

Using Complying Development in Schools

The purpose of this fact sheet is to provide information regarding the types of development that can be built at schools using the complying development pathway.

Complying development is a process of approval for development that can be determined through a fast-track assessment by a council or private accredited certifier. Approval for complying development is issued by council or an accredited certifier, provided it meets certain pre-determined standards.

General conditions of complying development certificates can be found in section 3.21 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure)*-Chapter 3 Educational establishments and child care facilities (Chapter 3).

Types of buildings allowed as complying development

Using the complying development pathway, Chapter 3 of SEPP Transport and Infrastructure allows certain school buildings to be constructed, or altered, within the boundaries of an existing or approved school.

The types of buildings permitted as complying development under SEPP Transport and Infrastructure include (but are not limited to) a library, administration building or teaching facility.

A full list of complying development items is found in section 3.40 of SEPP Transport and Infrastructure.

The complying development provisions apply to some activities on student accommodation which is within the boundaries of an existing or approved school, such as minor alterations and additions that do not add bulk and scale to the building.

Complying development does not apply to the development of car parks, even if these are within the boundaries of an existing or approved school.

Development carried out as complying development must not contravene any existing conditions of development consents applying to a site relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student/staff numbers.

Where complying development can be carried out

Complying development is permissible only when carried out within the boundaries of an existing or approved school. It cannot occur outside the boundaries of an existing or approved school, including on adjoining or nearby land.

Existing schools must be on land that has been lawfully occupied for the purpose of a school.

An approved school means a school which has obtained development consent.

Where complying development cannot be carried out

SEPP Transport and Infrastructure sets out additional land on which complying development cannot occur. These include (but are not limited to) land that is:

- reserved for a public purpose
- identified on an Acid Sulphate Soils Map as being Class 1 or Class 2
- significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*
- identified by an environmental planning instrument as being within a buffer area, a riverfront area, an ecologically sensitive area, environmentally sensitive land, a protected area.
- identified as being or affected by a coastline hazard, coastal hazard, coastal erosion hazard, or in a foreshore area.

See section 3.18 for a full list of the land where complying development cannot occur.

Additionally, complying development must not be carried out on land that is:

- critical habitat
- a wilderness area (within the meaning of the *Wilderness Act 1987*)
- an item that is listed on the State Heritage Register or subject to an interim heritage order under the *Heritage Act 1977*
- an item of environmental heritage or a heritage item by an environmental planning instrument
- within an environmentally sensitive area (defined in Clause 1.5 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*).

More information on the above can be found at Clause 1.17A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Complying development on bushfire prone land

In limited circumstances a bush fire safety authority is not required for school development on bush fire prone land, and the proposed development may be undertaken as complying development.

This is set out in section 100B of the Rural Fires Act 1997, and includes:

- the carrying out of internal alterations to any building, or
- development excluded by clause 46 of the Rural Fires Regulation 2022.

The development must still meet all criteria, general requirements and development standards and controls for complying development under Chapter 3, SEPP Transport and Infrastructure.

Where a bush fire safety authority is required then the proposed development cannot be complying development.

A bush fire safety authority can be sought from the Commissioner of the NSW Rural Fire Service. Questions regarding the application process for a bush fire safety authority should be directed to the NSW Rural Fire Service.

Additionally, complying development cannot be carried out on land in bush fire attack level-40 or the flame zone. The local council or a person who is recognised by the NSW Rural Fire Service as a suitably qualified consultant in bush fire risk assessment can determine whether the land is in bush fire attack level-40 or the flame zone – see section 3.19 of SEPP Transport and Infrastructure.

Development standards for complying development

The specific development standards that apply to complying development are listed in Schedule 6 of SEPP Transport and Infrastructure and relate to:

- the building height of new buildings and additions to existing buildings
- the front, side and rear setbacks of new buildings and additions to existing buildings
- the design requirements and building materials that may be used
- noise emission limitations
- overshadowing of adjoining properties
- design requirements to minimise loss of privacy of adjoining properties
- landscaping for screening along boundaries
- the provision of suitably located waste-storage facilities
- the carrying out of earthworks related to the complying development
- stormwater drainage connections
- flood control lots.

Developments must comply with all of the applicable development standards in order to be approved as complying development. If a proposed development cannot comply with a development standard, then it will require a development application to be lodged instead. Other general requirements for complying development can be found in section 3.18 of SEPP Transport and Infrastructure.

Design requirements

There are seven design principles that must be considered on buildings higher than 12 metres. These include ensuring new developments respond appropriately to their setting, are accessible to all and provide a high level of amenity to students.

A written statement by a qualified designer verifying the development has applied these design principles must be submitted before the certifier can issue a complying development certificate for new buildings, or alterations and additions.

Traffic, road safety and parking

The management of traffic, road safety issues and parking requirements for schools is a significant issue.

For example, to obtain a complying development certificate, developments that will result in an additional 50 or more students must be accompanied by a certificate issued by the relevant roads authority. The purpose of the certificate is to certify that any impacts on the surrounding road network as a result of the development will be acceptable if specified requirements are met.

This means the developer of a school project must consult with the relevant roads authority regarding the proposed project before applying for a complying development certificate. The roads authority may require submission of information to enable a proper assessment of the proposal and its likely impacts.

Consultation requirements

No consultation requirements exist in regard to complying development, although schools proposing developments are strongly encouraged to discuss development plans with their surrounding community.

However, the person undertaking the school development is required to give written notice to owners or occupiers of dwellings located within 20 metres of the land proposed to be developed at least two/seven days before the commencement of works.

Additionally, the accredited certifier must notify the council within two days of the determination of a complying development application by forwarding copies of relevant documents including the determination, plans and specifications.

Prior to commencement of building works, the person undertaking the school development must give at least two days notice to the council and principal certifying authority (if not the council) of the intention to commence construction of the building.

Complaints about complying development

Individuals who believe a complying development does not conform to the required standards regarding, for example, noise or overshadowing specifications should raise this matter with the appointed principal certifying authority for resolution. If the certifier does not respond to the complaint or take any necessary action, a formal complaint can be lodged with NSW Fair Trading about that certifier.

Where can I find out more?

- For information on SEPP Transport and Infrastructure go to <https://www.planning.nsw.gov.au/Policy-and-Legislation/Education>