



PLANNING SYSTEM

State environmental planning policies

Circular	PS 09-004
Issued	20 February 2009
Related	PS 09-005; LEP practice note PN 09-001

SEPP (Exempt and Complying Development Codes) 2008

The purpose of this circular is to advise councils, accredited certifiers and the community of the commencement of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 on 27 February 2009.

Introduction

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) was gazetted on 12 December 2008, and will commence operation on **27 February 2009**.

Part 2 of the Codes SEPP comprises the General Exempt Development Code. It specifies 40 types of development of minor environmental impact that may be carried out as exempt development without the need for approval under the NSW planning system.

Part 3 of the Codes SEPP contains the first stage of the General Housing Code and specifies how residential developments, including:

- detached single and two storey dwelling houses
- alterations and additions
- other ancillary development, such as swimming pools

can proceed in certain zones **on lots 450 square metres and greater** as complying development.

The Codes SEPP has been designed to speed up and simplify the process for approving standard types of housing, reducing unnecessary complexity in the planning system and allowing minor residential development without the need for a development application. At the same time, it is intended to protect local character by including different standards for development on different lot sizes, and requirements for minimum landscaped area, maximum site coverage and street setbacks.

This Planning Circular [PS 09-004] 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 comprehensive LEPs
- implications for comprehensive LEPs and the effect of the Codes SEPP after 27 February 2009 on councils' exempt development provisions for development types covered by the General Exempt Development Code and the General Housing Code
- changes to the Local Development Performance Monitoring program to monitor the effectiveness of the Codes SEPP and the uptake of complying development
- the education and training program for practitioners, councils and the community
- future amendments to the Codes SEPP to introduce other development types including single and two storey detached dwellings on lots less than 450 square metres, attached dwellings, dwellings on rural lots and commercial development.

Planning Circular PS 09-005 details the commencement of certain provisions of the *Environmental Planning and Assessment Amendment Act 2008* as they relate to complying development.

In addition LEP Practice Note PN 09-001 sets out what changes are required to comprehensive LEPs that will be gazetted after the Codes SEPP commences.

Relationship with existing LEPs and DCPs

The relationship between the Codes SEPP and a council's existing exempt and complying development provisions in its LEP or DCP are dealt with under clause 1.9 of the Codes SEPP. These arrangements ensure an orderly and efficient

transition to the new State-wide codes and provide for councils' existing complying development provisions to continue unaffected for the first 12 months of operation of the Codes SEPP.

Under the arrangements in the Codes SEPP:

- if the same development type¹ is specified as exempt development in the General Exempt Development Code and in the council's existing LEP or DCP, then the Codes SEPP prevails and the development must be carried out in accordance with the General Exempt Development Code
- if the General Housing Code specifies a development type as complying and the council's LEP or DCP nominates it as complying, applicants **can, until 27 February 2010, choose** to use whichever provisions they prefer as the basis on which to prepare an application for a complying development certificate
- if the General Exempt Development Code specifies a development type as exempt and the council's LEP or DCP nominates it as complying, applicants **can, until 27 February 2010, choose** to use whichever provisions they prefer as the basis for being considered and to carry out their development as exempt development
- if the same development type is specified as complying development in the General Housing Code and as exempt development in the council's LEP or DCP, then the provisions of the Codes SEPP prevails and the development must be carried out as complying development in accordance with the Codes SEPP
- if a LEP or a DCP nominates a development type as exempt or complying and the Codes SEPP does not deal with that development type, then the council's current provisions prevail.

During the transition period between commencement of the Codes SEPP and 27 February 2010, applicants will be required to nominate on their application for a complying development certificate which planning controls they will be relying on.

In circumstances where a complying development type is nominated in a council's LEP or DCP but is not covered by the Codes SEPP then the LEP or DCP provisions will continue to apply after **27 February 2010** until those development types are covered by future amendments to the Codes SEPP.

The provisions of clause 1.9 of the Codes SEPP apply to LEPs or DCPs made **before or after** the commencement of the Codes SEPP.

Clause 1.9 also applies to exempt and complying development provisions in deemed environmental planning instruments in the same way as it applies to provisions in LEPs and DCPs.

