## NSW Housing Code A guide to complying development



A Guide to Complying Development: Housing Code State of New South Wales through the NSW Department of Planning

I DEPEND THE REPORT OF LEVEL

#### April 2011

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housingcode.planning.nsw.gov.au/

www.legislation.nsw.gov.au

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### Introduction

#### Purpose of this user guide

It is now possible to build a new or carry out alterations and additions to a dwelling house without having to lodge a development application (DA), using a State wide complying development code.

This user guide explains how the State Environmental Planning Policy (Exempt and Complying Codes) 2008 ("Codes SEPP") applies to different types of residential development on residential zoned land.

The guide provides information on development that can be carried out using the General Housing Code, the Housing Alterations Code and the Demolition Code. There is also a Rural Housing Code, for residential development on rural zoned land.

Under the Codes SEPP, development may be carried out as exempt or complying development. This guide will explain the difference between the two.

By working through a series of logical steps, this guide will help the reader navigate the Codes SEPP for development on residential zoned land to determine whether:

- the Codes SEPP can be used
- the Codes SEPP applies to the proposed development (and, if not why)
- if the Codes SEPP does apply, whether the proposed development is categorised as exempt or complying development
- the relevant development standards that apply to the proposed development, and
- any other conditions, standards, approvals or legislation that must be considered or requirements met.

This user guide does not replace the Codes SEPP and should be read in conjunction with the Codes SEPP (there are references throughout the guide to clauses contained in the Codes SEPP). It may also be necessary to consider other legislation that regulates exempt and complying development including:

- Environmental Planning and Assessment Act 1979 (EP&A Act 1979)
- Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)
- Local Government Act 1993
- Building Code of Australia (BCA)
- relevant Australian Standards (AS)
- Standard Instrument Principal Local Environmental Plan
- Roads Act 1993
- Swimming Pools Act 1992
- National Park and Wildlife Act 1974
- Conveyancing Act 1919
- Protection of the Environment Operations Act 1991
- Occupation Health & Safety Regulation 2001
- Threatened Species Act 1995

The Codes SEPP does not override existing legislation that may apply to the proposed development.

Current versions of all environmental planning instruments (EPIs) and legislation, including the above, is arranged in alphabetical order on www.legislation.nsw.gov.au.

Throughout this document you will see an icon with a



clause number under the headings. These direct you to the specific clauses in the Codes SEPP that relate to the heading.

This user guide does not cover all types of complying development permissible under the NSW planning system. Some complying development is permissible or enabled under other environmental planning instruments – for example the State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Affordable Rental Housing) 2009, councils' local environmental plans (LEP) and development control plans (DCP).

Anyone undertaking complying development should ensure they are familiar with the particular requirements of the environmental planning instrument they are relying upon to assess their development.

**Note:** The scenarios and pictures used in this guide are used for illustrative purposes only.

#### Background

The NSW Government is streamlining the development approval processes for low impact and routine development proposals, freeing up the merit based system for more complex and sensitive developments.

Under the NSW planning system, a development consent is required in most instances. There are generally three pathways for development:

- exempt development, covers certain types of minor work where no application for planning or construction approval is required, however there are standards which must be met
- complying development, covers work that meets certain pre-determined development standards and can be assessed and approved by a certifying authority (council or private accredited certifier), in 10 days or
- merit based assessment which requires a DA to be submitted to a consent authority (usually council) for assessment and results in a development consent, if approved.

The principal aim of the Codes SEPP is to remove unnecessary complexity and red tape for home owners constructing single or two storey dwelling houses or embarking on low impact renovations or improvements to their homes.

#### The Codes SEPP

#### Overview

The Codes SEPP incorporates:

- the General Exempt Development Code (exempt development for housing, commercial and industrial uses)
- the General Housing Code (complying development)
- the Housing Alterations Code (complying development)
- the Rural Housing Code (complying development)
- the General Commercial and Industrial Code (complying development)
- the Subdivisions Code (complying development)
- the General Development Code (complying development), and
- the Demolition Code (complying development).

The Codes SEPP does not repeat all of the technical requirements for buildings that are contained in other legislation, including the BCA and relevant Australian Standards.

#### What is exempt development?

Exempt development has minimal environmental impact and can be carried out under the NSW planning system, without the need to gain planning approval. It is important to remember that development undertaken as exempt development must be carried out in accordance with the development standards contained within the General Exempt Development Code as well as any other relevant legislation, codes and standards. For example, a 'general requirement' for exempt development is that it must meet the relevant provisions of the BCA. Advice from an appropriate professional may be required to ensure that a proposed development meets the exempt development requirements under the Codes SEPP.

It is important to recognise that if an exempt development type does not satisfy any of the applicable development standards it is no longer exempt development and development consent may be required. For more information on exempt development click here.

#### What is complying development?

Complying development is a combined planning and construction approval for development that meets pre-determined development standards. Determination of a complying development certificate (CDC) relies on a code-based assessment. The local council or a private accredited certifier can issue a CDC. Where an application for complying development meets the specified development standards in the Codes SEPP (or council's complying development controls) it must be determined within 10 days of lodgement (unless both parties mutually agree to an extension). If an applicant chooses to work beyond the development standards contained in the Codes SEPP, they will need to lodge a DA with the relevant local council in accordance with the merit-based rules, for consideration.

### Environmental Planning and Assessment Regulation 2000

The EP&A Regulation plays an important role in implementing the planning provisions of the EP&A Act 1979. The EP&A Regulation 2000 sets a number of administrative and process requirements, including mandatory conditions of a complying development certificate.

These requirements can be found in Part 7 "Procedures relating to complying development certificates" of the EP&A Regulation 2000.

The requirements include, but are not limited to:

- how an application must be made
- the ability for a certifying authority to require additional information
- requiring a site inspection to be undertaken

- time limit for determining a complying development certificate
- compliance with the Building Code of Australia
- the requirements for certification undertaken on bush fire prone land, as well as outlining what information is required
- home Building Act requirements, fulfilment of BASIX requirements, development involving asbestos and other conditions.

In addition, the EP&A Regulation enables a complying development certificate to be lodged for two or more new dwelling houses being erected concurrently on adjoining lots. This is discussed further in the user guide under the "General Housing Code" section.

It is important that both council and private accredited certifiers are familiar with all relevant requirements of the EP&A Regulation 2000.

#### Getting started

Prior to determining whether using the Codes SEPP is right for your project, there are some useful pieces of information you may need.

#### Section 149(2) and (5) certificate

Councils in NSW are able to issue a planning certificate as to whether or not complying development under the Codes SEPP can be carried out for a particular lot of land. This is the easiest way to find out whether the Codes SEPP can be used on your land.

It is recommended that applicants obtain the full Section 149 (2) and (5) certificate. This will provide a comprehensive list of planning matters and constraints affecting the subject lot.

#### Certificate of title and survey plan

A certificate of title that indicates the size of the lot and any easements or notations that may affect the lot.

A certificate of title is available from www.lpma.nsw. gov.au

A survey plan prepared by a registered surveyor is also useful. Make sure the surveyor includes the location of houses on adjoining lots, contours and plenty of existing ground levels around where you propose your new development as this will be useful in determining setbacks and building heights.

### Who can issue a complying development certificate (CDC)

An application for a CDC can be lodged with either the local council or a private accredited certifier. A CDC must be issued by the certifying authority prior to building work commencing.

The Building Professionals Board (www.bpb.nsw.gov. au), which oversees accredited certifiers, maintains an online database which can be searched by local area or accreditation category to find a certifying

#### authority.

It is recommended that you start talking to council or a private accredited certifier before you start finalising your plans. They can provide guidance to ensure that you meet with the relevant requirements and development standards.

#### Other legislative requirements

In addition to a CDC, there may be other legislative requirements for approvals, licenses, and permits that authorities may also require. For example if a new driveway is proposed, a road opening permit from council will be required prior to a CDC being issued.

Information on some common approvals is contained later in this guide.

#### Need help?

It is always best to contact your local council, architect, planner, draftsperson or accredited certifier to obtain advice during the early stages of designing a development.

#### More information on Codes SEPP

- Visit: housingcode.planning.nsw.gov.au
- Call Codes SEPP Infoline: 1300 305 695
- Email: codes@planning.nsw.gov.au









## Is the proposed development exempt under the Codes SEPP?

#### 1.1 The General Exempt Development Code

For small scale or minor building works, there may be no need to obtain any formal approval.

The General Exempt Development Code sets out the activities and associated development standards for developments that can be carried out as exempt development; no other planning or construction approval is required although other standards, codes and legislation may still apply.

Examples of exempt development under the General Exempt Development Code include, but are not limited, to:

- air-conditioning units
- balconies, decks, patios, pergolas, terraces, and verandahs
- cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses
- carports
- driveways
- fences, and
- minor alterations.

The General Exempt Development Code lists more than 40 development types that can be undertaken as exempt development around the home. You should refer to Part 2 of the Codes SEPP for the full list of development types covered and the applicable development standards. For further information about exempt development under the Codes SEPP refer to Appendix A, of this guide.

Where the proposed development does not meet the requirements for exempt development, users should consider using the other codes to test whether their project can be carried out as complying development.

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# Does the proposed development meet the land based requirements under the Codes SEPP?

The requirements for complying development are set out in Part 1 of the Codes SEPP. These requirements include that the development must:

- be permissible with consent in the land use zone in which it is proposed to be carried out
- meet the relevant provisions of the BCA
- meet the land based requirements.

Where the proposed development does not meet the requirements, consider amending the proposal to meet the general requirements, or lodge a DA.

#### 2.1 Excluded land and exemptions

The Codes SEPP generally applies to all the land in NSW. However, there are some circumstances where the land has been excluded from the Codes SEPP.

The Codes SEPP establishes three levels of exclusions:

- general exclusions
- land based exemptions
- local exclusions

The simplest way to find out whether an exclusion applies to the lot is by obtaining a s149 (2) certificate.

Some land has been excluded or exempted because of certain land characteristics that require further merit-based consideration and therefore some complying development is not possible. For example a new dwelling house cannot be carried out on land at risk of coastal hazardous processes. However development made under the Housing Alterations Code to a dwelling house may be carried out on these lands because alterations will have a lower impact on the land sensitivity.

#### **General exclusions**

Clause 1.4 of the Codes SEPP sets out the land to which the policy applies. It also lists land where the policy does not apply. This land is known as a general exclusion.

