



NSW Housing Code - Exempt and Complying Development

Current at 29/01/09

On 12 December 2008, the NSW Government, as part of its ongoing planning reforms, released the first stage of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the *Code*)¹. The *Code* outlines how residential developments, including detached single and two storey dwellings, home alterations, renovations and additions and other ancillary development, on lots 450 square metres and greater can be approved (in as little as 10 days) as complying development with council or accredited certifier approval. It also outlines how 41 types of minor developments around the home can proceed as exempt development without planning approval.

Q&A

Where and when can I use the *Code*?

The *Code* is applicable on lots 450sqm and greater throughout NSW. There are excluded areas in the *Code* (e.g. flood prone land, bushfire land and others). Members are advised to check the *Code* to see if they are located in one of the excluded areas.

How do I know if I'm located in an excluded area?

The *Code* will list all types of areas that are excluded and where complying development is not permissible. If you are located within an excluded area under the *Code*, a development application (DA) will be required to be lodged. From 27 February, Planning Certificates (S149(2)) issued by councils will (on request) illustrate if complying development cannot be carried on the particular site (under the State-wide *Code*) and the reason why complying development cannot be carried out. Although the Planning Certificate (S149) is not mandatory, it may be a useful for members to obtain one to ensure that the complying development is permissible on a specific site.

The house design meets all of the numerical requirements except one or two within the *Code*. Can I still use the *Code*?

No. The house design must meet all of the provisions within the *Code* to receive a Complying Development Certificate from a council or accredited (private) certifier. A DA will need to be lodged if you are unable to meet all the necessary requirements of the *Code*.

If I can't meet all of the *Code* requirements, will the same requirements and criteria apply to a DA?

There are 152 councils across NSW. Each council has at least one policy setting out criteria for residential building work. While the standards in these policies currently vary from council to council, HIA is working with the Department of Planning to achieve greater consistency for

¹ The '*Code*' is the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 which is the legal instrument which forms part of the NSW (Exempt and Complying) Housing Code.



proposed work that does not meet the *Code* requirements. For now, if you are unable to meet the *Code* and therefore need to lodge a DA, you will need to comply with the council's relevant development standards for merit assessment (e.g. LEP, DCP).

Is demolition permitted under the *Code*?

Yes. Work that can be built, erected or installed under the *Code* as exempt development (no planning approval necessary) may also be demolished as exempt development under the *Code*. Any other type of development (i.e. single dwellings, part of a dwelling etc.) on lots 450sqm or greater can be demolished, subject to requirements, as complying development under the *Code*. Heritage and draft heritage listed buildings cannot be demolished or changed in any way under the *Code*.

Can I use a council or an accredited (private) certifier to check the plans and issue a Planning Certificate?

Yes. Both council and accredited certifiers will be permitted to issue an application with a Complying Development Certificate in as little as 10 days.

Can I remove a tree on a site before constructing a dwelling under complying development in the *Code*?

Most councils will require a permit or development consent to remove or prune a tree or other vegetation prior to obtaining a Complying Development Certificate.

This is a State-wide *Code*. Can a council add to, or vary the criteria in the *Code*?

Councils can apply to the Minister for Planning for a variation to the *Code*, but only in respect to the landscaped area, front setback and side setback standards under the *Code*. The council will need to justify why a variation is needed. Any specific council variation to the *Code* as approved by the Minister will be added to a Schedule within the *Code*. Councils will be invited to nominate local variations for approval from March 2009.

I am a builder in regional NSW and actively use the council's own existing complying development plan as it is easy to use and less restrictive. Can I keep using the council's existing plan after 27th February 2009?

Yes. For the first 12 months of operation, applicants can use either the new State-wide *Code* or their council's existing complying development plan.

I've received a job which involves adding a room to the rear of an existing dwelling. The existing house is located on a lot greater than 450sqm but its current site coverage is greater than what the *Code* allows for a single dwelling. Can I add an additional room to the rear of the dwelling if I comply with all other requirements such as setbacks, height etc?

No. You will need to lodge a DA in this situation. The *Code* does not apply to work that will bring the dwelling into non-compliance or increase the non-compliant component of an existing house in any way. If the additional room increases the existing non-compliant site coverage, the applicant will need to lodge a DA to council.



I've been asked to do a job which involves adding a second storey to an existing one storey dwelling. The proposed work meets all of the requirements of the *Code* for a dwelling such as height, setbacks, privacy etc. Can I add an additional storey using complying development under the *Code*?

Yes, provided the proposed work does not cause the dwelling to become non-compliant and does not add to an already non-compliant situation. If you add to an existing house and you still remain within the requirements for a single dwelling under the *Code*, you can obtain a Complying Development Certificate from a certifier and proceed with the construction.

I have a contract to build a house on a sloping site. Can I use the *Code* to obtain a Complying Development Certificate for the erection of a house on a sloping site?

Yes. If the proposed dwelling complies with the cut and fill requirements of the *Code* and all other requirements for a single dwelling under the *Code* (e.g. maximum building height), you will be able to build a house on a sloping site as complying development under the *Code*.

How is building height measured?

Building height is the height of the dwelling at a specified point (e.g. at the external wall or at the ridge). The building height is measured from the natural ground level which is the level of the ground prior to any cut and fill taking place.

I've been engaged to knock down an old dilapidated house and rebuild a new dwelling which is located in an existing built up area. The front elevation of the neighbouring dwelling on the right of the dwelling is located just 3 metres from the front boundary and the neighbouring dwelling on the left is located 5 metres from the front boundary. What is the minimum setback for the new dwelling from the front boundary?

The *Code* specifies that the front boundary setback of a new dwelling house in an existing area must be the average distance of setbacks of the nearest 2 dwelling houses having a boundary with the same side of the primary road and located within 40m of the new dwelling. In this case, the new dwelling will need to be setback 4 metres from the front boundary as it is the average of the two dwellings located either side of the site within 40 metres.

Do I need to notify the neighbour before the Complying Development Certificate is issued?

No, neighbours will receive a notice from the certifier once the certificate is issued.

Will I need to notify the neighbours after the Complying Development Certificate has been issued and prior to constructing/proceeding with a development that is complying development under the *Code*?

Yes, the certifier will need to. After a Complying Development Certificate has been issued, the council or accredited certifier will be required to notify all neighbours within 40m of the proposed development within 2 days after the date of determination. The applicant must notify the Council of the appointment of the PCA (unless the council is the PCA) and the date of commencement of building work at least 2 days before building work takes place.



Will I need to notify the neighbours prior to proceeding with a development that is exempt development under the *Code*?

No. Neighbour notification will not be required if your proposal meets the exempt development requirements under the *Code*. However, it is good practice to notify the neighbours prior to undertaking any building work.

I've been approached to construct and install a deck to the rear of a dwelling. Are decks, car ports and other minor building works considered as exempt development under the *Code*?

Yes, if they comply with the development standards as exempt development under the *Code*. The *Code* specifies 41 different types of exempt development that can be constructed without the need for a planning or construction approval from the council or a certifier. These types of minor building works can be exempt but must still comply with the development standards in the *Code*. For example, a new deck may be exempt if it complies with the development standards like size, height etc. in the *Code*. Any development undertaken as exempt development must meet these development standards.

If you have any doubt and need clarification, or have any further questions, please call the NSW Planning Advisor on 9978 3333.

Visit the HIA website – click on your trade category, select your state and follow the link to 'Building and Planning Services' for a summary of the *Code* or visit www.planning.nsw.gov.au/housingCodes to access the *Code* [State Environmental Planning Policy (Exempt and Complying Development *Codes*) 2008], supporting guidelines and information.