



PLANNING SYSTEM

Act and regulation changes

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

Commencement of certain provisions of the EP&A Amendment Act 2008 and EP&A Amendment (Complying Development) Regulation 2009

The purpose of this circular is to advise councils, accredited certifiers and the community of the provisions of the *Environmental Planning and Assessment Amendment Act 2008* and the Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009 that will commence on 27 February 2009.

Introduction

The *Environmental Planning and Assessment Amendment Act 2008* (Amendment Act) was assented to on 25 June 2008.

Provisions of the Amendment Act relating to complying development are to commence on **27 February 2009** along with the Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009 (Complying Development Regulation).

The relevant parts of the Amendment Act and the Complying Development Regulation outline new requirements and procedures for the determination of complying development certificates. The Amendment Act and Complying Development Regulation support the new framework for complying development introduced by the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) which will also commence on 27 February 2009.

Planning Circular PS 09–004 outlines the relationship between the Codes SEPP and councils' 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, changes to the Local Development Performance Monitoring program to

monitor the effectiveness of the Codes SEPP, the Education and Training Program and future amendments to the Codes SEPP.

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.

Amendments to the Environmental Planning and Assessment Act 1979

Amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act) that will commence on 27 February 2009 are identified below.

New procedures for applications for complying development certificate

The lodgement with or receipt by a council or accredited certifier of an application for a complying development certificate is not required to be notified to adjoining landowner or other persons.

Councils can no longer prepare DCPs that provide for advertising and/or notification of applications for complying development. Any provision of a DCP that requires advertising or notification of an application for complying development will have no effect from 27 February 2009.

Time limit for determination of complying development application

Section 85A(8) of the EP&A Act has been amended so as to provide that an application for complying development certificate is to be determined within the

period prescribed by the Regulations. The period prescribed by the Regulations is 10 days (see further discussion in relation to the Regulation below).

Post-determination notification

Section 85A (11) (c) is a new provision introduced by the Amendment Act and requires councils and accredited certifiers to notify any determination to issue a complying development certificate. Such notification being in accordance with the Regulations (see further discussion in relation to the Regulation below).

Amendments to the Environmental Planning and Assessment Regulation 2000

Changes to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) that will commence on **27 February 2009** are as follows.

New requirement for information to be included in application for complying development certificate

In addition to the matters outlined in Schedule 1 of the EP&A Regulation an application for complying development certificate must contain:

- the name of the environmental planning instrument under which the development is complying development
- if the development is specified as complying development by a DCP referred to in that instrument, the name of the DCP.

Time limit for determination of complying development application

Clause 130AA of the EP&A Regulation provides that the period for determining an application for a complying development certificate is 10 days.

The Savings and Transitional Regulation provides that this new provision **does not** apply to an application for a complying development certificate made but not finally determined before commencement on 27 February 2009.

Post-determination notification

New provisions have been inserted into clause 130 of the EP&A Regulation (subclause (5) and (6)) that require the council or accredited certifier to cause written notice of a determination to issue a complying development certificate to be given to the owner or occupier of any land within 40 metres of any boundary of the land to which the certificate relates within two days after the date of determination.

Notice is to be provided in the form approved by the Director-General. This form is available on www.planning.nsw.gov.au/housingcode.

The Savings and Transitional Regulation provides that these provisions do apply to an application for a complying development certificate made but not determined before the 27 February 2009.

Form of complying development certificate

Clause 134 (1A) of the EP&A Regulations require additional information to be recorded on complying

development certificates for development that is complying development under the Codes SEPP. The complying development certificate must specify:

- the land use zone within which the land is situated
- if the land is not zoned under an environmental planning instrument made as provided by section 33A (2) of the EP&A Act, the equivalent named land use zone applicable to the land for the purposes of that Policy.

The Savings and Transitional Regulation provides that these provisions **do apply** to an application for a complying development certificate made but not determined before the 27 February 2009.

Planning certificates

Clause 279 and Schedule 4 of the EP&A Regulation prescribe the matters to be specified in a section 149 (2) certificate.

Clause 279 (2) has been inserted into the EP&A Regulations and provide that a certificate under section 149 (2) of the EP&A Act may be issued containing only information set out in clause 3 of Schedule 4.

In other words, a person may make an application for, and council may issue, a section 149 (2) certificate that only identifies whether or not the land to which the certificate relates is land on which no complying development may be carried out under the Codes SEPP; and, if no complying development may be carried out on that land under the Codes SEPP, the reason why complying development may not be carried out on that land.

In order to facilitate an application for a section 149 (2) certificate which only sets out the information called for by clause 3 of Schedule 4 of the EP&A Regulations councils should amend their application forms to include a category of certificate as follows:

Certificate under section 149(2) identifying only the information set out in clause 3 of Schedule 4 of the EP&A Regulations.

If council issues a section 149 (2) certificate limited to the matters identified in clause 3 of Schedule 4 of the EP&A Regulations then the certificate should in addition to identifying the land to which the certificate relates only set out the information required by clause 3 of Schedule 4 of the EP&A Regulations.

By default all other section 149 (2) certificates issued by councils will be required to set out the all of the information called for by Schedule 4 of the EP&A Regulations including clause 3.

Councils will need to amend the content of the certificate and make provision to answer the questions raised by clause 3 of Schedule 4.

When answering the question in either form of the section 149 (2) certificate a council must:

- state yes or no that complying development may be carried out under the Codes SEPP
- if the answer is complying development may not be carried out on the land the certificate must identify the reason why complying development cannot be carried out on the land and in doing so would identify the applicable restrictions as listed in clause 1.19 of the Codes SEPP.

For example, if the certificate related to land that was identified in an environmental planning instrument as being within an area of coastal erosion hazard then the section 149 (2) certificate would include a response:

- No. Complying development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 may not be carried out on this land.
- The land is excluded land being land identified by an environmental planning instrument as being within an area of coastal erosion hazard.

A section 149 (2) certificate issued which only details the information required by clause 3 of Schedule 4 of the EP&A Regulations should include the following notation:

This section 149 (2) certificate has been issued for the limited purpose of identifying whether or not the land the subject of the certificate is land on which complying development may be carried out under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This certificate is not to be relied upon for the purpose of an Annexure to a Contract for the Sale of Land under the *Conveyancing Act 1919*.

Further information

The Amendment Act, Complying Development Regulation and Codes SEPP are available online at www.legislation.nsw.gov.au.

If you have further enquiries please phone the Planning Information Centre 02 9228 6333 or email information@planning.nsw.gov.au.

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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