¹ Two or more instruments are taken to identify the same development if they specify that development in a zone for the same purpose may be carried out on the same land, even though there may be some differences in the specifications or development standards for that development. For example, deck is a type of development, even if the size of the deck varies in different LEPs or DCPs.

Exclusions and variations

General exclusions

The Codes SEPP identifies general exclusions that apply across NSW. These general exclusions are usually identified within a local, regional or State environmental planning instrument (LEP, regional environmental plan or SEPP) or other legislation. There are additional exclusions applying to complying development and specific exclusions that apply to certain exempt development types.

Exempt development

Clause 1.15 and 1.16 of the Codes SEPP identifies the general requirements to enable exempt development to be undertaken.

Clause 1.19 (1) and 1.19 (4) of the Codes SEPP identifies environmentally sensitive areas where exempt development must not be carried out.

Part 2 of the Codes SEPP, the General Exempt Development Code, identifies exclusions or restrictions to certain development types.

Complying development

Clause 1.17 and 1.18 of the Codes SEPP identifies the general requirements to be classified as complying development.

Clause 1.19 (1) to 1.19 (4) of the Codes SEPP identifies land where complying development must not be carried out.

Local exclusions nomination process

The Codes SEPP establishes standard exclusions across NSW where the Codes SEPP will not apply, for example, the Codes SEPP is excluded from operation in many environmentally sensitive areas.

Councils may seek additional local exclusions through a nomination process outlined by the Department. These can be either zone based, contained within an environmental planning instrument or be a precinct identified in a policy or plan as having particular unique attributes that may require a merit-based assessment of any development proposal through a development application.

Where there is an area that council would like to be excluded from the application of complying development under the Codes SEPP a council may nominate the area and seek approval from the Minister for Planning for that exclusion from the operation of the Codes SEPP.

A zone-based exclusion will only be approved if there is a provision in a local environmental planning instrument or other supporting information that identifies the area as having particular character attributes that require a merit assessment of any development proposal.

Where the particular attributes can be accommodated within a local variation to complying development standards for front setback, side setback (on lots greater than 900 square metres) and the amount of landscaped area, then a nomination for a local variation will be the preferred approach.

To make a valid application for a local exclusion, a council must use the local exclusion nomination form

provided as Attachment 1 to this Circular and available at www.planning.nsw.gov.au/housingcode.

The general requirements for a local exclusion are:

- the area to be excluded must be identifiable by lot **and**
- any lot to be excluded must be mapped electronically **and**
- any lot to be excluded must be identified within a LEP or an environmental study or within a DCP.

Diagram 1 (below) will assist councils in identifying a nomination for local exclusion.

Local exclusions review process

All nominations for local exclusion will be reviewed by the Local Exclusions and Variations Panel, a panel of experts. The Panel may seek the advice of the Department of Planning. Further information can be requested from the nominating council if required before a recommendation is made to the Minister for Planning to approve the nomination.

If the exclusion is recommended for approval, then the council will be requested to map the nomination within a defined geographical information system (GIS) format provided at www.planning.nsw.gov.au/housingcode.

The local exclusion, once approved by the Minister for Planning, will be published on the NSW legislation website (www.legislation.nsw.gov.au). Maps showing local variations and exclusions will also be made publicly accessible through that website.

The Department of Planning will accept nominations for local exclusions up to 30 June 2009. Depending on the implementation and successful uptake of complying development, the Department may call for additional nominations for local exclusions for consideration at a later date.

Local variations nomination process

Local character results from a combination of elements from both the public and private realms. As well as the topography, natural features, streets and public open spaces, the private houses on their lots and the relationship of individual lots to the street also have a significant effect on the local character of a place.

Often the proportions and layout of a location are a reflection of a particular settlement type whether that is inner urban, coastal city, city fringe or a rural town.

In addition to the houses themselves, the particular attributes of individual private lots that influence the streetscape and help determine local character are:

- the size of the front setback
- the size of side setbacks
- the amount of landscaped area on the lot.

The General Housing Code controls have been written around Lot Types which reflect various lot sizes. The controls vary according to these lot sizes in recognition of the importance some controls play in contributing to local character.