Land where the policy does not apply includes land:

- to which State Environmental Planning Policy (Kosciuszko National Park - Alpine Resorts) 2007 applies
- to which State Environmental Planning Policy (Western Sydney Parklands) 2009 applies
- that is within 18km of the land owned by the Australian National University at Siding Spring to which the Orana Regional Environmental Plan No.1 - Sliding Springs applies.

#### Land based exemptions

Some land is exempt from the operation of the codes. This is usually land that has a high level of environmental sensitivity.

The following tables list the land to which the General Exempt Development Code does not apply, and also land to which the Codes SEPP does not apply for complying development under the General Housing Code, the Rural Housing Code, Housing Alterations Code and the Demolition Code.

#### Local exclusions

The Codes SEPP also includes local exclusions; this is land that is excluded from the provisions of the General Housing Code due to unique circumstances such as coastal erosion. Users should refer to Schedule 2-5 of the Codes SEPP to ensure that land is not subject to a local exclusion or variation. Generally speaking, it can be expected that land not subject to environmental sensitivities will be eligible for complying development.

Table 1. General Land Exemptions - General Exempt Development Code			
Clause	Land		
1.15	land that is critical habitat		
	<ul> <li>land within a wilderness area (identified under the Wilderness Act 1987)</li> </ul>		
1.16	designated development		
	<ul> <li>land that comprises, or on which there is, an item that is listed on the State Heritage Register under the <i>Heritage Act 1977</i> or that is subject to an interim heritage order under the <i>Heritage</i> <i>Act 1977</i></li> </ul>		
1.19	<ul> <li>Iand described or otherwise identified on a map specified in Schedule 4 of the Codes SEPP</li> <li>Iand identified as an environmentally sensitive area under this Policy;</li> <li>the coastal waters of the State</li> <li>a coastal lake</li> <li>Iand to which State Environmental Planning Policy No 14 - Coastal Wetlands or State Environmental Planning Policy No 26 - Littoral Rainforests applies and land within 100m</li> <li>Iand reserved as an aquatic reserve under the <i>Fisheries Management Act 1994</i> or as a marine park under the <i>Marine Parks Act 1997</i> and land within 100m</li> <li>Iand within a wetland of international significance declared under the Ramsar Convention</li> </ul>		
	<ul> <li>on Wetlands or within a World heritage area declared under the World Heritage Convention and within 100m</li> <li>land identified in this or another environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance</li> <li>land reserved under the <i>National Parks and Wildlife Act 1974</i> or land to which Part 11 of that Act applies</li> <li>land reserved or dedicated under the <i>Crown Lands Act 1989</i> for the preservation of flora, fauna, geological formations or for other environmental protection purposes,</li> <li>land identified as being critical habitat under the <i>Threatened Species Conservation Act 1995</i> or Part 7A of the <i>Fisheries Management Act 1994</i>.</li> </ul>		

**Note:** If only a part of a lot is land to which this applies, complying development must not be carried out on any part of that lot. It must be permissible, with consent, in the land use zone and must not be carried out on land that is less than the minimum lot size for the erection of a dwelling house under an environmental planning instrument applying to the land.

To find out whether your land is listed as environmentally sensitive or affected by a general exclusion or land based exemption apply for a "planning certificate" known as a section 149(2) certificate from your council.

## STEP

Table 2. General Land Exemptions - General Housing Code			
Clause	Land		
1.17A	land that is critical habitat		
	<ul> <li>land within a wilderness area (identified under the Wilderness Act 1987)</li> </ul>		
	<ul> <li>land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or that is subject to an interim heritage order under the <i>Heritage</i> <i>Act 1977</i> or that is identified as an item of environmental heritage in an environmental planning instrument)</li> </ul>		
	development that requires concurrence		
	<ul> <li>land identified as an environmentally sensitive area under this Policy;</li> </ul>		
	the coastal waters of the State		
	a coastal lake		
	<ul> <li>land to which State Environmental Planning Policy No 14 - Coastal Wetlands or State Environmental Planning Policy No 26 - Littoral Rainforests applies and land within 100m</li> <li>land reserved as an aquatic reserve under the Fisheries Management Act 1994 or as a marine park under the Marine Parks Act 1997 and land within 100m</li> </ul>		
	<ul> <li>land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention and within 100m</li> </ul>		
	<ul> <li>land identified in this or another environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance</li> </ul>		
	<ul> <li>land reserved under the National Parks and Wildlife Act 1974 or land to which Part 11 of that Act applies</li> </ul>		
	<ul> <li>land reserved or dedicated under the Crown Lands Act 1989 for the preservation of flora, fauna, geological formations or for other environmental protection purposes,</li> </ul>		
	<ul> <li>land identified as being critical habitat under the <i>Threatened Species Conservation Act</i> 1995 or Part 7A of the <i>Fisheries Management Act</i> 1994.</li> </ul>		

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1.19

•	land that comprises, or on which there is, an item that is listed on the State Heritage Register under the <i>Heritage Act 1977</i> or that is subject to an interim heritage order under the <i>Heritage</i> <i>Act 1977</i>
•	land that comprises, or on which there is, a heritage item or draft heritage item
•	land within a wilderness area (identified under the Wilderness Act 1987)
•	land within a heritage conservation area or a draft heritage conservation area, unless the development is a detached outbuilding or swimming pool
•	land that is reserved for a public purpose in an environmental planning instrument, or
•	and identified on an Acid Sulfate Soils Map as being Class 1 or Class 2
•	land that is subject to a biobanking agreement under Part 7A of the <i>Threatened Species</i> <i>Conservation Act 1995</i> or a property vegetation plan under the <i>Native Vegetation Act 2003</i> , land in a foreshore area
•	land that is in the 25 ANEF contour or a higher ANEF contour, unless the development is only for the erection of ancillary development, the alteration of or an addition to ancillary development or the alteration of a dwelling house
•	unsewered land to which <i>Drinking Water Catchments Regional Environmental Plan No 1</i> applies, or
•	unsewered land in any other drinking water catchment identified in any other environmental planning instrument
•	land that is declared to be a special area under the Sydney Water Catchment Management Act 1998
•	land described or otherwise identified on a map specified in Schedule 5 of the Codes SEPP
•	excluded land identified by an environmental planning Instrument:
	Within a buffer area
	Within a river front area
	Within an ecologically sensitive area
	Environmentally sensitive land
	Within a protected area, or

• Land identified by an environmental planning instrument, a development control plan or a policy adopted by the council as being a coastal erosion hazard.

**Note:** If only a part of a lot is land to which this applies, complying development must not be carried out on any part of that lot. It must be permissible, with consent, in the land use zone and must not be carried out on land that is less than the minimum lot size for the erection of a dwelling house under an environmental planning instrument applying to the land.

To find out whether your land is listed as environmentally sensitive or affected by a general exclusion or land based exemption apply for a "planning certificate" known as a section 149(2) certificate from your council.

Table 3. G	eneral land exemptions: Housing Alterations Code
Clause	Land
1.17A	<ul> <li>land that is critical habitat</li> <li>development that requires concurrence</li> <li>land within a wilderness area (identified under the <i>Wilderness Act 1987</i>)</li> <li>land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or that is subject to an interim heritage order under the <i>Heritage Act 1977</i> or that is identified as an item of environmental heritage in an environmental planning instrument)</li> <li>land identified as an environmentally sensitive area under this Policy;</li> <li>the coastal waters of the State</li> <li>a coastal lake</li> <li>land to which <i>State Environmental Planning Policy No 14 - Coastal Wetlands</i> or <i>State Environmental Planning Policy No 26 - Littoral Rainforests</i> applies and land within 100m</li> <li>land reserved as an aquatic reserve under the <i>Fisheries Management Act 1994</i> or as a marine park under the <i>Marine Parks Act 1997</i> and land within 100m</li> <li>land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention and within 100m</li> <li>land identified in this or another environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance</li> <li>land reserved under the <i>National Parks and Wildlife Act 1974</i> or land to which Part 11 of that Act applies</li> <li>land reserved or dedicated under the <i>Crown Lands Act 1989</i> for the preservation of flora, fauna, geological formations or for other environmental protection purposes,</li> <li>land identified as being critical habitat under the <i>Threatened Species Conservation Act 1995</i> or Part 7A of the <i>Fisheries Management Act 1994</i>.</li> </ul>
1.19	<ul> <li>land that comprises, or on which there is, an item that is listed on the State Heritage Register under the <i>Heritage Act 1977</i> or that is subject to an interim heritage order under the <i>Heritage Act 1977</i></li> <li>land that comprises, or on which there is, a heritage item or draft heritage item</li> <li>land within a wilderness area (identified under the Wilderness Act 1987)</li> <li>unsewered land to which <i>Drinking Water Catchments Regional Environmental Plan No 1</i> applies,</li> <li>unsewered land in any other drinking water catchment identified in any other environmental planning instrument.</li> </ul>

**Note:** If only a part of a lot is land to which this applies, complying development must not be carried out on any part of that lot. It must be permissible, with consent, in the land use zone and must not be carried out on land that is less than the minimum lot size for the erection of a dwelling house under an environmental planning instrument applying to the land.

To find out whether your land is listed as environmentally sensitive or affected by a general exclusion or land based exemption apply for a "planning certificate" known as a section 149(2) certificate from your council.

Table 4. General land exemptions: Demolition Code			
Clause	Land		
1.17A	land that is critical habitat		
	<ul> <li>land within a wilderness area (identified under the Wilderness Act 1987)</li> </ul>		
	<ul> <li>land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or that is subject to an interim heritage order under the <i>Heritage</i> <i>Act 1977</i> or that is identified as an item of environmental heritage in an environmental planning instrument)</li> </ul>		
	development that requires concurrence		
	<ul> <li>land identified as an environmentally sensitive area under this Policy;</li> </ul>		
	the coastal waters of the State		
	a coastal lake		
	<ul> <li>land to which State Environmental Planning Policy No 14 - Coastal Wetlands or State Environmental Planning Policy No 26 - Littoral Rainforests applies and land within 100m</li> </ul>		
	<ul> <li>land reserved as an aquatic reserve under the Fisheries Management Act 1994 or as a marine park under the Marine Parks Act 1997 and land within 100m</li> </ul>		
	<ul> <li>land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention and within 100m</li> </ul>		
	<ul> <li>land identified in this or another environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance</li> </ul>		
	<ul> <li>land reserved under the National Parks and Wildlife Act 1974 or land to which Part 11 of that Act applies</li> </ul>		
	<ul> <li>land reserved or dedicated under the Crown Lands Act 1989 for the preservation of flora, fauna, geological formations or for other environmental protection purposes,</li> </ul>		
	<ul> <li>land identified as being critical habitat under the <i>Threatened Species Conservation Act</i> 1995 or Part 7A of the <i>Fisheries Management Act</i> 1994.</li> </ul>		

**Note:** If only a part of a lot is land to which this applies, complying development must not be carried out on any part of that lot. It must be permissible, with consent, in the land use zone and must not be carried out on land that is less than the minimum lot size for the erection of a dwelling house under an environmental planning instrument applying to the land.

