

## Land-based controls for exempt and complying development

This information sheet explains about land-based planning controls. These determine if you can carry out exempt and complying development on your land. The information sheet explains how to find out what land-based controls apply and what it means in relation to exempt and complying development.

### Important note

This information sheet is for guidance only and may not contain all the information relevant to every property in NSW. Applicants should refer to the [relevant planning controls](#)<sup>1</sup> before beginning work, or seek professional advice on how the planning controls apply to their property.

The majority of the development that can be done as exempt or complying development in NSW is identified in the State Exempt and Complying development Policy (the State Policy). View the policy at the [Exempt and Complying Development Policy website](#)<sup>2</sup>.

**Exempt development** is minor building works that do not need planning or building approval. [Information sheet 1.1](#)<sup>3</sup> provides more information about exempt development.

**Complying development** is a joint planning and construction approval that can be granted by council or a private certifier. [Information sheet 1.2](#)<sup>4</sup> provides more information about complying development.

use zones and identifies what type of development can occur in that zone.

All development on a lot must be development that is permissible in the zone that it is in. zoning land means that residential, commercial and industrial development is located in suitable locations. It also ensures that compatible uses are located together

Other land-based policies can also apply to a parcel of land. More than one land-based policy can be applied to land to identify a number of designations including:

- a heritage item or conservation area,
- flood prone land,
- bushfire prone land,
- contaminated land,
- native vegetation protection areas,
- riparian buffer areas, and
- enterprise corridors.

Importantly, some land-based designations effect if you can do exempt or complying development on your land. Before you carry out any exempt or complying developments you should first check what land-based policies apply to your land.

### What are land-based policies?

The NSW planning system uses land-based policies to manage and control development. The majority of land in NSW is identified in an environmental planning instrument as having a specific land use zone.

Environmental planning instruments (generally council's local environmental plan) identifies land

### How can I find out what land-based policies apply to my land?

A section 149 planning certificate from council will outline what land-based policies and planning controls apply to your land. It will also state whether exempt and complying development can be done on the land.

Alternatively, you can check what land-based policies apply to your land at the [Planning Portal](#)

<sup>1</sup> <https://maps.planningportal.nsw.gov.au/Terms>

<sup>2</sup> [www.planning.nsw.gov.au/exemptandcomplying](http://www.planning.nsw.gov.au/exemptandcomplying)

<sup>3</sup> [www.planning.nsw.gov.au/exemptandcomplyingoverview](http://www.planning.nsw.gov.au/exemptandcomplyingoverview)

<sup>4</sup> [www.planning.nsw.gov.au/exemptandcomplyingoverview](http://www.planning.nsw.gov.au/exemptandcomplyingoverview)

[website](#)<sup>5</sup>. This allows you to search for your property and see what land-based policies apply.

The [Electronic Housing Code](#)<sup>6</sup> can also be used in certain council areas to identify exempt development requirements for a particular area.

## What land-based exclusions apply to exempt development?

Exempt development can never be carried out on the following land:

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

## Exclusions that apply to exempt development allowed by the State policy

In addition, exempt development that is allowed under the State policy cannot be carried out on:

- a State heritage item listed on the State Heritage Register (SHR) or an interim heritage item under the *Heritage Act 1977*.

## Local exclusions and variations applying to exempt development

Some types of exempt development cannot be undertaken within areas that are subject to local exclusions or variations. These are listed in Schedules 2 and 4 of the policy.

## What land-based exclusions apply to complying development?

Complying development can never be carried out on the following land:

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

<sup>5</sup> <https://www.planningportal.nsw.gov.au/>

<sup>6</sup> [www.ehc.nsw.gov.au/](http://www.ehc.nsw.gov.au/)

- on a State heritage item listed on the State Heritage Register (SHR) or an interim heritage item under the *Heritage Act 1977*, or
- on a local heritage item, listed in an environmental planning instrument (generally council's local environmental plan).