Diagram 1. Identifying a nomination for a local exclusion from the Code SEPP

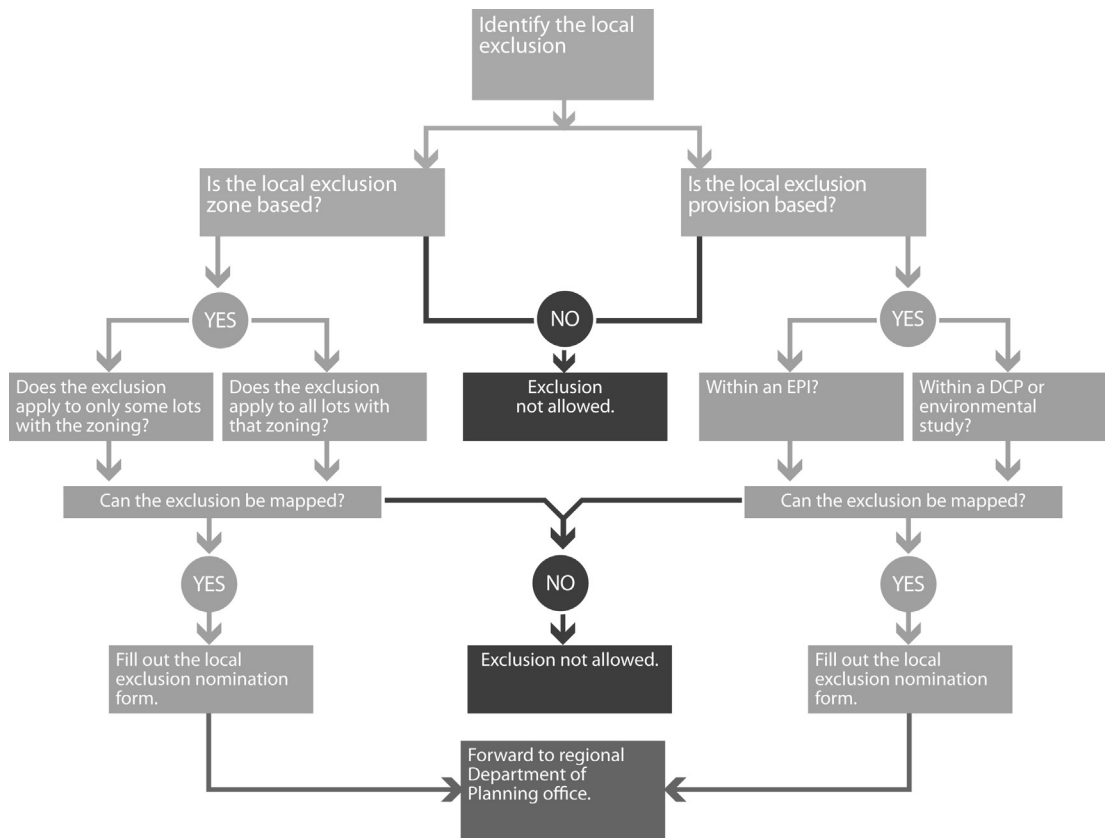