To find out whether your land is listed as environmentally sensitive or affected by a general exclusion or land based exemption apply for a "planning certificate" known as a section 149(2) certificate from your council.

#### 2.2 Bush fire prone land

Low risk bush fire prone land is no longer being excluded from the Codes SEPP.

The Department of Planning (DoP) and the Rural Fire Service (RFS) have worked together to introduce a new system which allows complying development on some bush fire prone land, but importantly maintains a rigorous assessment regime for managing bush fire risk.

Clause 1.19 of the Codes SEPP has been amended so that land identified as being "bush fire prone" is no longer listed as a land exemption and is no longer excluded from the application of the codes. Instead, specified development requirements and development standards have been added to the General Housing Code that apply to new development undertaken on low risk bush fire prone land (BAL 29 or lower).

The development standards have been designed to ensure that:

- complying development is not allowed on high risk bush fire prone land (i.e. BAL (Bushfire Attack Level) 40 or BAL Flame Zone)
- only a 'suitably qualified consultant' (see definition below), the local council or the Rural Fire Service (until 2012) can certify the BAL under the Planning for Bushfire Protection Guidelines 2006
- Once the BAL is known, the council or private accredited certifier must certify that the proposal complies with AS 3959-2009 Construction of buildings in bush fire prone land, and the standards in the Codes SEPP.

The flow chart on the following page outlines the steps required to obtain a complying development certificate on bush fire prone land.

#### HELPFUL HINT-Definition of 'BAL'

BAL is the bush fire attack level category that has been assigned to land describing the amount of risk that the property is at in the event of a bush fire attack.

More information about the categories of bush fire attack, including the flame zone, can be found in Table A3.4.2 of Addendum: Appendix 3 to the publication titled 'Planning for Bush Fire Protection'. (The addendum was published in 2010).

### HELPFUL HINT-

Definition of a 'suitably qualified consultant'

A 'suitably qualified consultant' is someone who is a member of a scheme recognised by the RFS as having met the requirements to determine bush fire attack level categories.

Visit www.rfs.nsw.gov.au for a list of qualified consultants.

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#### Process for assessing an application on bush fire prone land



#### 2.3 Flood control lots

Low hazard flood control lots are no longer excluded from the Codes SEPP. A new process is being introduced which allows complying development to be undertaken on some land identified as being subject to flood controls. Importantly, a rigorous assessment regime has been developed to determine and minimise flood risk.

Clause 1.19 of the Codes SEPP has been amended so that land identified as a 'flood control lot' is no longer excluded from the application of the General Housing Code. Instead, specified development and development standards have been added to the General Housing Code for development on low hazard flood control lots.

The development standards have been designed to ensure that:

• complying development is not allowed on high hazard or high risk flood control lots. They

include: floodways, flood storage areas, a flowpath or areas identified in local flood plans as high hazard or high risk. This is to be certified by the local council or a professional engineer who specialises in hydraulic engineering, and

 the local council or a professional engineer who specialises in hydraulic engineering must certify that the proposed development complies with the development standards for flood control lots.

The flow chart on the following page outlines the steps required to obtain a complying development certificate on bush fire prone land.

#### HELPFUL HINT-Definition of a 'profesional engineer'

A 'professional engineer' is someone who is a registered Corporate Member of the Institution of Engineers, Australia, and has appropriate experience and competence in the relevant field.

Visit www.engineersaustralia.org.au/ for a list of qualified consultants.



A family has recently purchased a block of vacant land in a bushland suburb in metropolitan Sydney where they plan to build a two storey house. They are unclear about whether or not the General Housing Code applies to their proposed development.

The family should approach the local council to find out whether complying development can be carried out on their land. A section 149 (2) certificate would answer this question. On this occasion, after obtaining 149 (2) and (5) certificates the family discovered the land is not excluded from the Codes SEPP by either the general exclusions or the land-based exemptions for complying development.

The family could then lodge a CDC to have their development approved. Importantly, there are further requirements to be met, including the size of the land, whether any trees would need to be removed, whether it is connected to sewerage and has lawful access to a public road. In addition, the dwelling house itself will need to fit into a defined building envelope – these requirements will be discussed in detail later in the user guide.

#### Process for assessing an application on flood control lots



#### Is the land a flood control lot?

**Yes**. You may be able to lodge a complying development certificate.

• You can determine whether your land is a flood control lot from a s.149 certificate from your local council. Go to step 2.

Step	2
	$\rightarrow$
	$\rightarrow$

#### Is the land identified as being a high hazard area, or: a floodway / a flood flowpath / flood storage area / a high risk area

**Yes.** A complying development certificate cannot be lodged on high risk or high hazard flood control lots. A development application would need to be lodged with the local council.

• while a s.149 certificate will identify if your lot is a flood control lot, only the council or a suitably qualified person is able to determine that the lot is not located within a high risk or high hazard area.

X No. You may be able to lodge a complying development certificate.

• if a suitably qualified person or the council is unable to confirm that the area is not high risk or high hazard, then the development cannot be considered as complying development.

Go to the next step if land is certified as not in a high risk or high hazard flood area.



#### Is the land located within the flood planning area?

Yes. If the land is located in a flood planning area, flood related development standards will apply.

**No.** If the land is not located in a flood planning area, there are no additional flood related development standards applicable to a complying development certificate.

• Only a council or a suitably qualified person can determine if the lot is located within a flood planning area. Go to the next step.

Step 4

### Does the proposal comply with the flood control lot development standards in the Codes SEPP?

- Yes. If the development standards for flood control lots are all met, the complying development certificate can be issued by the local council or a private accredited certifier.
- Only a council or a suitably qualified person can certify that the proposed development meets the applicable standards.
- The development standards include, but are not limited to:
  - minimum floor level of habitable room above FPL as provided by the local council (including consideration of sea level rise impacts where relevant)
  - the part of the development below the habitable floor level is of flood compatible material
  - a registered structural engineer or a registered civil engineer with significant hydrological and hydraulics experience confirms the development can withstand the forces of floodwater, debris and buoyancy up to the flood planning level
  - the council or a registered civil engineer with significant hydrological and hydraulics experience confirms that the development will not increase flood affectation elsewhere in the floodplain
  - reliable access for pedestrians or vehicles is available from the development to a safe refuge
  - open car parking spaces or carports are no lower than the 20-year flood level,
  - the driveways between car parking spaces and the connecting public roadway will not be inundated by a depth of water greater than 0.3m during a 1:100 ARI (average recurrent interval) flood event.
- The full standards are set out in the Codes SEPP.
- **No.** Consider amending the proposal, lodging a development application or consulting with your local council or accredited certifier for options.

Step 5

### Do you meet all of the requirements for complying development in the Codes SEPP?

**Yes.** A complying development certificate can be determined.

No. Consider amending the proposal, lodging a development application or consulting with your local council or accredited certifier for options.

#### 2.4 Heritage conservation areas

Most development in a heritage conservation area or a draft heritage conservation area will require a merit assessment through a development application. However, some minor development, considered to have a minimal impact is permitted under the Codes SEPP as complying development. This development includes:

- Swimming pools (located behind the rear most building line and setback from the side boundaries no closer than the dwelling house)
- Outbuilding (located behind the rear most building line and setback from the side boundaries no closer than the dwelling house)
- Internal alterations
- External alterations (to that part of the dwelling that is single storey and behind the rear most building line).



## Is the development specified under the Codes SEPP?

#### 4.1 Specified development

Further to the general requirements each code sets out development that is considered to be complying development under the code.

The table below illustrates the specified development, minimum lot size and zone requirements under the General Housing Code, Housing Alterations Code, and Demolition Code.

The Codes SEPP relies on zones defined by the Standard Instrument and minimum lot sizes.

Note: The minimum allotment size for the erection of a dwelling house in an EPI no longer determines whether you can carry out complying development. Now, only the minimum lot requirement in the Codes SEPP applies.

In circumstances where council has not yet made a LEP in accordance with the Standard Instrument, the Codes SEPP provides that complying development can be carried out on an equivalent zone.

Click here to view or download information tables for all NSW council equivalent zones.

#### HELPFUL HINT – Definition of 'building line'

Building line means the line of the existing or proposed building wall or roof (other than a wall or roof of any building element within an articulation zone), or the outside face of any existing or proposed ancillary development, closest to a relevant boundary of a lot.

The following is also specified as complying development under the Codes SEPP:

- Basements (with limitations in area)
- Attic conversions
- Studios on rear lanes

Under the General Housing Code a roof terrace on the top most roof is not specified development on a dwelling house or an outbuilding.

Table 5. Specified development and land requirements (General Housing Code, Housing Alterations Code,           Demolition Code.			
Development	Minimum lot area <sup>1</sup>	Minimum lot width <sup>2</sup>	Zone <sup>3</sup>
Internal alterations	Any	Any	Anywhere a dwelling house is permissible
External alterations	Any	Any	Anywhere a dwelling house is permissible
New dwelling houses, outbuildings or ancillary development	200m <sup>2</sup> or greater	6m or greater	R1, R2, R3, R4 or RU5
Additions to a dwelling house, outbuilding or ancillary development	200m <sup>2</sup> or greater	6m or greater	R1, R2, R3, R4 or RU5
Demolition	Any	Any	Any

Note 1 - Lot Area - For the purpose of calculating the area of a lot the area of the access handle is excluded if it is a battle axe lot.

Note 2 - Lot Width - The lot width is measured at the building line on the primary road, see front setback on page 24.

**Note 3** - Equivalent Zones - The Codes SEPP relies on the land use zones (ie residential, commercial, business etc) established under Standard Instrument – Principal Local Environmental Plan.

#### HELPFUL HINTS Definition of a 'dwelling house'

A dwelling house is a building containing one dwelling, an attached dwelling or semi-detached dwelling, but does not include any part of the building that is ancillary development or exempt development under this policy.

