



PLANNING SYSTEM

Act and regulation changes

Circular	PS 09–012
Issued	17 April 2009
Related	PS 09–004, PS 09–005, PS 09–006; PN 09–001

Complying development – changes to Conveyancing Regulation, and guide to post-determination notification

The purpose of this circular is to provide councils, accredited certifiers and the community with further guidance on changes to the Conveyancing (Sale of Land) Regulation 2005, and post-determination notification requirements for complying development.

Introduction

Planning Circular PS 09–005 outlined the changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) consequent upon the introduction of the new framework for complying development on 27 February 2009.

The Department is continuing to work with stakeholders, including councils and privately operating accredited certifiers, in respect of other matters arising out of the implementation of the codes for exempt and complying development, including notification. The Department will issue further advice to stakeholders as such matters are resolved.

Changes to the Conveyancing (Sale of Land) Regulation 2005

The changes outlined in planning circular PS 09–005 included an amendment to clause 279 of the EP&A Regulation to provide for the issue of a 'limited' section 149(2) certificate containing information only relating to complying development.

In response to stakeholder concerns, the Conveyancing (Sale of Land) Regulation 2005 was amended by the Conveyancing (Sale of Land) Amendment (Planning Certificates) Regulation 2009 on 3 April 2009 to make clear that this limited form of section 149(2) certificate is *not* a section 149 certificate that can be attached to a contract for the sale of land (or an option to purchase residential property).

Changes relating to the notification of complying development

One of the changes to the EP&A Regulation that took effect on 27 February 2009 is the requirement to provide written notice of a determination to issue a complying development certificate (CDC) to the owner or occupier of any land within 40 metres of the land to which the certificate relates. This notice is to be in the form approved by the Director-General of the Department of Planning and is to be given within two days after the date of determination to issue the CDC. This form is available at www.planning.nsw.gov.au/housingcode.

The purpose of the notice is to inform neighbouring owners/occupiers that a CDC has been issued.

The post-determination notice for complying development serves a different purpose to the notice that may be required to be given by a council in relation to development applications (DAs). Notification of a DA is for the purposes of informing people that they can make a submission in respect of the DA before a determination is made. By contrast, a complying development notice is a courtesy advice to neighbours to inform them that a CDC has been issued.

Requirement to provide notice

The EP&A Regulation requires notice to be provided to the owner or occupier of any land within 40 metres of the land to which the certificate relates.

Therefore councils and accredited certifiers may elect to issue notice to either the owner or the

occupier. There is no requirement to issue the notice to both the owner and the occupier.

In both instances, it is not necessary for the notice to be issued to a named individual. Councils and accredited certifiers therefore do not require the personal details of the owner or occupier in order to satisfy the notice requirements, nor do they need to undertake title/property searches.

Option 1—issuing notice to occupiers

Notice may be issued to occupiers by preparing a notice addressed to ‘the occupier’ and delivering the notice by hand or by post.

In the case of a strata title residential flat building, notice would need to be issued to the occupiers of all apartments within the building (the alternative option being to issue notice to the owner/s of the residential flat building—see option 2 below).

Option 2—issuing notice to owners

The notice requirements for complying development can also be satisfied by issuing a notice to the owner of land within 40 metres of the land to which the complying development certificate relates.

Where the name of the owner is known, for example where councils have access to this information, a notice can be issued directly to the owner.

In the case of residential flat buildings, a notice can be issued to ‘the owner or owners’ corporation’, addressed to the street address for the building, for example:

The Owner or Owners’ Corporation
65 Smith Street
Ashfield NSW 2131

The notice can be delivered by hand or by post. If there is no specific letterbox for the building owner or owners’ corporation, the alternative is to notify all of the occupiers (option 1).

As accredited certifiers are unlikely to have access to personal details of owners:

- in the case of houses, certifiers should consider issuing notice to occupiers
- in the case of residential flat buildings, certifiers should consider issuing notice to ‘the owner or owners’ corporation’ (as set out above).

Site visits and notification

A certifying authority must not issue a CDC for development unless a council or an accredited certifier has carried out an inspection of the site of the development.

At the time the site inspection is carried out it is recommended that council staff and accredited certifiers determine which properties would need to be notified in the event a determination is made to issue a CDC. This will avoid the need for councils and accredited certifiers to carry out a further inspection at a later date for the purpose of working out which properties should be notified.

Further information

Information about the NSW Housing Code is available on the Department’s website at www.planning.nsw.gov.au/housingcode, including:

- State Environmental Planning Policy (Exempt and Complying Codes) 2008, as amended
- *NSW Housing Code: guide to complying development for detached housing* (Department of Planning 2008)
- facts sheets, frequently asked questions, education and training presentations
- specific practice notes and relevant planning circulars
- tables of equivalent zones in all local government areas
- nominations forms for local exclusions and variations.

For further information, please contact planningreform@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 www.planning.nsw.gov.au/planningsystem/practicenotes.

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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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