Diagram 2. Local exclusions nomination and review process

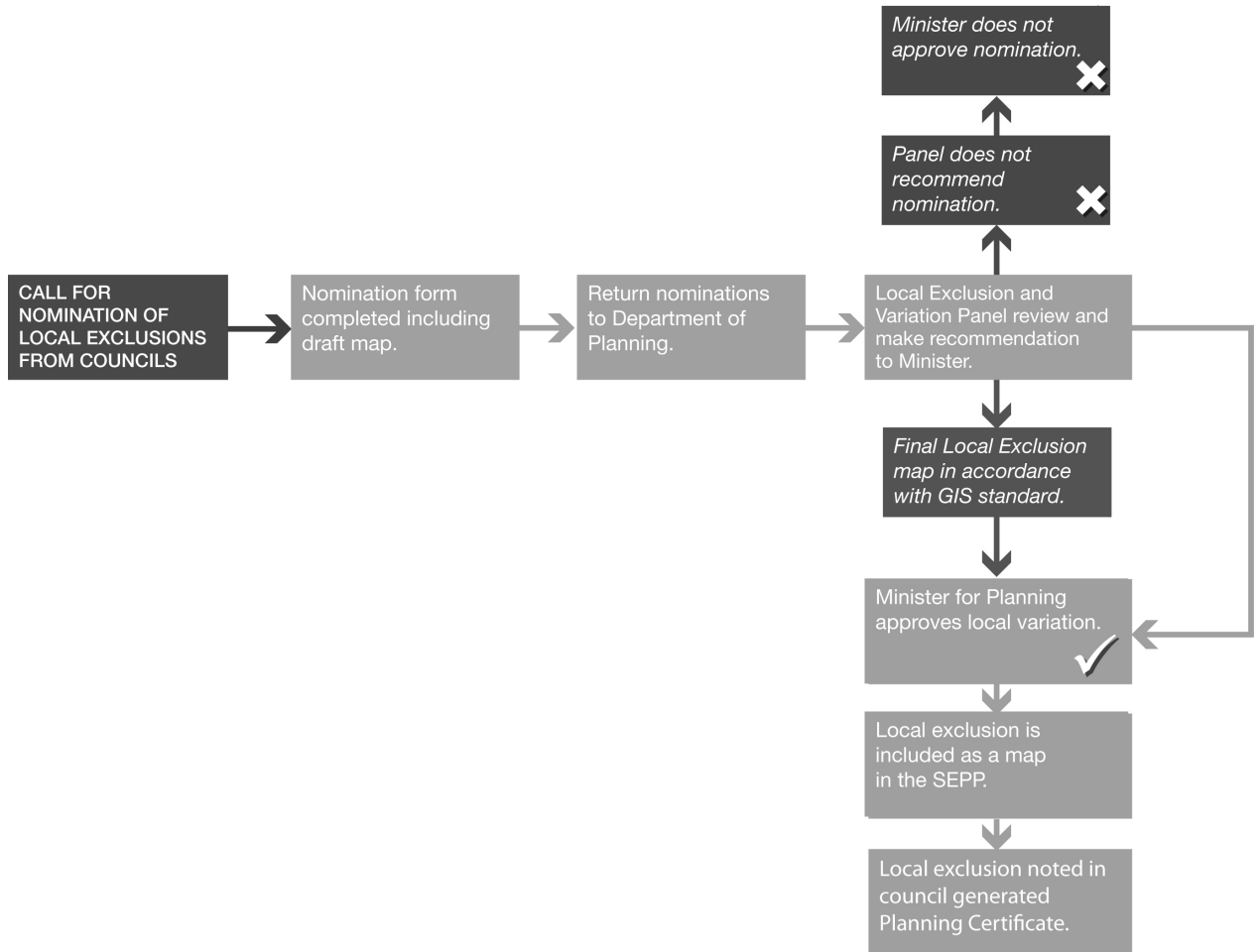
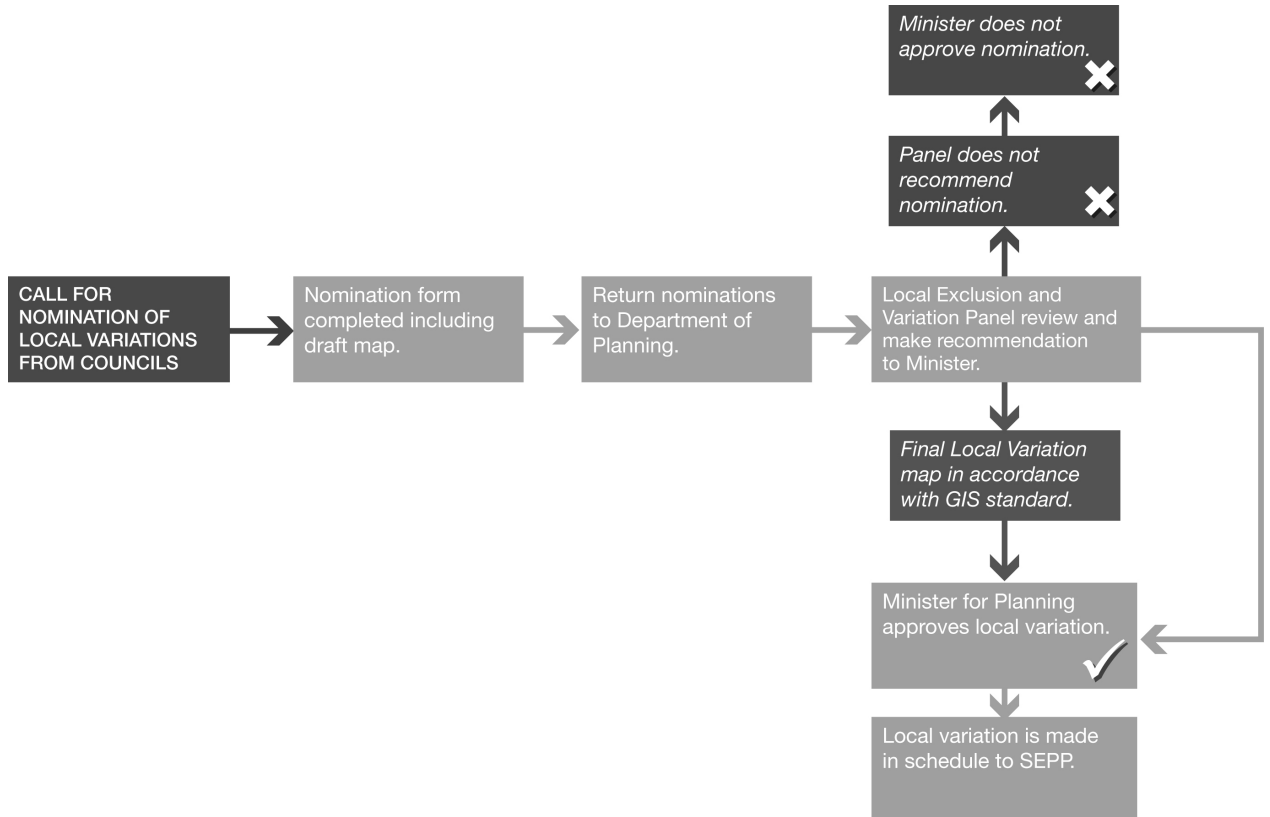


