



PLANNING SYSTEM

Exempt and Complying Development

Circular	PS 13-004
Issued	23 December 2013
Related	PS 09-016 and PS 13-005

Exempt and Complying Development - changes to the Environmental Planning and Assessment Regulation 2000

Amendments to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) have been made to support amendments to State Environmental Planning Policy (Exempt and Complying Codes) 2008. The amendments are set out in the *Environmental Planning and Assessment Amendment (Complying Development and Fire Safety) Regulation 2013* (the amending Regulation).

The purpose of this circular is to provide councils, accredited certifiers and the community with advice regarding the amending Regulation. The amendments to the Regulation will begin on 22 February 2014.

Why the amendments have been made

The amending Regulation makes important changes to the lodgement and determination of applications for a complying development certificate (CDC). This includes new requirements to provide advice and notification of complying development to neighbours. There are also additional requirements for information to be lodged with an application for a CDC and for conditions to be imposed on a CDC approval.

The SEPP has been amended to include new complying development codes, development standards and other requirements. These amendments will require changes to the information provided in section 149 planning certificates. The new development types also include a number of prerequisites for certain proposals to be complying development. These and other related matters are specified in the Regulation.

Changes to neighbour notification

Advice of complying development

Under clause 130AB of the Regulation, advice of a complying development application must be given to neighbours 14 days prior to the approval of a CDC by the certifying authority, which is either the council or the accredited certifier, and given to the council if the certifying authority is not the council.

The advice to must be given to neighbours of each dwelling on a lot that is within a residential or rural zone and within 20m of the boundary of the proposed development site.

This requirement applies to complying development for:

- a new dwelling house, additions to an existing dwelling house under any environmental planning instrument including a council's local environmental plan (LEP),
- the demolition of a building under the SEPP, and
- a secondary dwelling and a group home under State Environmental Planning Policy (Affordable Rental Housing) 2009.

This pre-approval notification requirement does not apply to residential release areas that are defined in the Regulation as being:

- an urban release area or a land release area identified in the council's LEP,
- any land subject to State Environmental Planning Policy (Sydney Region Growth Centres) 2006, or
- certain areas identified in State Environmental Planning Policy (Major Development) 2005.

The time for determining a complying development certificate that has been the subject of the new pre-approval notification requirement has been increased to 20 days. Other CDCs remain subject to a 10 day approval time.

The purpose of this requirement is for advice only and there is no opportunity to lodge objections to the CDC application. Applicants are, however, encouraged to consult their neighbours to resolve concerns prior to lodging an application for a CDC. A brochure on the importance of neighbour consultation is available from the department.

The Regulation specifies information that must be included in the advice to neighbours. The department has prepared a template letter for use by councils and private certifiers.

Notice of commencement of works

The current neighbour notification requirements for complying development under the SEPP have been removed and are now included in the Regulation. Under clause 136AB of the Regulation, notification of the commencement of works under a CDC must be given to neighbours seven days prior to commencement of work.

The notification must be given by the person having benefit from the CDC to neighbours of each dwelling on a lot that is within 20m of the boundary of the proposed development site. This requirement applies to complying development for:

- a new building,
- an addition to an existing building, and
- the demolition of a building.

In residential release areas, this requirement to notify neighbours prior to works commencing remains at the current two days.

The department has prepared a template letter for providing notification to neighbours of the commencement of works.

Other important matters for councils and private certifiers

Section 149 planning certificates

- The SEPP has been amended to allow exempt and complying development to take place on lots affected by certain zoning and other land based restrictions as long as the development is not on part of the lot affected by the exemption.
- For example, where only a portion of a lot is included in a foreshore area or where a heritage item is defined to be a specific part of a lot, exempt and complying development can still be undertaken on the parts of the site not affected by these and other types of exclusions.
- As a result, the Regulation now requires councils to identify whether a lot is affected by a land exclusion, and if so the extent to which the lot is affected. If a council does not have sufficient information to ascertain the extent of the land based exclusion, a statement to this effect must be included in the planning certificate.
- The SEPP includes new complying development codes and as a result, the Regulation requires

planning certificates to include information on these codes.

Development contributions

Development contributions under section 94 and 94A of the *EP&A Act* will be required for a complying development proposal where a council's contributions plan specifies a contribution is payable for a particular development type. A condition of approval is to be imposed on a CDC for any relevant contribution to be payable prior to the commencement of work, irrespective of the requirements specified in the contributions plan.