#### Definition of a 'dwelling'

A dwelling is the generic term and includes a *dwelling house* as well as apartments, villas and townhouses.

#### Definition of 'ancillary development'

Ancillary development is any of the following that are not already exempt development under the Codes SEPP and is built in association with a dwelling house;

- access ramp
- awning, blind or canopy
- balcony, deck, patio, pergola, terrace or verandah that is attached to a dwelling house
- carport that is attached to a dwelling house
- driveway, pathway or paving
- detached studios
- fence or screen
- garage that is attached to a dwelling house
- outbuilding
- rainwater tank that is attached to a dwelling house
- retaining wall, and
- swimming pool or spa pool and child-resistant barrier.

#### Definition of 'outbuilding'

An outbuilding means any of the following:

- balcony, deck, patio, pergola, terrace or verandah that is detached from a dwelling house
- cabana, cubby house, fernery, garden shed, gazebo or greenhouse
- carport that is detached from a dwelling house
- farm building
- garage that is detached from a dwelling house, rainwater tank (above ground) that is detached from a dwelling house
- shade structure that is detached from a dwelling house,
- shed.

#### 3.1 Other approvals

#### Driveway access

If you require any works to be done on the street or footpath, such as construction of a new driveway crossing, or alterations to the footpath pavement you will need to obtain separate approval from council under S138 of the *Roads Act 1993*, prior to the issue of a complying development certificate.

#### Drainage

Approval from council, Sydney Water or Hunter Water or your local water authority may be required for water supply, sewer and stormwater drainage works.

#### Tree removal

If all the following standards are satisfied then the vegetation can be removed without approval as part of an issued CDC:

- it is located within 3m of the proposed development
- it is less than 6m high, and
- it is not listed on a significant tree register or register of significant trees kept by the council.

If all the standards are not met, the removal of trees, lopping or the cutting of roots will require approval by council under their Tree Preservation Order (TPO) prior to the CDC being issued.

#### Mine subsidence

If the land is in a mine subsidence district under the *Mine Subsidence Compensation Act 1961*, the development must have the approval of the Mine Subsidence Board prior to lodgement of a CDC application. A S149 certificate will identify whether the land is in a mine subsidence district.



FIGURE 3 TREE PRUNING OR REMOVAL



A homeowner wants to build a dwelling house which will take advantage of district views. They contact their local architect for advice about their options under the General Housing Code. They want to know whether they should build a two storey dwelling house with a balcony or a single storey dwelling house with a roof-top terrace.

The applicant could build a two storey dwelling house with a balcony on the first floor. The Codes SEPP allows for first floor balconies, subject to privacy requirements. Under the General Housing Code, a single storey dwelling house is permitted as complying development; however, they can not include a roof top terrace. The applicant would need to either build a two storey dwelling house with a balcony to take advantage of the General Housing Code or lodge a DA with council for a single storey dwelling house with roof-top terrace.

<image>

## Does it meet the complying development standards under the Codes SEPP?

The following section will take you through some of the common development standards that control development in residential zones in the Codes SEPP.

At the beginning of each section the clause number is shown in orange. Go to the clause in the Codes SEPP for the complete development standards.

## 4.1 Principles for complying development

The following provides a background to some of the principles that underpin the development standards for complying development.

#### Site coverage and density

Different areas require different building forms, setbacks and other standards. The amount of space around a dwelling house will vary with the settlement type (e.g. inner city or rural fringe). This is achieved through a combination of well established setbacks, building heights and maximum site coverage and floor areas. A house should be sized and positioned to allow a usable rear garden, a front garden and, where appropriate, space between neighbours.

In the General Housing Code, site coverage refers to the percentage of area built upon in relation to your lot size. To ensure the bulk of a house is not excessive, maximum floor area is also set in the General Housing Code.

#### Setbacks - relationship to street and neighbours

Setbacks are the distance between a house and the lot boundary (the horizontal distance between the relevant boundary and the building line) and are critical in maintaining a consistent relationship between proposed and existing dwelling houses within a street. The General Housing Code establishes that the front setback must be the average of the nearest two dwelling houses within 40m with the same street frontage. Where there are no adjoining dwelling houses then a default setback is provided, which varies depending on the size of the lot.

Side and rear setbacks are also set under the General Housing Code. These are in place to ensure that there is adequate separation between neighbours to provide visual and acoustic privacy, limit overshadowing and to provide an appropriate siting of the dwelling house within the lot. On smaller lots (those between 200m<sup>2</sup> and 300m<sup>2</sup>) the option of building to one or both boundaries has been provided. This is to allow for housing forms typical on smaller lots to be carried out as complying development.

#### Appropriate heights

It is important to consider building heights and their setbacks in order to ensure minimal impact on neighbours and street amenity.

#### Adequate landscaping

Unbuilt areas and landscaping are key contributors to the character of a place. It is important that provision is made for a landscaped area which can allow for water absorption to help minimise water run off, and allow vegetation to be grown.

#### Managing car parking

In order to provide a diverse and attractive streetscape, the house's presentation to the street should be dominant and the impact of garages on the streetscape should be minimised.

#### Case Study

A family owns a block of land on the outskirts of the city and wants to know if its plans for a two storey dwelling house will satisfy the site coverage and floor area controls for complying development. The block is 560m<sup>2</sup>, 14m wide and 40m deep.

The proposed dwelling house will have a total built footprint on the ground level of 215m<sup>2</sup>. The General Housing Codes states for a lot with an area of at least 450m<sup>2</sup> but less than 600m<sup>2</sup> a maximum 50 per cent site coverage is permitted which includes the dwelling house and all ancillary structures.

Therefore, the proposal would comply with the maximum site coverage requirement.

The General Housing Codes also states that for a lot with an area of at least 450m<sup>2</sup> but less than 600m<sup>2</sup> a maximum floor area of 330m<sup>2</sup> is permitted. The two storey dwelling house proposed has a total floor area of 270m<sup>2</sup> which means it satisfies this standard as well.

A quick check of the other complying development controls in the Codes SEPP shows all other issues are met. The family can then seek a CDC and have their development approved within 10 days.

#### 4.2 Choosing which Codes

The Codes SEPP provides a number of Codes for different development types and different site constraints. The Codes relevant to a dwelling include:

- Exempt Development Code
- General Housing Code
- Housing Alterations Code
- General Development Code
- Demolition Code

Depending on what development you are proposing to undertake you may carry out the work under one or a combination of the Codes.

Codes within the Codes SEPP and specified		
development		
General Housing Code (Part 3)	New dwelling house, alterations and additions to an existing dwelling house, outbuilding, ancillary development to a dwelling house, detached studio	
Housing Alterations Code (Part 4)	Alterations to a dwelling, attic conversions	
Demolition Code (Part 7)	Dwelling house, ancillary development, outbuilding	

Note: A dwelling includes a dwelling house, and a dwelling - such as a dwelling contained within a townhouse, villa or apartment.

The following are examples of typical development that explain how the codes can be used in combination or as a stand alone:

- apartment internal alterations (Housing Alterations Code)
- new swimming pool (General Housing Code) terrace (General Housing Code), cabana (General Exempt Development Code) and paving (General Exempt Development Code)
- demolition of existing dwelling house (Demolition Code) and erection of a new dwelling house (General Housing Code)
- attic conversion of existing attached dwelling house (Housing Alterations Code)
- demolition at rear of existing semi-detached dwelling house (Demolition code), convert old bedroom into new bathroom (Housing Alterations Code) and new living rooms at rear of an existing dwelling house (General Housing Code),
- new kitchen, external windows on side external wall, (Housing Alterations Code) and new bay window (General Housing Code).

## 4.3 Summary of key development standards

Sumarised below are the key controls needing to be met for development to be complying development under the Codes SEPP for the construction of a new dwelling house or alterations and additions to an existing dwelling house.

Some development standards vary based on the lot area, others on the lot width. This is to ensure development is sized appropriatly to the lot size and context.

Check the Codes SEPP for full details of the standards.

#### HELPFUL HINT – Definition of 'at least'

In many development standards the term 'at least' is used. Generally it means equal to and greater than. For example the minimum lot area is at least 300m<sup>2</sup>. In this example this means that the area can be 300m<sup>2</sup> or more than 300m<sup>2</sup> (eg 301m<sup>2</sup>).

In the tables below where a range is used (eg 200-250m<sup>2</sup>) this is to be interpreted as 'from and including 200m<sup>2</sup> and up to but not including 250m<sup>2</sup>'

Table 6. GENER	AL HOUSING	CODE: Develop	oment standar	ds relating to I	ot area		
Lot Size	200-250m <sup>2</sup>	250-300m <sup>2</sup>	300-450m <sup>2</sup>	450-600m <sup>2</sup>	600-900m <sup>2</sup>	900-1500m <sup>2</sup>	1500m <sup>2</sup> +
Height				8.5m			
Floor area	90%	85%	270	330	380	430	
Site coverage	65%	60%	55%	50% <sup>1</sup>	50%	40%	30%
Rear setback	up to 4.5	5m = 3m	ι	up to 4.5m = 3n	า	up to 4.5m	up to 4.5m =
		= average of s of adjoining	a	lbove 4.5m = 8r	n	= 5m	10m
		uses or 10m,				above 4.5m =	above 4.5m =
	0	s the lesser					15m
Street setback	3.0m or	average	e 4.5m or average			6.5m or	10.0m or
						average	average
Landscaping <sup>2</sup>	10	0%	15%	20%	30%	40%	45%
Private open	16	m <sup>2</sup>	24m <sup>2</sup>				
space							
Outbuilding:	36	m <sup>2</sup>	45	m²	60m <sup>2</sup>	100	Dm²
max floor area							
Outbuilding:				4.8m			
max height							
Detached	6m						
studios: max							
height							

**Note:** 1. Minimum site coverage for single storey dwelling house on lot of at least 450m<sup>2</sup> but less than 500m<sup>2</sup> is 55%.

