

Part B

EXEMPT AND COMPLYING DEVELOPMENT

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CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

The NSW Government introduced a State-wide exempt and complying development code being part of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) in February 2009. The Codes SEPP identifies certain developments as either exempt development or complying development. In addition to the Codes SEPP, LEP 2012 also identifies certain developments as exempt or complying development.

Exempt development is generally a small-scale development with minimal environmental impacts. These minor developments can be carried out without the need to gain planning or construction approval. While these developments/structures may be considered relatively minor, if not properly controlled they may have the potential to impact adversely on neighbours or streetscapes. Therefore, predetermined standards are specified in the Codes SEPP and LEP 2012 to minimise these impacts, by restricting the size and location of these structures, and provide consistency for these minor forms of development throughout the State.

Complying development is a form of accelerated planning approval for development that meets predetermined development standards. The determination of a Complying Development Certificate (CDC) relies on a codes-based assessment, and there is no merit based assessment for complying development. Development that does not fully comply with all the controls is required to follow the standard development application assessment process at Council.

The Codes SEPP specifies development provisions or predetermined development standards for both exempt and complying developments under the following codes:

- General Development Code;
- General Housing Code;
- Housing Alterations Code;
- Rural Housing Code;
- General Commercial and Industrial Code;
- Subdivisions Code; and
- Demolition Code

1.2 OTHER RELEVANT LEGISLATION

Although the Codes SEPP or LEP 2012 specifies certain development as exempt development or complying development, other legislative requirements for approvals, licences, permits and authorities may still apply to them. Therefore the Codes SEPP and/or LEP 2012 need to be read in conjunction with other relevant legislation that regulates exempt and complying development including but not limited to:

- *Environmental Planning and Assessment Act, 1979* (the Act);
- *Environmental Planning and Assessment Regulation 2000* (the Regulation);
- *State Environmental Planning Policy (Infrastructure) 2007*;
- *Local Government Act 1993*;
- *National Construction Code (NCC) and relevant Australian Standards (AS)*;

- *Roads Act 1993;*
- *Swimming Pools Act 1992;*
- *National Parks and Wildlife Act 1974;*
- *Conveyancing Act 1919;*
- *Protection of the Environment Operations Act 1991;*
- *Occupation Health & Safety Regulation 2001; and,*
- *Threatened Species Conservation Act 1995*

The applicant has an obligation to ensure that all requirements are met prior to undertaking an exempt development or lodging a complying development application.

CHAPTER 2

EXEMPT DEVELOPMENT

2.1 EXEMPT DEVELOPMENT

Exempt Development is a minor development or a small-scale structure that has minimal environmental impacts, and can be carried out with no planning or construction approval. Developments undertaken as exempt development are subject to compliance with the development standards specified in the Codes SEPP, LEP 2012 and other relevant legislation, codes and standards.

Part 2 General Exempt Development Code of the Codes SEPP sets out preset development standards for different types of exempt development including certain aerials, antennas, air conditioning units, awnings, barbecues, blinds, canopies, cubby houses, decks, fences, garbage bin storage enclosures, garden sheds, home-based childcare centres, letter boxes, rainwater tanks, sky lights and wind mills. In addition, Schedule 2 Exempt Development of LEP 2012 also identifies certain development as exempt development.

The LEP 2012 requirements for exempt development are explained below.

2.2 REQUIREMENTS FOR EXEMPT DEVELOPMENT

To be exempt development, the development:

- must meet the relevant deemed-to-satisfy provisions of the *National Construction Code*, or if there are no such relevant provisions, must be structurally adequate;
- must not, if it relates to an existing building, cause the building to contravene the *National Construction Code*;
- must not be designated development;
- must not be carried out on land that comprises, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under the *Heritage Act 1977*;
- must not be carried out in an environmentally sensitive area for exempt or complying development (as defined in clause 3.3 of LEP 2012);
- must not be on land that is critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*);
- must not be on land within a wilderness area (identified under the *Wilderness Act 1987*);
- must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent;
- must be installed in accordance with the manufacturer's specifications, if applicable;
- development that relates to an existing building that is classified under the *National Construction Code* as class 1b or class 2–9 is exempt development only if:
 - the building has a current fire safety certificate or fire safety statement, or
 - no fire safety measures are currently implemented, required or proposed for the building.

