



PLANNING SYSTEM

State environmental planning policies

Circular	PS 09–021
Issued	5 August 2009
Related	PS 09– 004–6, 012, 013, 020, 022; PN 09–001

Changes to the exempt and complying development codes

The purpose of this circular is to advise councils, accredited certifiers and the community of the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial) 2009, which commence on 7 September 2009. It includes advice about the new Housing and Internal Alterations Code and the new General Commercial and Industrial Code as well as changes to the existing exempt and complying development codes.

Introduction

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) commenced on 27 February 2009. The Codes SEPP currently includes the General Exempt Development Code and the General Housing Code.

On 5 August 2009, State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial) 2009 (the SEPP amendment) was published on the NSW Legislation website and will commence on 7 September 2009.

The SEPP amendment adds a new General Commercial and Industrial Code and new Housing Internal Alterations Code to the Codes SEPP. In addition, it introduces new commercial, industrial and housing types to the General Exempt Development Code, clarifies the interpretation of some development standards, and amends some development types and standards in the General Housing Code.

To support the new Commercial and Industrial Code, an amendment has been made to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). This amendment also alters post-determination notification and planning certificates requirements. These changes will also commence on 7 September 2009 and are outlined in Planning Circular PS 09–022.

The following outlines the changes to the each part of the Codes SEPP.

Amendments to Part 1—General of the Codes SEPP

The SEPP amendment:

- introduces new definitions to support the interpretation of the new General Commercial and Industrial Code. This includes a new definition of ‘commercial premises’ which means ‘business premises’, ‘office premises’ or ‘retail premises’
- clarifies existing definitions, including the definition of building height (see ‘Amendments to Part 3—General Housing Code’ below)
- extends the equivalent zone tables to include business and commercial zones
- amends the general requirements for complying development
- amends the land-based requirements for complying development and renames them ‘land exemptions’ to support the new General Commercial and Industrial Code and Housing internal Alterations Code
- excludes land to which the Bathurst Regional (Interim) Local Environmental Plan 2005 applies.

Amendments to Part 2—Exempt Development Codes

Part 2 of the Codes SEPP contains the General Exempt Development Code. This makes provision for certain development types that are of minimal environmental impact to be carried out without obtaining development consent if the person complies with the applicable development standards.

The SEPP amendment introduces nine new exempt development types so as to further increase the number of development types not requiring planning or construction approval. These include:

- animal shelters
- automatic teller machines
- bollards
- change of use of premises
- evaporative cooling units (roof mounted)
- garbage bin storage enclosure
- hard stand spaces
- hot water systems
- signage (replacement of identification signs).

To facilitate the use of the code, a number of minor amendments have also been made to clarify the development standards and their application to domestic, commercial and industrial premises.

Amendments to Part 3—General Housing Code

The SEPP amendment alters the complying development types and development standards under the General Housing Code, in the light of a number of interpretation queries and requests received by the Department.

To clarify the operation of the code and improve its implementation, the changes include:

- allowing for external alterations and additions where the existing dwelling house complies with site coverage and maximum floor area, provided the external alterations and additions comply with all the relevant standards. Only the new works would need to comply with all of the development standards of the General Housing Code as the existing dwelling house was assessed and approved under the applicable rules when that house was constructed
- increasing the maximum floor area for outbuildings so as to reflect the size of structures being commonly constructed in both urban and rural zones
- reducing the height of balconies, decks, patios, pergolas, terraces and verandahs to reduce amenity impacts but allow for an increase in the maximum floor area
- clarifying the definition and use of building height in development standards for side and rear setbacks
- excluding roof terraces as complying development, because of concerns that this could intrude on neighbours' privacy
- introducing a new note identifying that where development is near infrastructure, the relevant authority should be contacted.

Building height

The definition of 'building height' has been amended to ensure a more consistent application of the development standards in the Codes SEPP.

This will ensure that when calculating side or rear setbacks it is height of the building at any point

closest to the side or rear setback that is relevant, not the maximum overall height of the building or outbuilding.

For example, in Figure 1 (below) when determining the required setback, the two-storey dwelling house has a building height of 6.2 m as measured at the point (wall) closest to the boundary.

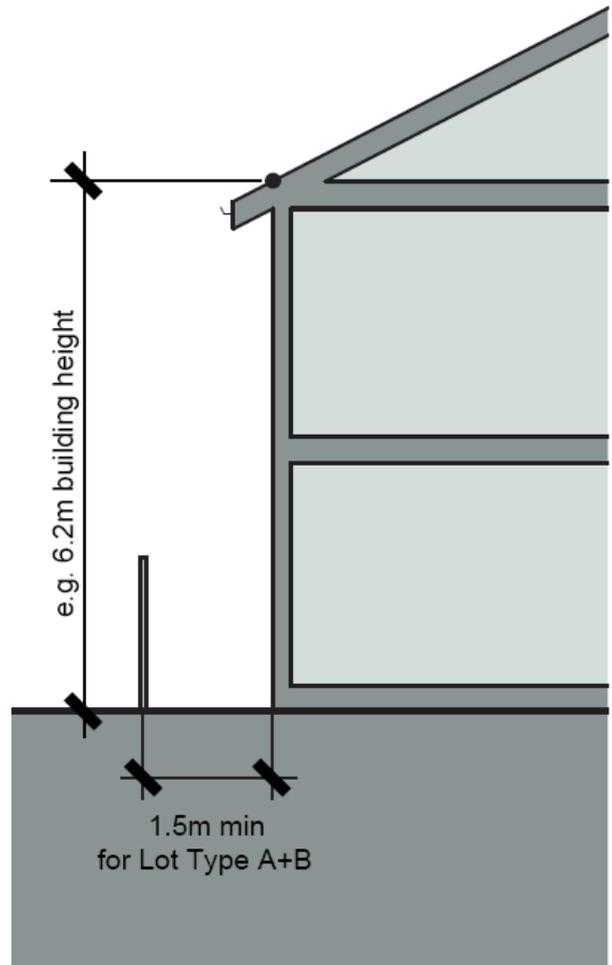


Figure 1

The 6.2 m is the building height **at any point** used to calculate the additional side setback based on the additional height of the wall above 3.8 m.