2. Minimum dimension of landscaped area is 1.5m. 50% of landscaped area must be located behind the building line.

Table 7. GENERA	L HOUSING C	ODE: Develop	ment standard	Is relating to l	ot width		
Lot width	6-8m	8-10m	10-12m	12-15m	15-18m	18-24m	24+m
Side Setbacks - dwelling houses and outbuildings	1/4 of addit	up to 5.5m; 0.9 plus of additional height above 5.5m 0.9m up to 4.5m; 0.9m p additional height abov				1.5m up to 4.5m; 1.5m plus 1/4 of additional height above 4.5m	2.5m
Built to boundary			N/A	N/A	N/A	N/A	N/A
Basement	25	im <sup>2</sup>	45m <sup>2</sup>	45m <sup>2</sup>	45m <sup>2</sup>	45m <sup>2</sup>	45m <sup>2</sup>
Landscape area: front setback <sup>1</sup>	25% of the ar	ea forward of th	building line must contain landscaped area			50% of the area forward of the building line must contain landscaped area	
Max garage door width	0m	3.2m	3.2m	6m	6m	6m	6m
Private open space <sup>2</sup>	16	bm <sup>2</sup>			24m <sup>2</sup>		
Outbuilding rear setback			to 4.5m 0.9m up ove 4.5m 1.5m ab			1.5m	2.5m
Detached studios on laneway: Max floor area		60			75m²	100m <sup>2</sup>	
Detached studios on laneway: side setback		0.9m up 1.2m abo			0.9m up to 4.5m 1.5m above 4.5m	1.5m up 2.5m abo	

**Note:** 1. Minimum dimension of landscaped area is 1.5m.

2. Minimum dimension of private open space 3m. Maximum gradient 1:50.

#### 4.4 Site requirements

#### Site coverage

clause 3.9

Maximu	Maximum site coverage by lot area						
200 - 250m²	250 - 300m²	300 - 450m²	450 - 900m²	900 - 1500m²	1500m² +		
65%	60%	55%	50%	40%	30%		

- The total area of the lot to be covered by a dwelling house and all ancillary development (e.g. carport, garage, shed) varies from 30 per cent maximum to 65 per cent maximum depending on lot area.
- The calculation of site coverage does not include access ramps, awnings, eaves, unenclosed balconies, decks, pergolas, terraces, verandahs, driveways, farm buildings, fences and screens, rainwater tanks attached to the house, swimming pools, spas or development under the General Exempt Development Code.



FIGURE 4 AREA INCLUDED AS SITE COVERAGE

#### Maximum floor area - dwelling house

clause 3.10

Maximum floor area dwelling house by lot area							
200 - 250m²	250 - 300m²	300 - 450m²	450 - 600m²	600 - 900m²	900m <sup>2</sup> +		
90%	85%	270m <sup>2</sup>	330m <sup>2</sup>	380m²	430m <sup>2</sup>		

- The maximum floor area of a house must not exceed the areas in the floor area table.
- For lots below 300m<sup>2</sup> a maximum percentage of lot is used to calculate the floor area. For lots above 300m<sup>2</sup> a maximum floor area in square metres is provided. Note: the site area excludes access handles on battle axe lots.
- The area includes external walls, but excludes stairs, lifts and voids.



FIGURE 5 AREA INCLUDED AS FLOOR AREA

## STEP

#### Maximum floor area - outbuildings

#### clause 3.11

Maximum floor area outbuildings by lot area					
< 300m <sup>2</sup>	300 - 600m²	600 - 900m²	900m²+		
36m²	45m <sup>2</sup>	60m <sup>2</sup>	100m <sup>2</sup>		

- The maximum floor area of an outbuilding should not exceed the areas in the table above.
- The maximum area for an outbuilding in a heritage conservation area or draft heritage conservation area is 20m<sup>2</sup>.

### Maximum floor area for balconies, decks, patios, pergolas, terraces and verandahs

#### clauses 3.5, 3.12

The maximum floor area for balconies, decks, patios, pergolas, terraces and verandahs attached to a dwelling house with a floor level more than 3m above the existing ground level must not be more than 12m<sup>2</sup>.

Note: A balcony, deck, patio, pergola, terrace or verandah that is attached to a dwelling house on a lot that has an area less than 300m<sup>2</sup> and a width 10m or less is only permitted to the primary road frontage under complying development.

Refer to clause 2.11 and 2.12 for balconies, decks, patios pergolas, terraces and verandahs under the General Exempt Development Code.

#### HELPFUL HINT-

## Definition of floor area for balcony, deck, patio, terrace or verandah

The calculation of the floor area for a balcony, deck, patio, terrace or verandah means the area of the measured at the floor level within the outer face of:

- the external walls if enclosed
- the extent of the deck or balustrade or other safety barrier if not enclosed.

#### HELPFUL HINT – Definition of dwelling house floor area

The calculation of the floor area of a dwelling house is the sum of the areas of each storey measured at a height of 1.4m above floor level that is within the outer face of:

- the external walls of the dwelling house, and
- the walls of the carport, garage, balcony, deck, patio, pergola, terrace or verandah.

The following areas are excluded:

- eaves
- awning, blinds outside the outer walls or supporting columns
- stairways
- lifts shaft,
- a void above a lower storey.

#### HELPFUL HINT – Definition of floor area for an outbuilding

The calculation of the floor area of an outbuilding includes:

- if there are enclosing walls the sum of the areas at each level measured at a height of 1.4m above each floor level within the within the outer face of the external walls,
- if there are no walls the sum of the areas at each level measured at a height of 1.4m above each floor level within the supporting columns.

The following areas are excluded:

- eaves
- awning, blinds outside the outer walls or supporting columns,
- stairways.

#### 4.5 Building heights

#### Maximum height of dwelling house

Clause 3.13 and Clause 1.5)

#### Building heights by lot area

200 - 1500m<sup>2</sup>+

8.5m max

- The maximum building height for a dwelling house must not the height in the table above.
- The maximum building height of an outbuilding must not exceed 4.8m above existing ground level.



#### FIGURE 6 MAXIMUM BUILDING HEIGHT



#### Case Study

The proposed dwelling house is being built on a corner lot. The owners have already determined the **Codes SEPP** applies to their lot; however they are having difficulty working out from which street frontage the side setback for their house should be calculated. To calculate the setback they will need to determine which elevation of the dwelling house faces the primary (or the main) road and which side of the dwelling house faces the secondary road.

The primary road is defined under the Codes SEPP as 'the road to which the front of a dwelling house, or a main building, on a lot faces or is proposed to face'. The remaining street frontage becomes the secondary frontage. The rear boundary will become the opposite of the primary road boundary and the side boundary will be the remaining boundary.

**Note:** The postal address of the property is not relevant as the primary and secondary road frontages relate to the orientation of the front door of the dwelling house, relative to the roads.

#### HELPFUL HINT-Definition of building height

'Building height' is the height of the building at any point of a building, and is the vertical distance between a point at ground level (existing) and the highest point of the building immediately above that point, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

It varies across the building often being lower at the eaves and higher towards the ridge.

#### Maximum height for outbuildings

 The height of an outbuilding or alterations and additions to an existing outbuilding must not be more than 4.5m above existing ground level.

STEP

#### 4.6 Setbacks

Setbacks determine how close development can be constructed from a particular boundary.

For all of the setbacks below the controls do not apply to the following:

- existing parts of a dwelling house or ancillary development
- allowable encroachments permitted in 3.7.1.7 of Vol 2 of the Building Code of Australia
- any eave or roof overhang that is not projecting over 450mm from the setback.

#### Front setbacks - other than classified roads

#### clause 3.14

The primary control for front setbacks in the General Housing Code are based on the setback of the nearest two dwelling houses. The average of the dwelling houses immediately adjoining a site (within 40 metres) should be calculated to work out the correct setback for a development.

A dwelling house must be setback from its primary road frontage:

- where there are existing neighbouring dwelling houses within 40m, the setback should be an average of the front setbacks of the nearest two neighbouring dwelling houses, with the same primary road frontage, other than a dwelling house on a battle axe lot
- where there are no neighbours (i.e. dwelling houses within 40m) a minimum setback from the primary road frontage will vary from 3m to 10m depending on the lot area.

Front s	Front setback by lot area where no neighbouring							
houses								
200 - 250m²	250 - 300m²	300 - 450m²	450 - 600m²	600 - 900m²	900 - 1500m²	1500m² +		
3.0m	3.0m	4.5m	4.5m	4.5m	6.0m	10.0m		
min	min	min	min	min	min	min		



FIGURE 7 IN ESTABLISHED STREETS THE FRONT SETBACK WILL RELATE TO THOSE OF NEIGHBOURING HOUSES





## STEP

#### Secondary street setbacks

#### clause 3.14

A dwelling house on a corner lot must be setback at least the distance in the table below from the secondary road boundary.

Secondary minimum street setback by lot area					
200 - 600m <sup>2</sup>	600 - 1500m <sup>2</sup>	1500m <sup>2</sup> +			
2.0m min	3.0m min	5.0m min			



FIGURE 9 A CORNER LOT HAS A MINIMUM SETBACK TO BOTH ROAD FRONTAGES. THE SETBACK DISTANCE VARIES WITH LOT AREA

#### Setbacks to classified roads

#### Clause 3.15

Any dwelling house or ancillary development must have a setback from a boundary to a classified road of at least 9m, or the distance specified in another environmental planning instrument applying to the lot.

#### Articulation zone

#### Clause 3.21-22

- Within the front setback of a new dwelling house an 'articulation zone' may be incorporated where the dwelling has a primary road setback of at least 3m.
- This zone is a notional area projecting 1.5m forward of the front building line within which additional building elements such as entry features and porticos, balconies, decks, verandahs, and bay windows may be built.
- Up to 25 per cent of the articulation zone, when viewed from above, may include building elements. An awning or other feature over a window and a sun shading feature are not included in the maximum area of a building element in the articulation zone.
- A new dwelling house must have a window to a living area or a bedroom ('habitable room') and a front door facing the primary road or parallel road.



FIGURE 10 ARTICULATION ZONE

STEP

#### Side setbacks

#### clause 3.16

- The minimum side setback varies with lot width, • see table below.
- The minimum setback of a point on a building is based on the building height at that point.
- It varies with building height so a lower part of a • building can be closer to the side boundary than a taller part.
- On sloping sites you should look for the maximum • height at the side of the building to calculate the side setback.

- A side wall may be stepped in at the upper level • but must still have the minimum side setback at the closest part of the wall to the side boundary.
- The setback of any dwelling house or outbuilding must have a minimum setback of 3m from any public reserve.
- A two storey dwelling house could have its ground • floor (if 4.5m in height or less) set back 900mm from the side boundary with the second storey set back a further distance, which would be determined by the lot width, and the height of that wall.



