

Circular	PS 10 – 007
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Related	PS 09-004; 09-005; PS 09-006, PS 09-012, PS 09-013, PS 09-020, PS 09-021, PS 10 - 003 LEP Practice Note PN 09-001

Codes SEPP 2008 – miscellaneous amendment

The purpose of this circular is to provide councils, accredited certifiers and the community with advice regarding the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2010*. The SEPP makes a series of minor amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 in response to the 12 month review of the operation of the Codes SEPP.

Introduction

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the 'Codes SEPP') commenced on 27 February 2009.

In line with the Government's commitment, the range of development types covered by the Codes SEPP has been expanded over the last 12 months.

Clause 1.14 of the Codes SEPP requires that the Policy be reviewed after the first anniversary of its commencement. This review has now been completed and a 12-month review paper will be released shortly.

As a result of this review, there are a number of amendments relating to the General Exempt Development Code, the General Housing Code and the Housing Internal Alterations Code, as well as the creation of a new Subdivisions Code.

A new User Guide for the Housing Code has been developed and is also available from www.planning.nsw.gov.au/housingcode. A section on exempt development is included in the User Guide for the General Housing Code.

Why the amendments are required

The NSW Government is committed to expanding the uptake of complying development across NSW by shifting the number of low impact and straight forward development proposals from development applications (DA) into applications for complying development certificates (CDC).

The exempt and complying development codes are being introduced in stages. Future codes will cover small lots, commercial and industrial stage 2 and rural lots. Alongside the release of new codes, the Codes SEPP continues to be reviewed and expanded so that the development types and development standards reflect the types of development proposed by home and business owners.

Overview of the amendments

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2010 (the "SEPP amendment") amends the Codes SEPP, in response to implementation feedback received over the first 12 months of the Codes SEPP's operation. The SEPP amendment inserts or amends 12 provisions.

ANEF (Australian Noise Exposure Forecast)

It has been brought to the Department's attention that the Codes SEPP is inconsistent with policies regulating development in areas affected by aircraft noise.

In response, the amendment excludes complying development from occurring on high noise affected areas, as well as requiring dwellings to comply with relevant standards in areas that are moderately affected by noise exposure.

An additional land-based exemption has been included in clause 1.19(5) which excludes land with a noise contour 25+. For land affected by ANEF 20-25, *Australian Standard 2021-2000 Acoustics – Aircraft noise intrusion - Building siting and construction* has

been included in Clause 1.18 General requirements for complying development.

A new definition has been added in Clause 1.5 for ANEF. Councils need to be aware that from the commencement of this SEPP when preparing s149 (2) planning certificates the exclusion of land affected by ANEF 25+ will need to be included as an exclusion under question 3.

Building height and side and rear setbacks

The current amendments revise these development standards further by introducing a new, clearer way of expressing the standard. Importantly, the setback requirements themselves do not change.

To support the changes to the wording, minor changes have been made to the definitions for building height and building line.

These changes make it clear that when calculating the side or rear setback it is the height of the building at the relevant point on the relevant building line that is required to be measured.

Ancillary development in bushfire prone land

Prior to the current amendment, all ancillary development under the General Housing Code was excluded from bush fire prone land.

The current amendment now allows non combustible ancillary development such as swimming pools, retaining walls, fences of non-combustible materials and the demolition of any type of ancillary development or of a dwelling house itself to occur on bushfire prone land.

Clause 1.19(5)(e) has been amended to remove the exclusion for demolition and removal of dwellings, and the erection of swimming pools, retaining walls and fences from the bushfire prone land based exemption.

Councils need to be aware when preparing s149 (2) planning certificates that from the commencement of the SEPP Amendment, the new wording of Clause 1.19(5)(e) needs to be reproduced where the land is affected by bushfire prone land. For example the answer to question 149(2) would be:

3. Whether or not the land is land on which complying development may be carried out under each of the codes for complying development in [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

(1) No, unless the development is only the demolition or removal of a dwelling house, the demolition of ancillary development, or the erection of a swimming pool, fence or retaining wall.

(2) Bush fire prone land.

Communication dishes

A drafting anomaly to the General Exempt Development Code for communication dishes, Clause 2.24 (1)(c)(ii) has been corrected. The development standard now sets a maximum height above ground level (existing) of 1.8m for ground mounted communication dishes.

Setbacks for outbuildings

The Codes SEPP sets development standards for new building works.

Clause 3.18 Setbacks has been amended to clarify that a new outbuilding needs to meet the development standards specified. These standards do not apply to existing outbuildings. This ensures the provisions relating to outbuildings are consistent with the September 2009 amendment for alterations and additions (see PS09-021).