Payment of security

Security bonds/damage deposits may be required for works under a CDC in a similar way to how they are applied under development consents. A condition of approval is to be imposed on a CDC for a bond to be paid or a guarantee to be provided to the council prior to the commencement of works, if the development:

- has an estimated costs of work that is \$25,000 or more, and
- is carried out on land adjacent to a public road, and
- the relevant council website specifies the payment of a security for development of the same type or description as the proposed complying development.

The Regulation also makes provision for the refund of the security less the cost of making good any damage caused to council property and minus a fee for inspecting the site.

This condition can be imposed only if a council identifies these charges in their schedules of fees and charges published on their website. The relevant charge should be specified as a payment relevant under clause 136M of the Regulation.

Protection of adjoining properties

The Regulation also requires a condition be imposed to ensure development involving excavation on land adjoining road or rail corridors must protect and support adjoining premises from possible damage.

Compliance with pre-commencement conditions

The Regulation requires that a Principal Certifying Authority (PCA) must be satisfied that all the conditions of a CDC that are to be satisfied prior to work commencing on site have been met.

Fire safety

The new Fire Safety Code in the SEPP will facilitate fire safety upgrade works to hydraulic fire safety systems. The amending Regulation removes the requirement for a fire safety schedule to accompany an application for these and other specified fire safety works.

Information to be lodged with applications for a CDC

Protection of easements

The SEPP will contain new provisions that prevent new buildings and some other development types being erected over registered easements.

The Regulation requires a Certificate of Title to be lodged with an application for a CDC if a development standard requires that the development must be set back from an easement.

If the Certificate of Title identifies an easement on the lot, a Title Diagram of the easement must be submitted with the CDC application for the certifying authority to confirm the proposal satisfies easement separation requirements.

Building upgrade report

Development proposals for a change of use or addition or alteration to an existing building that was erected prior to 1 January 1993, and that involves an area of more than 500m², will require a building upgrade report from an independent accredited certifier (who is not assessing the CDC application).

The report must provide an assessment of matters relating to the compliance with the deemed-to-satisfy provisions of the Building Code of Australia, and may make recommendations for the complying development to include appropriate work for fire protection.

A copy of the report must be submitted to the council, and the PCA must obtain acknowledgement receipt of this report from the council before an occupation certificate is issued.

Site contamination statement

Where a new industrial building or additions to an existing commercial or industrial building is proposed, the CDC application must be accompanied by a statement from a person who is qualified to assess contaminated sites, stating:

- the land is suitable for the development, or
- the land will be suitable for the development if specified remediation works are carried out.

Where the site contamination statement specifies any requirements, the CDC must be issued subject to a condition that the requirements must be met.

The requirement for a site contamination report applies to land that:

- is or was used for a purpose identified under table 1 Managing Land Contamination Planning Guidelines under SEPP 55 (Remediation of Land) 1998, or
- is on the list of sites notified under section 60 of the *Contaminated Land Management Act 1997*.

Roads and Maritime Services traffic impact certificate

A CDC application for a new industrial building or additions to an industrial building with a total gross floor area of 5,000m² or more, and that has pedestrian or vehicular access to a classified road, or is within 90m of a classified road, must include a certificate from Roads and Maritime Services.

Where a new industrial building or additions to an industrial building is proposed, the CDC application requires a certificate from Roads and Maritime Services if the building has a total gross floor area of 5,000m² or more, and has pedestrian or vehicular access to a classified road, or is within 90m of a classified road.

The RMS certificate will state that traffic impacts on the surrounding road network are acceptable, or will be acceptable, if specified requirements are met. Where the RMS certificate includes requirements, the CDC must be issued with a condition that the requirements to be met.

Further information

Information about the changes that have been made to the Regulation, SEPP and other environmental planning instruments, including notification template letters and information sheets on specific changes, is available on the department's website at www.planning.nsw.gov.au/exemptandcomplying

For further information please contact the NSW Department of Planning & Infrastructure's information centre on 1300 305 695.

NSW Department of Planning & Infrastructure circulars are available from www.planning.nsw.gov.au/circulars

Authorised by:

Sam Haddad
Director-General

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

© State of New South Wales through the Department of Planning & Infrastructure
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.