6-10M LOT WIDTH





24M+ LOT WIDTH

Calculate setback based on building height

0.10	ide estheeld		0.9		height - 5.5
6-10m S	ide setback	=	0.9	+	4
10 19m <b>c</b>	ide setback	_	0.9	+ '	height - 4.5
10-10111 5	IUE SELDACK	-	0.9	+	4
10.04m	ide setback	_	1.5		height - 4.5
10-24111 5	Ide Selback	=	1.5	+ 1	4
Example:	Lot with a wid	th of	12m		
= 0.9m +	(6.1m – 4.5m)	/ 4)			
= 0.9m +	(1.6m / 4)				
= 0.9m +	0.4m				
= 1.5m					

#### Calculate max. height based on setback

6-10m	height	= 4 x ( side setback - 0.9 ) + 5	.5
10-18m	height	= 4 x ( side setback - 0.9 ) + 4	.5
18-24m	height	= 4 x (side setback - 1.5 ) + 4	.5
Example	e: Lot with	h a width of 19m	

 $= 4 \times (1.9 \text{m} - 1.5 \text{m}) + 4.5 \text{m}$ 

- $= 4 \times 0.4 m + 4.5 m$
- = 1.6m + 4.5m
- = 6.1m

#### Exceptions

Side and rear setbacks and setbacks from the boundary with a road do not apply to allowable encroachments permitted under clause 3.7.1.7 of Volume 2 of the Building Code of Australia or any eave or roof overhang that has a horizontal width of not more than 450mm.



FIGURE 14 SIDE SETBACKS EXAMPLE

Table 8. Side setback e	examples minimum (m)	for the different lot widt	hs	
Building height at side (m)	6-10m	10-18m	18-24m	24m+
4.5m	900mm	900mm	1.5m	2.5m
4.8m	900mm	975mm	1.575m	2.5m
5.0m	900mm	1.025m	1.625m	2.5m
5.4m	900mm	1.125m	1.725m	2.5m
5.6m	925mm	1.175m	1.775m	2.5m
6.2m	1.075m	1.325m 1.475m 1.625m	1.925m	2.5m
6.8m	1.225m		2.075m	2.5m
7.4m	1.375m		2.225m	2.5m
8.0m	1.525m	1.775m	2.375m	2.5m
8.5m	1.65m	1.90m	2.5m	2.5m
### Built to boundary

## Clause 3.16(3)-(6)

For lots with a width of 6-10m, there is the option of building to the lot boundary in certain circumstances where you comply with the standards.

- For a lot width of 6-8m: option to build to both side boundaries.
- For a lot width of 8-10m: option to build to one side boundary.

The boundary wall must meet the following standards with respect to height:

- Must be no higher than 3.3m, or
- If the wall is to be built to a boundary wall on an adjoining lot, it must not be higher than the height of that wall.

The boundary wall must meet the following standards with respect to length.



FIGURE 15 BUILT TO BOUNDARY. MATCH ADJOINING BUILT TO BOUNDARY WALL OR COMPLY WITH MAXIMUM LENGTH AND WALL HEIGHT STANDARDS.

- Total length of all boundary walls: no longer than 20m or 50per cent of the lot depth, which ever is the lessor or
- If the wall is to be built to a boundary wall on an adjoining lot, it must not be longer than the length of that wall.

A boundary wall cannot be constructed if on an adjoining property there is a wall within 0.9m of the boundary and the wall:

- is not of masonry construction, or
- has a window facing the boundary.

### Protecting adjoining walls

## clause 3.20A

If the development involves the erection of a wall to a boundary and on the adjoining property there is a wall that is within 0.9m of the boundary, the new wall must be built in accordance with the method of support proposed by a professional engineer's report provided with the application for the CDC.



FIGURE 16 PROTECTING ADJOINING WALLS: A STRUCTURAL ENGINEER'S REPORT IS REQUIRED WHERE THE WALL IS BUILT WITHIN 0.9M OF THE BOUNDARY.

### Rear setbacks - dwelling house

### clause 3.17

Rear setback minimum - Dwelling Houses				
	200- 300m <sup>2</sup>	300- 900m²	900- 1500m²	1500m² +
up to 4.5m (X)	3m	3m	5m	10m
4.5- 8.5m (Y)	The average of the first floor rear setback of the nearest 2 dwelling houses within 40m, or where there are no dwelling houses 10m	8m	12m	15m

- The minimum rear setback varies with lot area, see table above.
- It also varies with building height so a lower building can be closer to the rear boundary.



A couple recently bought a vacant lot in an established urban area with a street frontage of 7m. Adjacent to the property on one side is a detached dwelling house setback 0.5m from the boundary with three windows on the side wall. Adjoining the property on the other side is a two storey house with a 5m long masonry wall to the boundary which is 6.5m high and does not contain any windows or openings.

The couple contact their local architect for advice about their options under the General Housing Code. They want to know if they can build to the boundary on both sides.

The General Housing Code allows built to boundary on both sides for lots with a width between 6m-8m in some circumstances. However, as the dwelling house on the neighbouring property is setback

- The minimum rear setback increases once the building height at the rear of the dwelling is greater than 4.5m.
- The setback of any dwelling house or ancillary structure must not be less than 3m to any public reserve.



FIGURE 17 REAR SETBACKS FOR DWELLING HOUSES VARY WITH SITE AREA

## Case Study

less than 0.9m and contains windows the applicant cannot build to that boundary as complying development.

On the other boundary the applicant is able to match the length and height of the boundary wall of the adjoining dwelling house.

The applicant can choose to match the length and height of an adjoining built to boundary wall with the default numerical standards only applying if there is no dwelling house built to the boundary adjoining the subject site or the adjoining lots are vacant.

The couple could build to the boundary along one boundary and set the other side wall back in accordance with the side setback controls outlined in the **General Housing Code**. If the couple would like to build to the boundary on both sides they would need to lodge a DA with council.

### setbacks - outbuildings

## clause 3.18

The setback of a new outbuilding or alterations and additions to an outbuilding from the rear building must be at least the following, as described in the table below.

Rear setback minimum - Outbuildings					
	200- 300m <sup>2</sup>	300- 900m <sup>2</sup>	900- 1500m²	1500m <sup>2</sup> +	
up to 3.3m	0m	0.9m	1.5m	2.5m	
up to 3.8m	0.9 + 1/4 add. height	0.9m	1.5m	2.5m	
above 3.3/3.8m	0.9 + 1/4 add. height	0.9 + 1/4 add. height	1.5 + 1/4 add. height	2.5 + 1/4 add. height	

On a lot with an area of at least 200m<sup>2</sup> but less than 300m<sup>2</sup>, if a wall of a building on an adjoining lot is within 0.9m of the boundary and that wall:

- is not of masonry construction or
- has a window facing the boundary,

then the minimum setbacks are the same as for a lot that has an area  $300-900m^2$ .

## 4.7 Privacy

## clause 3.23

A new window must have a privacy screen if:

- it is a window in a habitable room, other than a bedroom, that has a floor level more than 1m above the existing ground level
- the wall has a setback of less than 3m from a side or rear boundary, and
- the window has a sill height of less than 1.5m.

A new or additions to an existing balcony, deck, patio, terrace and verandah must have a privacy screen if it:

- has a setback of less than 3m from a side or rear boundary
- has a floor area more than 3m<sup>2</sup>,
- and has a floor level more than 1m above ground existing ground level.

A privacy screen means a screen that:

- faces the boundary
- is 1.5m in height above floor level
- has no individual opening more than 30mm wide,
- the total area of all openings is less than 30 per cent of the surface area of the screen when viewed in elevation.



FIGURE 18 PRIVACY REQUIREMENTS

## 4.8 Landscaping

### Landscaped area

clause 3.24

Landscaped area by lot area					
200- 300m²	300- 450m²	450- 600m²	600- 900m²	900- 500m²	1500m² +
10%	15%	20%	30%	40%	45%

- A lot must include at least the minimum amount of landscaped area as required for its particular area.
- The minimum landscaped area is described by a percentage of the total lot area.
- 'Landscaped area' does not apply to alterations and additions where there is no increase in site coverage or decrease in landscaped area.
- The 'landscaped area' must be at least 1.5m wide.
- At least 50 per cent of the landscaped area must be located behind the building line to the primary road boundary.
- For lots less than 18m wide at least 25 per cent of the area to the front of the building line must be landscaped.



FIGURE 19 LANDSCAPED AREA - VARIES WITH LOT WIDTH

### HELPFUL HINT-Definition of landscape area

'Landscaped area' means a part of a site used for growing plants, grasses and trees, but does not include any area that contains a building, structure, hard paved area or swimming pools.

• For lots with a width of at least 18m at least 50 per cent of the area forward of the front building line must be landscape area.

### Principal private open space

lause 3.25

Principal private open space by lot width				
6-10m 10m+				
Minimum area	16m <sup>2</sup>	24m <sup>2</sup>		
Minimum width	3m	4m		

The 'principal private open space' is a recreation area such as a deck, patio or paved area which is directly accessible from a living area and has a gradient of less than 1:50. It is only required for new dwelling houses.



FIGURE 20 PRINCIPAL PRIVATE OPEN SPACE

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SIEP **1** 

# STEP

## 4.9 Car parking and access

## Clause 3.26-28

- For a new dwelling house at least one off-street car parking space must be provided for lots with a width greater than 8m.
- Where alterations and additions are proposed to an existing dwelling house, at least one car parking space must be retained.
- For lots with a width of 6m-8m no off street car parking is required to be provided, except where an exclusion is noted below (see note 1).
- A car parking space may comprise of a garage, carport or open car parking space.
- Car parking spaces are required to be setback at least 5.5m from the road boundary.
- Car parking spaces must be setback at least 1m behind the building line.
- The maximum cumulative width of the garage doors is to be no more than in the following table. (Except when the door has a frontage to a laneway).

Garage door width by lot width				
	6-8	8-12	12+`	
Maximum width	0m <sup>1</sup>	3.2m	6m	

Note 1: With the exception of land within Fairfield and Holroyd local government areas, a garage or off street car parking space can only be provided on a rear lane for a lot under 8m in width. front building line



FIGURE 21 MINIMUM GARAGE SETBACKS AND MAXIMUM GARAGE DOOR SIZES

## 4.10 Earthworks and drainage

### Excavation for basements



Excavation is permitted under the building footprint to provide a basement.