Width of garages

The housing industry provided feedback that the development standards relating to garage widths did not allow double garages on lots with a width of between 12m and 15m. A significant proportion of newer subdivisions have a lot width of less than 15m which does not permit a double garage when the maximum garage door width standard of 50% is applied.

Double garages are a common feature of new house designs, particularly in new release areas. This meant that applications for new homes with a double garage on lots less than 15 metres wide had to be determined through a full merit assessment process.

To ensure these houses can take advantage of the NSW Housing Code the maximum garage door width has been increased to 60% on lots between 12m and 15m wide. All other design control measures relating to garages have been retained.

Cut and fill on the boundary

Prior to the current amendments the cut and fill development standards included in the General Housing Code were, in many circumstances, resulting in builders utilising dropped edge beam construction. This was restricting other, common place construction methods and could add an additional \$10 - 20,000 to the cost of a new dwelling house.

In line with the existing standards of a number of local councils, the Codes SEPP has been amended to give homeowners the option of utilising a retaining wall up to a maximum height of 600mm to contain fill on the boundary.

Clause 3.29 Excavation of sloping sites and Clause 3.30 Fill of sloping sites have been amended to allow cut and fill on the boundary as an alternative to dropped edge beam construction on sloping sites.

Housing internal alterations for dwellings

The Housing Internal Alterations Code has been expanded to now cover internal alterations for all dwellings, not just single dwelling houses. This enables works that are contained entirely within the interior of a dwelling house or a dwelling (such as an apartment) to be undertaken as complying development.

Internal alterations now include demolition

The Code has been amended so that the development includes both demolition of internal fabric of the dwelling and the alteration works to that internal fabric. *Australian Standard 2601-2001 – Demolition of structures* is now included as a development standard for demolition alongside requirements that the alterations or demolition not result in a change of

building class (under the BCA) and not result in any additional dwellings.

This provision applies only to dwellings. It includes group homes and bed and breakfast accommodation but does not extend to boarding houses nor tourist and visitor accommodation.

It will also only apply to dwellings in residential flat buildings that have been strata subdivided or in those residential flat buildings that have not been strata subdivided where the occupation certificate for the building had not been issued before 28 January 2000.

This will ensure the continued protection of affordable housing under *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

The land based exemptions have not changed for complying development under the Housing Internal Alterations Code.

New subdivisions code (Strata Subdivision)

A new complying development code has been included under the Codes SEPP – the Subdivisions Code. This Code enables strata subdivision as complying development. Two development standards have been introduced. One standard is a requirement that any approval (development applications or complying development certificates) granted before 1 January 2011 must have addressed the allocation of parking spaces.

The date of 1 January 2011 provides a transitional period to enable councils to ensure that as part of the approval for the construction of a development, the allocation of parking spaces is covered specifically in a development consent, rather than deferring this consideration until a subsequent approval for the strata subdivision of the development where additional conditions of complying development certificate cannot be added.

A development standard requiring that any strata subdivision not contravene any condition of any development consent or complying development certificate is also included. This does not require that all the conditions be satisfied prior to the issuing of the subdivision complying development certificate, just that the certifier ensure the subdivision complying development certificate is not inconsistent with the condition of any consent relating to the development.

The provision does not apply to secondary dwellings or dual occupancies.

Councils need to be aware that from the commencement of this SEPP, when preparing all answers to question 3 of a s149 (2) planning certificate the additional code is now referred to in Clause 1.19(2)(d) as the Subdivisions Code of the Codes SEPP. This will require the answer to question 3 of the s149(2) certificate to refer to the Subdivisions Code. The general land exemptions for the Subdivisions Code are the same as for the Housing Internal Alterations Code and the General Commercial and Industrial Code.

Equivalent land use table

The land use table in Clause 1.6 has been amended to ensure a consistent approach across the Department

relating to which permitted land uses are equivalent between the Standard Instrument template and non-Standard Instrument Local Environmental Plan zones.

Timing of changes

The SEPP amendment will be gazetted on 23 April 2010. There is a staged commencement of the provisions. The changes about communication dishes, building height side and rear setbacks and outbuildings commenced upon gazettal. The other amendments will be commenced on 4 June 2010.

Further information

Information about the Codes SEPP, including the General Exempt Development Code, General Housing Code, Housing Internal Alterations Code and Commercial and Industrial Code is available on the Department's website at www.planning.nsw.gov.au/housingcode

For further information, please contact 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/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.

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