

Exempt and Complying Development

Important note

This information is for guidance only and may not contain all the information relevant to every property in New South Wales. Applicants should refer to the relevant planning controls before work begins, or seek professional advice on how the planning controls apply to their property.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* identifies the majority of development types that can be done as exempt and complying development in NSW.

What is complying development?

Complying development is a form of planning approval that can be issued by an accredited certifier or a council in the form of a complying development certificate (CDC). This certificate combines approval for use of the land and building construction.

Before starting complying development, the applicant must find out what planning controls apply to the land and to the type of development. Some types of complying development are subject to local exclusions or variations - these are listed in Schedules 3 and 5 of the policy.

A section 149 planning certificate from council will outline what planning controls apply and whether particular parts of the policy can be used for development on the land.

What criteria apply to complying development?

Complying development cannot be carried out if the development requires agreement by another agency (i.e. concurrence) or a concurrence in relation to a critical habitat or threatened species. It also cannot be carried on land that is:

- a critical habitat under the Threatened Species Conservation Act 1995 or Fisheries Management Act 1994,
- a wilderness area under the Wilderness Act 1987.

Complying development also cannot be carried out on land that is a heritage item listed on the State Heritage Register (SHR) or that is subject to an interim heritage order under the Heritage Act 1977, or that is a heritage item identified in an environmental planning instrument (EPI) such as a council's LEP or in a draft EPI which has been publicly exhibited.

Complying development may be carried out on land that is a heritage item listed on the SHR or that is subject to an interim heritage order if the work is subject to a specific exemption under section 57 of the Heritage Act 1977. Development may also be carried out if it is located outside the area of the item as defined on the SHR or in an EPI.

Is your proposal complying development?

To be approved as complying development a proposal must be permissible with consent under the relevant council LEP or other environmental planning instrument. The development must also comply with the Building Code of Australia and:

- not require an environmental protection licence under the *Protection of the Environment Operations Act 1997*, and
- not be designated development as defined under section 77A of the Act.

Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations. It does not include State significant development despite any such declaration.

Before a CDC is issued a separate approval may be required for one or more of the following:

- an on-site effluent disposal system for unsewered land or an on-site stormwater drainage system, or
- the building of any kerb, crossover or driveway, or
- the removal or pruning of trees or vegetation where a development consent or approval is required.

There are other limitations or requirements that may apply to the land or other approvals may be required for development of land within:

- a mine subsidence area
- the 20 – 25 ANEF contours for aircraft noise, and
- the Siding Springs area under Orana Regional Environmental Plan No. 1.

What are the types of complying development?

Complying development is specified within a number of separate codes (these are now consolidated into the Policy):

- General Housing Code
- Rural Housing Code
- Housing Alterations Code
- General Development Code
- Commercial and Industrial Alterations Code
- Commercial and Industrial (New Buildings and Additions) Code
- Subdivision Code
- Demolition Code
- Fire Safety Code

Understanding complying development

Exempt and Complying Development

Each Code applies to particular types of complying development and identifies the relevant development standards. These standards must be met for a proposal to be approved via a CDC.

The General and Rural Housing Codes allow for new single and two storey dwelling houses up to a height of 8.5m, and ancillary development to be approved as complying development:

- on lots of 200m² or more in residential zones, and
- on lots of 4000m² or more in rural zones.

Under the two Commercial and Industrial Codes, complying development includes:

- new industrial buildings and additions up to a maximum of 20,000m²
- building additions for retail premises up to 1,000m²,
- building additions for any other commercial purposes up to 2,500m², and
- internal work, changes of use, first use, and ancillary and related development.

Land-based and other exclusions

Some Codes have additional restrictions or requirements specified depending on the type of land involved, (e.g. if the land is in a bush fire prone area, flood affected land or heritage conservation area).

In situations where a lot is only partly affected by a land-based exclusion, for example a foreshore area, complying development is allowed on the parts of the lot which are not affected.

A number of local exclusions and variations have also been included within the policy and these are identified in Schedule 3 and 5.

Clause 1.20 of the policy suspends the operation of any covenants or agreement applying to a lot where they include the same type of development standards as in the policy. Other covenants such as those that specify types of construction material, or a covenant imposed by a former owner, for example to limit height to protect a view, will continue to apply to the land.

What information should be lodged with a CDC application?

The CDC application must be submitted with additional details to ensure the certifying authority has sufficient information to assess whether the proposal complies with the development standards. This information is specified in Schedule 1 of the *Environmental Planning & Assessment Regulation 2000*.

Are there conditions of approval?

Complying development is approved subject to conditions specified in the CDC issued by the certifying authority. Information Sheet 1.5 includes additional information on conditions of approval.

Further information

Visit www.planning.nsw.gov.au/exemptandcomplying for more information sheets or to view the policy.

Contact the department's Exempt and Complying Development Team on 1300 305 695 or email codes@planning.nsw.gov.au.

Electronic Housing Code

A number of NSW councils are now utilising the EHC.

The EHC website helps applicants determine whether the proposed development qualifies as exempt or complying development and the standards that must be met.

Applications for complying development can also be lodged and tracked online for those council areas which are using the Electronic Housing Code. Visit www.electronichousingcode.com.au to find out if it is used by your local council or for more details.