The maximum floor area for a basement is as follows:

- On a lot with a width of at least 6m but less than 10m: 25m<sup>2</sup>
- On a lot with a width of at least 10m: 45m<sup>2</sup>

### HELPFUL HINT -Basement definition

a 'basement' means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

Note: A basement is counted as a storey



**FIGURE 22** MAXIMUM BASEMENT AREA WHERE THE FLOOR OF THE SPACE ABOVE IS <1M ABOVE EXISTING GROUND.

### Excavation outside the building footprint

### clause 3.29

The maximum depth of excavation on a site is 1m and must not extend more than 2m beyond the external wall of the dwelling house or ancillary development.

Excavation associated with swimming pools must not exceed the depth of the pool structure.

**Note:** For excavation at a distance more than 2m from the external wall of the building, refer to the standards for exempt development. clause 2.29 & 2.30



FIGURE 23 FILL AND EXCAVATION WITH RETAINING WALLS



FIGURE 24 FILL AND EXCAVATION WITH UNPROTECTED EMBANKMENTS

### Fill

### clause 3.30

Fill associated with the dwelling house or ancillary development must be contained:

 within the footprint of the external walls of the building

- by a retaining wall with a height no greater than 600mm above existing ground level,
- an unprotected embankment.

The unprotected embankment must comply with the following standards:

- the depth of fill is not more than 600mm above existing ground level
- the fill (but not the embankment) must be no more than 1m beyond the external wall of the dwelling house or ancillary development
- the toe of the embankment must have a setback of more than 0.4m from a side or rear boundary.

Fill more than 150mm deep must not occupy an area of more than 50 per cent of the landscape area of the lot.

The fill must not redirect the flow of surface water onto adjoining property.

**Note:** For fill outside the building footprint also refer to the standards for exempt development. clause 2.29 & 2.30

### **Retaining walls**

### clause 3.35

A retaining wall associated with a dwelling house or ancillary development must not

- extend more than 2m horizontally from any external wall.
- have a height greater than 1m.

Retaining walls not associated with excavation or fill from a dwelling house or ancillary development must have a height above or below existing ground level not exceeding:

- 0.6m: if located less than 0.5m from the side or rear boundary
- 1m: if located at least 0.5m from the side or rear boundary

**Note:** For fill outside the building footprint also refer to the standards for exempt development. clause 2.29 & 2.30.

### Drainage

### clause 3.32

All stormwater and surface water run off collecting as a result of the construction of a new dwelling, the alterations and additions to an existing dwelling, or ancillary development must be conveyed by a gravity fed or charged system to either the:

- public drainage system
- inter allotment drainage system
- on-site disposal system where approved.

Connection to a public or inter-allotment drainage system must:

- comply with the requirements of development control plan applicable to the land, or
- where approval is required under section 68 of the *Local Government Act*, seek approval from council.

# 4.11 Detached studios adjoining lanes

## Clause 3.33

A detached studio adjoining a laneway is a common development type found on smaller lots. The building is separate from the dwelling house and often contains a garage. The detached studio is a habitable room but is not a separate dwelling.

These works cannot be undertaken in a draft heritage conservation area or heritage conservation area.

This development type has the following additional standards:

- must have a frontage to a laneway >3m wide.
- the maximum dimensions of the building are:
  - maximum height: 6m
  - maximum width: 9m
  - maximum depth: 7m
- the maximum floor area is per the table below:

Detached studio max. floor area by lot width				
	6-12m 12-15m 15m+			
Max floor area	60m <sup>2</sup>	75m <sup>2</sup>	100m <sup>2</sup>	



FIGURE 25 DETACHED STUDIOS

• The minimum side setbacks for a detached studio are in the table below:

Detached studio side setbacks by lot width				
Lot Width	6-15m	15-18m	18m+	
Building height up to 4.5m	0.9m	0.9m	1.5m	
Building height over 4.5m	1.2m	1.5m	2.5m	

- A detached studio may be built to both side boundaries if the lot is at least 6m but less than 8m.
- A detached studio may be built to one side boundaries if the lot has a width of at least 6m but less than 8m.
- The same restrictions for height and setback with respect to build to boundary, as for a dwelling house apply to detached studios, (see pages 33 and 34).
- The distance between the studio/outbuilding and the dwelling house of 3m to any part of the dwelling house below 4.5m in height and 6m for any part of the dwelling house above 4.5m.
- Any inward facing windows to a detached studio must be fitted with a privacy screen.

# 4.12 Swimming pools

When carrying out the construction of a swimming pool on a lot that contains a dwelling house the following standards apply:

- Swimming pools must be located in the rear yard or behind the front building line.
- Minimum landscape area (see 4.8 on page 38).
- The water line must be setback at least 1m from a side or rear boundary.
- The pool coping is to be a maximum 1.4m above existing ground level and have a maximum width of 0.3m if it is more than 0.6m above the existing ground level.
- Decking associated with a pool is to be a maximum 0.6m above the existing ground level.
- Waste waters from the pool must be discharged in accordance with the relevant authority's requirements.
- Pumps associated with the pool must be located in a soundproof enclosure.
- Swimming pools can only be undertaken as complying development on a lot with an existing dwelling house or in conjunction with a new dwelling house.
- If the swimming pool is to be constructed in a heritage conservation area it must be located behind the rear most building line, and no closer to each side boundary than the dwelling house.



FIGURE 26 SWIMMING POOL

STEP

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## 4.13 Fences



- Fences within the front setback area from a primary road are to be a maximum 1.2m high and a minimum 50 per cent open construction for the upper two thirds of the fence.
- Other fences are to be a maximum of 1.8m high.



FIGURE 27 FENCE CONTROLS

## 4.14 Alterations and additions

## Part 4 - Housing Alterations Code

These provisions are for alterations to existing dwellings. Except where noted below the provisions apply in heritage conservation areas.

### Internal alterations

## Clause 4.1-4.2

- Internal alterations to existing dwellings (including strata apartments) and ancillary development.
- Must not result in any additional separate dwelling.
- Does not include the erection or conversion of basements.

### External alterations

### Clause 4.3-4.4

- External works to a dwelling house or ancillary development.
- If a dwelling house is in a heritage conservation area then development can only be carried out to that part that is single storey and behind the rear most building line.
- Must not change the floor area or the footprint of the dwelling house.

### Dormer windows and attic conversions

### clause 4.5-4.6

Under the Housing Alterations Code, existing attics can be converted to form additional living space. They must comply with the following standards:

- must be entirely within the roof space
- must not change the roof pitch.

Dormer windows must:

- not exceed a width of more than 1.3m
- must be at least 200mm below the existing roof ridge height
- must be set in at least 500mm from the edge of the roof,
- if facing the rear yard, must not have an area more than 4m<sup>2</sup>.

Although attic conversions can be carried out in a draft heritage conservation area or a heritage conservation area, dormer windows or rear roof windows associated with an attic conversion cannot be undertaken. However, flush roof windows are allowable to a maximum area of 1.5m<sup>2</sup>.

Note: An attic is not included in the definition of a storey.



FIGURE 28 DORMER WINDOWS



## 4.15 Demolition

## art 7 - Demolition Code

The partial or full demolition of a dwelling house or ancillary development associated with a dwelling house may be carried out under the Demolition Code.

## Demolition or removal of a dwelling house and ancillary development

## Clause 7.1-7.2

- Demolition of a heritage item, draft heritage item, dwelling within a heritage conservation area or draft conservation area is not possible under the Codes SEPP. However the following development in a draft heritage conservation area or heritage conservation area can be demolished:
  - a detached out building or ancillary development, if it is located behind the rear most building line, as long as it is not fronting a laneway or road frontage
  - internal elements of a dwelling in a heritage conservation area or draft heritage conservation area,
  - external demolition relating to works carried out under the Housing Alterations Code.
- All essential services must be disconnected in accordance with the relevant authority's requirements.
- Except where there is a separate permit or development consent, trees or other vegetation cannot be removed or pruned.
- See your local council for any approval required to remove or prune a tree or other vegetation.
- Removal of swimming pools:
  - the site must be filled where necessary to restore the site to the ground level adjacent the pool
  - the fill must be compacted
  - any piping or pool construction must also be removed.

• Other regulatory requirements (Refer Clause 3.33)

### Asbestos removal and disposal

The *EP* & *A Regulation 2000* includes a complying development condition for asbestos removal. When a CDC is issued in NSW a condition must be included which introduce requirements for the safe handling and removal of asbestos by a licensed contractor, in accordance with the *Occupation Health and Safety Regulation 2001* and in accordance with the Australian Standard for demolition of structures.

Note: Amendments to the Codes SEPP and the EP&A Regulation came into effect on 18 January 2010 which made it mandatory that any demolition work involving the removal of asbestos needs to be undertaken by a suitably qualified and licensed contractor in accordance with the requirements of Occupational Health and Safety Regulations governed by WorkCover NSW and in accordance with the Australian Standard for demolition of structures (Refer Clause 136E of the EP&A Regulation; PS09-31 also discusses these amendments –http://www.planning.nsw.gov.au/PlanningSystem/ Circularsandguidelines/tabid/69/Default.aspx.



FIGURE 29 PROTECTION OF ADJOINING PROPERTY

# Conditions and other requirements for complying development

### 5.1 Conditions

clause 3.37-3.45 (General Housing Code) clause 4.7-4.11 (Housing Alterations Code) clause 7.3-7.11 (Demolition Code)

Applicants need to meet the relevant conditions of a CDC contained in each of the codes under the Codes SEPP as well as the conditions within the *EP&A Regulation.* 

## 5.2 Neighbour notification

Although there is no formal process for neighbours to comment on your proposal like there is with a development application, it is good practice for applicants to discuss the design of their development proposal with their neighbours. This should be done from an early stage and before any formal application is lodged with the accredited certifier.

What individuals see as an acceptable impact can vary substantially; a positive attitude and an open mind to a neighbours' opinion is essential to achieving a good outcome. Early discussion of plans aimed at accommodating the neighbours' amenity can prevent conflict at a later stage.

The controls in the Codes SEPP have been developed to provide building envelopes that take into account your neighbours' amenity or privacy. These controls have been determined after an analysis of a large number of existing approved housing developments across NSW.

**Note:** There is no notification requirement for development undertaken under the Housing Alterations Code.

## Notifying neighbours before commencing work

One of the mandatory conditions requires the person who benefits from the CDC to notify the owner or occupier of each dwelling that is situated within 20m of the lot where construction works are going to be carried out. The notification needs to be in writing and must be made at least two days prior to commencing any construction. A notification template is available on the Housing Code website.