Diagram 3. Local variations nomination and review process



To enable an area to maintain its local character consistent with the areas settlement type, the Codes SEPP enables variations to the General Housing Code.

A council can apply to the Department of Planning for a local variation to specific complying development standards. Nominations for local variations to the General Housing Code are limited to:

- the size of the front setback
- the size of side setbacks (on lots greater than 900 square metres)
- the amount of landscaped area on the lot.

To make a valid application for a local variation, a council must use the local variation nomination form provided as Attachment 2 to this Circular and available at www.planning.nsw.gov.au/housingcode.

A nominated variation must be based on a provision in an environmental planning instrument, DCP or other supporting planning document that defines a local front or side setback or landscaped area unique to the areas settlement type.

In some cases, local variations to these three complying development standards will be approved by the Minister of Planning in recognition of the influence these attributes play in determining local character.

Local variations review process

All nominations for local variations will be reviewed by the Local Exclusions and Variations Panel, a panel of experts. The panel may seek the advice of the Department of Planning. Further information can be requested from the nominating council if required before a recommendation is made to the Minister to approve the nomination.

If the variation is recommended for approval, then the council will be requested to map the nomination within a defined GIS format provided at www.planning.nsw.gov.au/housingcode.

The local variation, once approved by the Minister for Planning, will be published on the NSW legislation website (www.legislation.nsw.gov.au). Maps showing local variations and exclusions will also be made publicly accessible through that website.

The Department of Planning will accept nominations for local variations up to 30 June 2009. Depending on the implementation and successful uptake of complying development, the Department may call for additional nominations for local exclusions for consideration at a later date.

Equivalent zones

The Codes SEPP relies on the land use zones established under Standard Instrument—Principal Local Environmental Plan. 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 on an equivalent zone. The Codes SEPP includes a guide to determining the equivalent zones under clause 1.6 (1) and allows the Director-General of the Department of Planning to determine the equivalent zones.

Tables listing the equivalent zones, by local government area, are publicly accessible on the

Department of Planning's website at www.planning.nsw.gov.au/housingcode until such time as comprehensive LEPs are prepared in accordance with the Standard Instrument. The tables will promote consistency of interpretation of land use zones across all NSW council areas.

Foreshore building line

The Codes SEPP excludes complying development from land affected by an existing foreshore building line referred to within either an environmental planning instrument or DCP made before 12 December 2009. The Codes SEPP also excludes certain types of exempt development from being carried out forward of an existing foreshore building line referred to within either an environmental planning instrument or DCP made before 12 December 2009.

