Exempt development: frequently asked questions

About the code

As part of its ongoing planning reforms, the NSW Government has released the first stage of the NSW Housing Code.

The NSW Housing Code outlines how owners of lots of 450 square metres or above can undertake specified residential developments as complying development with council or accredited certifier sign-off. These developments include:

- detached single and double storey dwelling houses;
- home extensions and renovations; and
- other ancillary development, such as swimming pools.

It also outlines how 49 types of low-impact development types (known as “exempt development”) can be undertaken without the need for planning or construction approval. However, other legislative requirements for approvals, licences, permits and authorities still apply.

What is exempt development?

Exempt development was first introduced in NSW in 1993 for low-impact forms of development where, subject to satisfying pre-specified standards, there is no need for planning or construction approval to be obtained. In other words, if the development standards are met, the development can be built without needing to be approved by an accredited certifier or local council. Other legislative requirements for approvals, licences, permits and authorities may still apply.

The code provides an easy-to-use framework for exempt development for homeowners. Exempt development typically covers small-scale structures associated with a dwelling such as sheds, pergolas, fences, rainwater tanks and fixed barbecues.

While these structures may be considered relatively minor, if not properly controlled they have the potential to impact adversely on neighbours or streetscapes. The standards within the NSW Housing Code minimise these impacts, by restricting the size and location of these structures.

What is the NSW Government doing in regard to exempt development?

When exempt and complying development was introduced in 1998, the NSW Government gave councils the option of either preparing their own lists of exempt development or adopting the NSW Government’s list in State Environmental Planning Policy 60 – Exempt and Complying Development (SEPP 60). Many councils chose to prepare their own exempt development lists and, as a result,
NSW had up to 115 different codes containing exempt standards (114 council codes and 38 councils using SEPP 60).

Between neighbouring council areas, with similar houses and lot sizes, there can be markedly different rules for the same types of exempt development. This causes uncertainty and confusion among tradespeople and home owners. It is also means that development applications (DAs) are being lodged for relatively minor property improvements.

The number of DAs being processed by councils is overwhelming. This unnecessary red tape is slowing down the process of improving residential property and costing homeowners and local councils both time and money.

In the 10 years to 2007-08, the number of DAs handled by NSW councils has more than doubled, from 45,000 to more than 108,000 annually. As a result of this increasing workload, in NSW the average time taken for a council to process a DA is now 74 days, with many taking much longer.

This has led the NSW Government to introduce a Statewide exempt development code for certain types of development, to provide consistency for these minor forms of development that can be controlled by pre-determined standards.

The exempt development code is contained within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. This code was gazetted on 12 December 2008 and commenced on 27 February 2009.

**What sort of development is covered in the code?**

The code provides rules for 45 types of exempt development that are available for dwelling houses, listed below.

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<tr>
<th>Access ramps</th>
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<tr>
<td>Air conditioning units</td>
<td>Animal shelters</td>
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<tr>
<td>Aviaries</td>
<td>Awnings, blinds and canopies</td>
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<tr>
<td>Balconies, decks, patios, pergolas, terraces and verandas</td>
<td>Bed and breakfast accommodation</td>
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<tr>
<td>Barbecues</td>
<td>Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses</td>
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<td>Car ports</td>
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<td>Communications dishes (radio and satellite)</td>
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<td>Driveways</td>
<td>Earthworks and retaining walls</td>
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An additional four exempt development types are reserved for commercial and industrial premises.

Where does the NSW Government’s code apply?

Generally, the Exempt Development Code applies to all land in NSW, regardless of zoning or lot size. However, the code has been specifically written for residences and many of the types of development included are limited to a residential (domestic purposes) setting only.

The code is excluded in its entirety from:

- environmentally sensitive areas (such as State conservation reserves and land within 100m of significant wetlands or marine reserves);
- State heritage items;
- alpine resort areas in Kosciuszko National Park;
- Bathurst Regional Council; and
- Warringah Council.

Please check the State environmental planning policy for the full list of excluded areas.

Some forms of exempt development in the code are limited to certain land-use zones. For example, some development types cannot be undertaken in draft or existing heritage conservation areas or in certain locations on the land. Similarly, development standards may differ, depending on the zoning of the property.