## Exclusions that apply to complying development allowed by the State policy

In addition, complying development that is allowed under the State policy cannot be carried out on:

- land in a mine subsidence district within the meaning of the *Mine Subsidence Compensation Act 1961*,
- land in a 20-25 aircraft noise exposure forecast (ANEF) contour (if development is a new house or an addition to a house),
- land within the area covered by *Orana Regional Environmental Plan No 1 – Siding Spring* (if development is a skylight or roof window).

## Additional land-based exclusions for specific complying development types

The State policy contains a number of complying development codes. Each code relates to a different complying development type (e.g dwelling houses, rural housing and commercial development).

Clause 1.19 of the Policy identifies specific land-based exclusions that are relevant to the different complying development codes in the policy, including the:

- General Housing Code and Rural Housing Code
- Housing Alterations Code and General Development Code
- Commercial and Industrial (New Buildings and Additions) Code

The exclusions specified for each complying development code mean that complying

development that is allowed under that code cannot be done on certain land.

For example, residential development can be especially sensitive to environmental conditions of the land. For this reason, work under the General Housing Code and the Rural Housing Code cannot be carried out in the following areas (see clause 1.19(1) of the policy for the complete list):

- land affected by coastal hazards or coastal erosion,
- environmentally sensitive land,
- heritage conservation areas (swimming pools and detached outbuildings are allowed),
- foreshore areas,
- land that is affected by aircraft noise at 25 ANEF contours or above, and
- land identified as having an Acid Sulfate level of class 1 or class 2.

Commercial and industrial development can potentially impact upon environmentally sensitive land. For this reason, work allowed by the Commercial and Industrial (New Buildings and Additions) Code cannot be carried out in the following areas (see clause 1.19(5) of the policy for the complete list):

- land affected by coastal hazards or coastal erosion,
- environmentally sensitive land and protected areas,
- heritage conservation areas and draft conservation areas, and
- land identified as having an Acid Sulfate level of class 1 or class 2.

### Local exclusions and variations applying to complying development

Some types of complying development cannot be done within areas that are subject to local exclusions or variations. These are listed in Schedules 3 and 5 of the policy.

## Additional land-based exclusions for specific complying development types

The following terms explain what each of the land-based exclusion terms mean, where they apply and where to find additional information.

### Mine Subsidence District

If complying development involves the alteration or erection of improvements on land that is in a mine subsidence district the prior approval of the Mine Subsidence Board is required. A mine subsidence district is declared under the *Mine Subsidence Compensation Act 1961*, and areas which are declared must be included on a section 149 planning certificate.

### Acid Sulfate Soils Map

Acid sulfate soils are soils that contain metal sulfides. If undisturbed and underwater, they may not pose any risk to development but when development exposes these soils to air, sulphuric acid is created and these soils can be corrosive and damage concrete and buildings.

Complying development cannot be undertaken on land identified as Class 1 or Class 2 on an Acid Sulfate Soils Map and some restrictions may also apply on land identified as Class 3 or 4. The Office of Environment and Heritage maintains mapping of acid sulfate soils across the NSW and relevant councils may also have information to identify these lands in their areas.

### State heritage items

Exempt and complying development cannot be carried out on land that is an item listed on the State Heritage Register (SHR) or that is subject to an interim heritage order under the *Heritage Act 1977*.

However, development may be carried out on such land if the development is located outside of the area of the item as defined on the SHR or if the

work is subject to a specific exemption under section 57 of the *Heritage Act 1977*.

Land that is listed on the SHR, or that is subject to an Interim Heritage Order (IHO) under that Act, is listed on the website of the Office of Environment and Heritage.

If the area of an item is limited to only part of the land this will be included in the listing on the SHR, and the listing will include information on any exemptions which may apply to allow exempt and complying development on that item.

### Biobanking and Property Vegetation Plans (PVPs)

Biobanking agreements are created under Part 7A of the *Threatened Species Conservation Act 1955* and ensure that the impact of development that requires the clearing of vegetation is offset by conserving and protecting other areas.