Implications for comprehensive LEPs

The Department of Planning has issued a LEP Practice Note PN 09–001 to provide guidance to councils on what changes will be required to comprehensive LEPs as a consequence of the commencement of the Codes SEPP. This is available at www.planning.nsw.gov.au/housingcode

Effect of the Codes SEPP after 27 February 2009

From 27 February 2009 councils' exempt development provisions for development types covered by the Codes SEPP will no longer apply. From that date applicants must use the General Exempt Development Code.

To ensure an orderly transition, councils should include the following note on its website and on any printed copies of its existing exempt and complying LEP or DCP (and any deemed environmental planning instrument).

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) specifies exempt development under that Policy. The Codes SEPP has state-wide application and commences on 27 February 2009. Consequently, from that date the exempt development provisions (for the development types covered by the Codes SEPP) in [insert name of relevant LEP or DCP] will no longer apply.

A copy of the Codes SEPP is available at: www.planning.nsw.gov.au/housingcode

Further information on the General Housing Code is available at: www.planning.nsw.gov.au/housingcode

For further information 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.

Local Development Performance Monitoring program

The Department of Planning will be monitoring the uptake of complying development through the Local Development Performance Monitoring (LDPM) program. Through this program the Department of Planning publishes a report on local development which is compiled from the data collected by councils available at

www.planning.nsw.gov.au/planningsystem/performance.asp.

The report gives the State Government, local councils, the development industry and the general public detailed information on local development and provides the Department of Planning with information for its policy work to improve the NSW planning system.

Councils have previously been advised of the LDPM data fields including those covering complying development. Councils are reminded that their LDPM data should include complying development applications determined by accredited certifiers. This data should be drawn from the information that accredited certifiers must supply to councils within two days after the date of the issuing of a complying development certificate under clause 130 (4) of the Environmental Planning and Assessment Regulation 2000 (the Regulation).

Under clause 130 (4) accredited certifiers must forward to the relevant council copies of the determination, the application to which the determination relates, any endorsed plans, specifications or other documents that were lodged with the application, any additional information provided by the applicant as required by the certifier under clause 127 of the Regulation, and any complying development certificate issued together with any associated fire safety schedule or fire link conversion schedule.

The Building Professionals Board will be reminding accredited certifiers of their obligations to send this information to councils.

Councils are required to record certain information in their register of complying development applications kept under clause 265 of the Regulation. This register, which can be used as a source of some of the LDPM data, should contain details on each application for a complying development certificate whether or not the certificate is issued by council or by an accredited certifier. Councils' efforts to maintain complete and accurate information on complying development are important as this information will be used in the review of the Codes SEPP.

Education and training

The Department of Planning is offering comprehensive education and training to councils, practitioners, and the community to support the implementation of the NSW Housing Code.

The Department of Planning is developing an 'eLearning' platform that will cover the various aspects of the Codes SEPP. This will allow councils, practitioners and the community to update and review their knowledge of exempt and complying development generally, and the Codes SEPP specifically.

'eLearning' will be available from mid-2009 and will be ongoing; with additions as further development types are included in the Codes SEPP. Further information on the NSW Housing Code Education and Training program is available at www.planning.nsw.gov.au/housingcode

Further development types — housing and commercial

Future amendments to the Codes SEPP will introduce other development types including single detached dwellings on lots less than 450 square metres, attached dwellings, dwellings on rural lots and commercial development.

Further information

A copy of the Codes SEPP, *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 implementation of the Codes SEPP, 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.

Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

Attachment 1—Housing Code local exclusions nomination form

Attachment 2—Housing Code local variations nomination form

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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State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)

Note: The following local exclusions nomination form is to be read in conjunction with Planning Circular PS 09-004.

Attachment 1—Local exclusions nomination form

Name of local government area (LGA)

.....

Property details

1. What are the formal particulars of title (by lot and deposited plan) of the lot(s)?

(Attach list if necessary.)

2. What is/are the street address(es) of the lot(s)? (Attach list if necessary.)

3. What is the nature of the local exclusion?

a) Zoned-based exclusion

i. What is the zone proposed for exclusion from the operation of the Codes SEPP? You can either refer to a name (such as Residential Zone) or a number (such as Zone No. 2 (d)).