The code has now been amended to include additional types of development and/or development standards for other land zonings (e.g., commercial, retail, industrial land and additional housing development). A separate fact sheet provides an overview of the additional exempt development types and commercial and industrial exempt development types.
How has the NSW Government developed the code?

The Exempt Development Code is based on a review of standards previously used by councils across NSW and is designed to provide a reasonable and consistent set of Statewide development standards.

In some cases, the code may be more flexible than existing council codes; in other cases, it may be tighter. The major benefit of the code is that it makes the rules clearer and provides consistency for homeowners across NSW.

The code was publicly exhibited in May 2008 and has been developed with input from councils, planning professionals, accredited certifiers, urban designers, and the general public.

When will the code come into force?

The exempt development code commenced on 27 February 2009, the Amendment which introduces commercial and industrial and additional housing exempt development types commenced on 7 September 2009.

How does the Statewide Exempt Development Code relate to existing local council codes?

If the Statewide Exempt Development Code covers the same development type listed in a council exempt development code, then the Statewide code prevails.

In some cases, a development type may be listed as exempt in the Statewide code, and complying in a council code. Until the end of February 2010, homeowners may choose to use either the State or council code. After this date, only the Statewide code will apply.

If the development type is listed as complying development in the Statewide code, and exempt in a council code, then the council code does not apply.

Complying development requires council or accredited certifier sign-off, unlike exempt development, where no planning or construction approval is required if the code’s standards are met.

What if my proposed development isn’t covered in the Statewide code?

If your proposed development type is not listed in the Statewide Exempt Development Code, you have several options.

Firstly, check with your local council to see if your development falls within council’s list of exempt development. In this case, you can follow the council code.

If your development is not covered in either the State or local council’s exempt development code, check whether your proposed work qualifies as complying development (which requires accredited certifier or council approval) under either the State or local council code. For instance, in-ground swimming pools are listed in the Statewide code as complying development, not exempt development.

If your planned work does not fit within either the local council or Statewide exempt or complying codes, you will probably need to submit a development application to your council.
**What if my proposed development breaches the Statewide code’s standards?**

Check whether the development type is listed in either the local council or Statewide complying development codes. The different standards of these codes may mean the development can proceed as complying development.

If this is not the case, you will need to lodge a development application with the council.

**What are the penalties for building something as exempt development, which is not covered in a local council or the Statewide Exempt Development Code?**

Any person (including neighbours) can take action in the Land and Environment Court to remedy a breach of the *Environmental Planning and Assessment Act*, which may include a breach of the exempt development code.

Councils and other consent authorities also have specific powers under the Act to issue fines or to issue orders to demolish works that fall outside the scope of exempt development.

**How does the exempt code relate to the wider NSW Housing Code?**

The Exempt Development Code covers minor alterations and modifications to dwellings and some landscaping and improvements to property.

The General Housing Code covers minor housing development, such as single and two storey detached dwellings proposed for lots 450 sq/m or greater. The Housing Internal Alterations Code provides for internal latertations as complying development. Complying development requires approval through a complying development certificate issued by a council or private accredited certifier.

**Can I cut down trees to build exempt development?**

If a council policy requires a permit or development consent for removal of a tree or other vegetation, you must obtain that approval before you remove the tree or other vegetation.

**Do I have to follow manufacturer’s specifications when installing something classed as exempt development?**

Yes.

**Will the code be regularly reviewed?**

Yes, as soon as practicable after the first anniversary of the policy.

**Do I have to notify my neighbours or local council before proposing or beginning exempt development?**

No. Neighbour or local council notification has never been part of the exempt development system used by local councils since 1993, as it applies only to minor works. However, it is good practice to speak with your neighbours before undertaking any building work.
How do I find out more?

For a wealth of information and resources log on to the Department of Planning website at www.planning.nsw.gov.au/housingcode or contact the Department’s Information Centre on 1300 305 695 or contact codes@planning.nsw.gov.au.

For up-to-the-minute updates sign up for the Department’s Enews email service, the latest information delivered direct to your inbox. Visit http://www.planning.nsw.gov.au/enews/index.asp to sign up, it’s easy and it’s free.