### 5.3 Implementation of the code

#### Environmental sustainability - BASIX

In NSW all new housing and alterations and additions with a total estimated cost of works of \$50,000 or more must have a BASIX Certificate before they can get planning approval. BASIX sets key standards for energy reduction, water use reduction and for thermal comfort. Some of the criteria that is assessed under BASIX include the orientation of the house and its relationship to the garden. Further information about BASIX can be obtained at the BASIX website.

### Additional resource materials

The Department of Planning has developed a range of resources to assist users with the application and interpretation of the Codes SEPP. These resources are available on the Department's website housingcode.nsw.gov.au and include:

- links to the legislation
- planning circulars,
- fact sheets, and
- sources of information for the General Commercial and Industrial Code.

### The Building Professionals Board (BPB) has developed a complying development checklist and a guide to the checklist.

**Note:** In addition to the requirements specified for development under this code, adjoining owners' property rights, the applicable common law and other legislative requirements for approvals, licences, permits and authorities still apply. For example, requirements relevant to development in this code may be contained in the Act, the *Environmental Planning and Assessment Regulation 2000*, various State environmental planning policies, the *Protection of the Environment Operations Act 1997*, the *Roads Act 1993*, the *Swimming Pools Act 1992* and Acts applying to various infrastructure authorities. If the development is in proximity to infrastructure, including water, stormwater and sewer mains, electricity power lines and telecommunications facilities, the relevant infrastructure authority should be contacted before commencing the development.

# Appendix A Exempt Development Code

Minor development in NSW often does not require any planning or construction approval. This is called exempt development because it is exempt from planning approval. This means you will save time and money that you would have otherwise spent with seeking planning approval.

Even with minor work that is exempt development you may still need to obtain expert advice or assistance in undertaking the actual building work. Advice in relation to building standards or specific construction techniques should be sought from a relevant professional.

Exempt development does not require any approval under the planning system provided it meets the criteria set out in the Codes SEPP.

There are certain areas in the State where the Exempt Development Code does not apply. Refer to Table 1, page 10 of this guide.

The proposed works must also meet the following requirements:

- The work must fully comply with the deemedto-satisfy provisions of the Building Code of Australia and be carried out in accordance with the relevant *Australian Standards*.
- The work must be structurally adequate and in accordance with relevant manufacturers specifications.
- The work can not involve the removal or pruning of any tree or vegetation that required council's



consent, unless prior approval has been obtained from council.

There are other requirements that are specific to each development type; users should refer to the relevant development standards listed in the General Exempt Development Code.

Under the Codes SEPP, demolition of a heritage item, draft heritage item, in a heritage conservation area or a draft heritage conservation area is not permitted. In heritage conservation areas and draft heritage conservation areas, some exempt development types may be restricted to the rear yard only.

#### Demolition and asbestos removal

For exempt development a note has been included in the Codes SEPP to alert homeowners to the risks of asbestos and statutory requirements relating to its removal and disposal. The note will also guide people to seek additional information from the Government's website.

Note: Where development can be carried out as either complying development or exempt development, it must be carried out as exempt development.

Development types	Relevant clauses
Access ramps	2.1, 2.2
Aerials and antennae	2.3, 2.4
Air-conditioning units	2.5, 2.6
Animal shelters	2.6A, 2.6B
Aviaries	2.7, 2.8
Awnings, blinds and canopies	2.9, 2.10
Balconies, decks, patios, pergolas, terraces and verandahs	2.11, 2.12
Barbecues & other outdoor cooking structures	2.13, 2.14
Bed and breakfast accommodation	2.15, 2.16
Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses	2.17, 2.18
Carports	2.19, 2.20
Clothes hoists and clothes lines	2.21, 2.20
Communications dishes (radio and satellite)	2.23, 2.24
Demolition	2.25, 2.26
Driveways	2.27, 2.28
Earthworks and retaining walls	2.29, 2.30
Emergency works and temporary repairs	2.30AA, 2.30
Evaporative cooling units (roof mounted)	2.30A, 2.30B
Farm buildings and structures	2.31, 2.32
Fences (non-rural) – behind the building line	2.33, 2.34
Fences (non-rural) – forward of the building line	2.35, 2.35
Fences (rural)	2.37, 2.38
Filming	2.38A, 2.38
Flagpoles	2.39, 2.40

Development types included in the General Exempt Development Code	
Development types	Relevant clauses
Fowl and poultry houses	2.41, 2.42
Garbage bin storage enclosure	2.42A, 2.42B
Hard stand spaces	2.42C, 2.42D
Home businesses, home industries and home occupations	2.43, 2.44
Home-based child care	2.45, 2.46
Hot water systems	2.46A, 2.46B
Landscaping structures	2.47, 2.48
Letterboxes	2.49, 2.50
Maintenance of buildings in draft Heritage Conservation Areas	2.50A, 2.50
Minor building alterations (internal)	2.51, 2.52
Minor building alterations (external)	2.53, 2.54
Pathways and paving	2.55, 2.56
Playground equipment	2.57, 2.58
Portable swimming pools and spas and child-resistant barriers	2.59, 2.60
Privacy screens	2.61, 2.62
Rainwater tanks (above ground)	2.63, 2.64
Rainwater tanks (below ground)	2.65, 2.66
Scaffolding, hoardings and temporary construction site fences	2.67, 2.68
Screen enclosures (of balconies, decks, patios, pergolas, terraces and verandahs)	2.69, 2.70
Shade structures of canvas, fabric, mesh or the like	2.71, 2.72
Skylights, roof windows, ventilators	2.73, 2.74
Subdivision	2.75, 2.76
Temporary builders' structures	2.77, 2.78
Temporary structures (other than tents and marquees), temporary alterations and additions to buildings, or works solely for filming purposes	2.78A, 2.78
Tennis courts	2.78C, 2.78D
Tents or marquees used solely for filming purposes	2.78E, 2.78D
Water features and ponds	2.79, 2.80

# Appendix B Glossary

Accredited certifier means the holder of a certificate or accreditation as an accredited certifier under the Building Professionals Board Act 2005.

**Attached** in relation to a building or structure that is complying development, means not more than 900mm from another building or structure.

**Battle-axe** lot means a lot that has access to a road by an access laneway.

**Boundary wall** means a wall that has a setback of less than 150mm from the side or rear boundary of a lot.

**Building height** (or *height of building*) at any point of a building, means the vertical distance between that point at ground level (existing) and the highest point of the building immediately above that point, including plant and lift overrums, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

**Building line** means the line of the existing or proposed building wall or roof (other than a wall or roof of any building element within an articulation zone), or the outside face of any existing or proposed ancillary development, closest to the relevant boundary of the lot.

**Certifying authority** means a person who, as in the *EP&A Act 1979*:

- a) is authorised by or under section 85A to issue complying development certificates, or
- b) is authorised by or under section 109D to issue Part 4A certificates.

**Council** means the council or local government area and, in relation to a particular development, means the council of the local government area in which the development will be carried out.

**Detached studio** means ancillary development that is habitable and is:

(a) established in conjunction with a dwelling house, and

(b) on the same lot of land as the dwelling house, and

(c) separate from the dwelling house.

### Development means:

- a) the use of land
- b) the subdivision of land
- c) the erection of a building
- d) the carrying out of a work
- e) the demolition of a building or work, and
- any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument.

but does not include any development of a class or description prescribed by the regulations for the purposes of this definition as in the *EP&A Act 1979*.

**Draft heritage conservation area** means an area of land identified as a heritage conservation area or place of Aboriginal heritage significance in a local environmental plan that has been subject to public exhibition under section 57 of the *EP&A Act 1979*, other than an area that was exhibited before 1 March 2006, but has not been included in a plan before the commencement of this Policy.

**Draft heritage item** means a building, work, archaeological site, tree, place or aboriginal object identified as a heritage item in a local environmental plan that has been subject to public exhibition under section 57 of the *EP&A Act 1979*, other than an item that was exhibited before 1 March 2006, but has not been included in a plan before the commencement of this policy.

**Dwelling house** means a building containing only one dwelling, an attached dwelling, or semi-detached dwelling, but does not include any part of the building that is ancillary development or exempt development under the Codes SEPP.

**Exempt development** is development for which provision is made as referred to in section 76(2) as in the *EP&A Act 1979*.

Foreshore area means the land between a foreshore

building line, identified by an environmental planning instrument or a development control plan adopted before 12 December 2008, and the mean high water mark of an adjacent waterbody (natural).

Habitable room has the same meaning as in the Building Code of Australia. The term is defined as a room used for normal domestic activities, other than a bathroom, laundry, toilet, pantry, walk in wardrobe, hallway, lobby, clothes drying room or other space of a specialised nature that is not occupied frequently or for extended periods.

Hard stand space means an area of concrete, paving or other hard material at ground level designed solely for parking a motor vehicle.

Heritage conservation area means an area of land identified as a heritage conservation area or a place of Aboriginal heritage significance, including any heritage items situated on or within that area in an environmental planning instrument.

**Heritage item** means a building, work, archaeological site, tree, place or Aboriginal object identified as a heritage item in an environmental planning instrument.

**Lane** means a public road, with a width greater than 3m, but less than 7m that is used primarily for access to the rear of premises, and includes a night soil lane.

Outbuilding means any of the following:

- balcony, deck, patio, pergola, terrace, verandah that is detached from a dwelling house
- cabana, cubby house, fernery, garden shed, gazebo or greenhouse
- carport that is detached from a dwelling house
- farm building
- garage that is detached from a dwelling house
- rainwater tank (above ground) that is detached from a dwelling house
- shade structure that is detached from a dwelling house,
- shed.

**Parallel road** means, in the case of a lot that has boundaries with parallel roads, the road is not the primary road.

**Primary road** means the road to which the front of the dwelling house, or a main building, on a lot faces or is proposed to face.

**Secondary road** means, in the case of a corner lot that has boundaries with adjacent roads, the road that is not the primary road.

**Setback** means the horizontal distance between the relevant boundary of the lot and the building line.

**Setback area** means the area between the building line and the relevant boundary of the lot.

**Standard Instrument** means the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006.* 

**Storey** means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include the following:

- an attic
- a lift shaft
- a mezzanine
- a stairway.

**Note:** the determination of the number of storeys a building contains is as set out in State Environmental Planning Policy No 6 – Number of Storeys in a Building.

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