2.3 COMPLIANCE WITH THE PRESET STANDARDS

A careful self-assessment needs to be undertaken against predetermined standards set out either in the Codes SEPP or the LEP and other requirements in other relevant legislation to assess whether the development meets all the specified standards and requirements for exempt development. If, the development satisfactorily meets all the criteria, it may be classified as an exempt development. If the development does not comply with all the requirements, development approval from Council needs to be obtained prior to commencing the development.

CHAPTER 3

COMPLYING DEVELOPMENT

3.1 COMPLYING DEVELOPMENT

Complying Development is a routine, low scale development that requires approval but which is capable of complying with all of the predetermined standards/controls specified in either the Codes SEPP or in Schedule 3 Complying Development of LEP 2012.

Complying development may include activities such as single storey dwelling houses, single storey dwelling house additions, covered decks, garages, industrial buildings, boundary adjustments and swimming pools, again, all not exceeding preset standards.

The LEP 2012 requirements for complying development are explained below.

3.2 REQUIREMENTS FOR COMPLYING DEVELOPMENT

To be complying development, the development must:

- be permissible, with consent, in the land use zone in which it is carried out;
- meet the relevant deemed to satisfy provisions of the *National Construction Code*;
- have an approval, if required by Local Government Act 1993, from Council for an on-site effluent disposal system if the development is undertaken on unsewered land
- must not be on land that is critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*);
- not be on land within a wilderness area (identified under the *Wilderness Act 1987*), or
- not be designated development;
- not be on land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or in Schedule 5 of LEP 2012 or that is subject to an interim heritage order under the *Heritage Act 1977*);
- not require concurrence (except a concurrence of the Director-General of the Office of Environment and Development in respect of development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat (identified under the *Threatened Species Conservation Act 1995*));
- not be on land identified as an environmentally sensitive area for exempt or complying development (as defined in clause 3.3 of LEP 2012).

3.3 APPLICATIONS FOR COMPLYING DEVELOPMENT CERTIFICATES

An application for a CDC may be made by the owner of the land on which the development is proposed to be carried out, or by any other person, with the consent of the owner of that land.

Applications can be made to Council or an accredited certifier.

3.4 INFORMATION REQUIREMENTS FOR APPLICATIONS FOR COMPLYING DEVELOPMENT

An application for a CDC should contain the information, and be accompanied by the documents, specified in Part 2 of Schedule 1 of the Regulation (see www.legislation.nsw.gov.au for details).

3.5 ADDITIONAL INFORMATION

Council may require additional information concerning the proposed development that is essential to the Council's consideration of the application.

3.6 WITHDRAWAL OF APPLICATION

An application for a CDC may be withdrawn at any time prior to its determination by the applicant by the provision to Council of a notice to that effect.

3.7 NEIGHBOUR NOTIFICATION

There is no requirement to notify neighbours before the CDC is issued. However, it is good practice to discuss with adjoining owners at the early stages of the design of the development prior to the lodgement of the application with Council.

A condition of consent may be imposed on a CDC requiring notification to neighbours within 20m of the subject property within two days of works commencing.

3.8 DETERMINATION OF APPLICATIONS

Complying development is a fast track, 10-day approval process. Council may determine an application by issuing a CDC unconditionally or subject to conditions, or by refusing to issue a CDC.

There is no right of appeal against the determination of, or a failure or refusal to determine, an application for a CDC by Council.

3.9 MONETARY CONTRIBUTION

In accordance with sections 85(6)(a) and 85(9) of the Act and Council's Development Contributions Plan(s), the payment of a monetary contribution may be imposed as a condition of a CDC.

3.10 NON COMPLIANCE

Once a CDC has been issued, the work undertaken must comply with the approved plans. No retrospective approval can be provided. If the work undertaken is not compliant with the CDC, Council may issue an order regarding the unauthorised works, and also may take action against such works.

3.11 DURATION A COMPLYING DEVELOPMENT CERTIFICATE

A CDC becomes effective and operates from the date endorsed on the certificate. The CDC lapses 5 years after the date endorsed on the certificate and no proceedings may be taken before a court or tribunal to extend this period. However, a CDC does not lapse if the development to which it relates is physically commenced on the land within the period of 5 years after the date of endorsement of the certificate.

3.12 MODIFICATION OF COMPLYING DEVELOPMENT

The applicant or a person having the benefit of a CDC may apply to modify the development the subject of the application or certificate.