.....

ii. What is the relevant environmental planning instrument?

.....

b) Excluded land identified by an environmental planning instrument

i. How is the land identified in an environmental planning instrument (such as 'Coastal Erosion Hazard', 'Foreshore Land')?

ii. What is the relevant environmental planning instrument?



c) Other land identified in either a Development Control Plan (DCP) or other council policy

i. How is the land identified in the DCP or other council policy?

DCP council policy

ii. What is the name of the DCP or other council policy?

.....

iii. What is the adoption date of that DCP or council policy?

.....

4. Is this information currently mapped or mappable in a Geographic Information System (GIS) format? See the planning circular on data standards on the NSW Department of Planning website at www.planning.nsw.gov.au. (Please note yes or no only, any request for GIS data will be at a later stage.)

Yes No

5. Why does the provision or zone necessitate affected lots being excluded from the application of the General Housing Code (complying development)? (Attach details if necessary.)

6. If approved, how will the proposed exclusion from the application of the General Housing Code impact on the uptake of complying development under the General Housing Code in the local government area? (Attach details if necessary.)

7. Does complying development currently apply to the lot(s)?

Yes No

8. On the relevant lot(s), could any development type (in addition to exempt development) be approved as complying development under council's LEP or DCP?

Yes No



9. As an alternative to an exclusion could a local variation to a development standard(s) be sought to the application of the Code?

a) Vary an existing development standard? Yes No

i. Which development standard (by reference to clauses in the Codes SEPP)?

ii. What could the alternative development standard be?

iii. What is the justification for this alternative development?

b) Include an additional development standard? Yes No

10. Is there any other supporting documentation that you believe needs to be considered as part of your nomination? (Please list only, information may be requested at a later stage).

Please post this completed local exclusions nomination form with any attached details to:
Planning Reforms
Department of Planning
GPO Box 39, Sydney NSW 2001

For further information about the local exclusions and variations process and the Codes SEPP, please see www.planning.nsw.gov.au/housingcode or email planningreform@planning.nsw.gov.au or call the Department of Planning's Information Centre on Freecall 1300 305 695 or 02 9228 6333



State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)

Note: The following local variations nomination form is to be read in conjunction with Planning Circular PS 09–004.

Attachment 2—Local variations nomination form

Name of local government area (LGA)

.....

Property details

1. What are the formal particulars of title (by lot and deposited plan) of the lot(s)?
(Attach list if necessary.)

2. What is/are the address(es) of the lot(s)? (Attach list if necessary.)

3. Which development standard does the potential variation relate to?

- | | |
|---|--|
| a. Front setback | |
| b. Side setback for lots 900 m ² and greater | |
| c. Percentage of landscaped area | |

4. What would the alternative development standard be?

- | | |
|---|--|
| a. Front setback | |
| b. Side setback for lots 900 m ² and greater | |
| c. Percentage of landscaped area | |



5. What are the supporting reasons for seeking the potential variation?
(Attach list if necessary.)

6. If the variation to the development standard(s) of the General Housing Code were to be approved, how will it impact on the uptake of complying development under the General Housing Code in the local government area?

7. Is this nominated variation to the development standard in an existing planning document?

a. Development control plan (DCP)

Name and date:

.....

b. Environment planning instrument (EPI)

Name and date:

.....

c. Environmental study for an EPI

Details of environmental study

(i.e. author, title of study, date)

.....

8. Is this information currently mapped or mappable in a Geographic Information System (GIS) format?
See the planning circular on data standards on the NSW Department of Planning website at www.planning.nsw.gov.au. (Please note yes or no only, any request for GIS data will be at a later stage.)

Yes

No



9. Is there any other supporting documentation that you believe needs to be considered as part of your nomination? (Please list only, information may be requested at a later stage.)

Please post this completed local variations nomination form with any attached details to:

Planning Reforms
Department of Planning
GPO Box 39, Sydney NSW 2001

For further information about the local exclusions and variations process and the Codes SEPP, please see www.planning.nsw.gov.au/housingcode or email planningreform@planning.nsw.gov.au or call the Department of Planning's Information Centre on Freecall 1300 305 695 or 02 9228 6333