Information Centre on Freecall 1300 305 695 or 02 9228 6333.

Note: This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/>

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