The formula below shows how the 6.2 m building height results in a minimum side setback of 1.5 m. In this case, the side setback is 1.5 m, as per the side set-back formula in the Codes SEPP (clauses 3.16 and 3.18).

$$\begin{array}{rcl}
 1.5 \text{ m total} & = & 0.9 \text{ m min} \\
 \text{min side} & & \text{setback for} \\
 \text{setback} & & \text{up to 3.8 m} & + & \begin{array}{r} 6.2 \text{ m} \\ \text{building} \\ \text{height} - \\ \underline{3.8 \text{ m}} \\ 4 \end{array}
 \end{array}$$

Awareness of other requirements

A new note to the Codes SEPP provides that where development is in proximity to infrastructure, the

relevant authority should be contacted. This is to resolve concerns that infrastructure not covered by an easement could be vulnerable to development within its proximity. When building over or close to infrastructure, whether it is a water or sewer pipe or telecommunications cable, the owner of the infrastructure should be contacted to determine whether there are any requirements for constructing in proximity to that infrastructure.

New Part 4—Housing Internal Alterations Code

The SEPP amendment introduces a new Part 4—Housing Internal Alterations Code, which allows for internal alterations to an existing dwelling house or ancillary development associated with the dwelling house (but does not include the construction or the conversion of a basement) as complying development, where the development is permissible with consent.

Examples of alterations that would be covered by the code include enlarging a lounge room by converting a bedroom, removing a wall between a kitchen and a lounge room to make an open plan kitchen or dividing a portion of a room to make a new bedroom.

Under this code the existing dwelling does not need to comply with the development standards of the General Housing Code as it would already have been the subject of assessment. It is only the new works that need to comply with all of the development standards.

Localities where complying development may not be carried out under the Housing Internal Alterations Code include:

- land that is an environmentally sensitive area
- 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*
- land that comprises, or on which there is, a heritage item or a draft heritage item
- land within a wilderness area (identified under the *Wilderness Act 1987*).

These exclusions are required under section 76A (6) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

As the Housing Internal Alterations Code only relates to internal alterations, the land-based exemptions for this code are less extensive than those for the General Housing Code. As the works are contained within an existing dwelling, there is no new impact. For example, it will be possible to carry out internal alterations as complying development in the following areas:

- unsewered land to which Drinking Water Catchments Regional Environmental Plan No. 1 applies
- land identified as being subject to acid sulfate soils
- land within a flood control lot
- land identified as bush fire prone
- land in a foreshore area
- within a buffer area

- a coastal erosion hazard
- a difficult site
- within an ecologically sensitive area
- environmentally sensitive land
- within a foreshore scenic protection area
- within a protected area
- within a scenic area
- within a scenic preservation area
- within a scenic protection area
- within a special area.

New Part 5—General Commercial and Industrial Code

The SEPP amendment introduces a new Part 5—General Commercial and Industrial Code.

The General Commercial and Industrial Code represents Stage 1 of the new simplified process for determining certain changes of use, minor external building alterations and internal building alterations associated with existing bulky goods premises, business premises, office premises, retail premises, premises used for light industry or a warehouse or distribution centre.

Stage 2 of the General Commercial and Industrial Code, anticipated to commence in 2010, may allow some types of new commercial and industrial buildings and external alterations and additions to existing commercial and industrial buildings as complying development.

The land-based exemptions on which complying development may not be carried out under the General Commercial and Industrial Code reflect the requirements of section 76A (6) of the EP&A Act as follows:

- land that is an environmentally sensitive area
- 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*
- land that comprises, or on which there is, a heritage item or a draft heritage item
- land within a wilderness area (identified under the *Wilderness Act 1987*).

As the General Commercial and Industrial Code largely relates to internal alterations and change of use, the land-based exclusions for this code are less extensive than those for the General Housing Code. The additional areas where complying development may be carried out under the General Commercial and Industrial Code are the same as for the Housing Internal Alterations Code set out above.

Savings provision relating to pending applications

The existing savings provisions in the Codes SEPP provide that the SEPP amendment does not apply to development applications or applications for complying development certificates made before 7 September 2009.

Further information

Further information is available on the Department's website at: www.planning.nsw.gov.au/housingcode and www.planning.nsw.gov.au/commercialcode, 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)
- *NSW commercial and industrial code: a guide to exempt and complying development* (Department of Planning 2009)
- facts sheets, frequently asked questions, education and training presentations
- specific practice notes and relevant planning tables of equivalent zones in all local government areas.

For further enquiries, please email codes@planning.nsw.gov.au or phone the Department'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/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/Default.aspx>.

Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

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.

© State of New South Wales through the Department of Planning
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.