PVPs are agreements between landowners and local authorities under the *Native Vegetation Act 2003* to protect native vegetation from future development.

Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place on land where either of these two agreements exists.

The Office of Environment and Heritage may have further information regarding biobanking and PVPs.

### Environmentally Sensitive Areas

An Environmentally Sensitive Area (ESA) is a term defined in the Policy as including a number of different types of land, each of which is separately defined.

Some types of exempt development and the repair and alteration to waterways structures are allowed within an ESA, but all other complying development is restricted from occurring within these areas.

An ESA is not to be confused with another term used in the Policy - environmentally sensitive land.

An ESA is defined as including:

- coastal waters of the State which generally begin from the mean high water mark as identified on a title diagram for a lot
- coastal lakes as listed in Schedule 1 of *SEPP No 71 – Coastal Protection*
- any land that *SEPP No 14 – Coastal Wetlands and SEPP No 26 – Littoral Rainforests* apply to, including land within 100m of these areas
- land that is an aquatic reserve under the *Fisheries Management Act 1994* or a marine park under *Marine Parks Act 1997* including an area within 100m of these lands
- internationally significant land declared under the Ramsar Convention on Wetlands, or that is within a world heritage area as declared under the World Heritage Convention. The ESA extends to any area within 100m of both of these identified lands
- land specifically identified in any EPI as being of “high Aboriginal culture significance” or “high biodiversity significance”
- land reserved under the National Parks and Wildlife Act 1974 or any land to which Part 11 of that Act applies
- land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes.

### Aircraft Noise Exposure Forecast areas

Aircraft Noise Exposure Forecast (ANEF) areas occur around airports and flight paths where areas may be impacted by the noise of aircraft landing and taking off. Contour maps which are available on individual airport websites display different levels of aircraft noise and exposure.

New houses or additions to an existing house are not permitted as complying development in areas that are 25 ANEF contour and above, and in areas that are between 20–25 ANEF require specific design measures to reduce the impacts of aircraft noise.

## Sydney Water Catchment land

“Special areas” may be declared under the *Sydney Water Catchment Management Act 1998* in and around water catchments. Activities in these areas are regulated to ensure that the State’s drinking water is protected from contamination and pollution. As a result, residential complying development cannot take place in these areas. Special areas are mapped and can be identified on the Sydney Catchment Authority’s website.

## Flood control lots

Councils may have identified certain land as being potentially flood affected and are required to include this information on section 149 planning certificates. If land is in an identified high risk flood area, complying development cannot be undertaken.

For other land that may have a potential to be flood affected, certain design measures need to be certified by a professional engineer for that the development to be suitable given the flood risk of the area.

## Bushfire prone land

Where land is surrounded by vegetation it may be identified as bushfire prone land. This land is graded at different bush fire attack levels (BAL) and complying development cannot be undertaken on land that is BAL- 40 or in the flame zone (BAL-FL).

In less severe bushfire prone areas additional requirements apply, and are required to be certified by the local council or a qualified bush fire risk consultant before complying development can be approved. The standards in the Policy have been developed in conjunction with the Rural Fire Service and construction requirements are detailed in the document “Planning for Bushfire Protection”.

Certain types of exempt development in bushfire prone land require use of materials that are non-combustible and this minimises the risk of fire spreading.

A section 149 certificate identifies whether land is bush fire prone.

## Types of land identified in an LEP or other EPIs

### Local heritage items and draft heritage items including items of Aboriginal significance

Local councils can list items of environmental heritage (land or buildings) in a schedule of their LEP and are sometimes identified in other EPIs.

Complying development generally cannot take place on heritage items and draft heritage items; but if the item is clearly mapped or described, the development can still take place on the land outside this area. Under the State Policy a heritage item is defined as “...a building, work, archaeological site, tree, place or Aboriginal object identified as a heritage item in an environmental planning instrument”.

Many specific types of exempt development are also restricted on land which is a local heritage item identified in an EPI or in a draft EPI which has been on public exhibition.

Please note if an Aboriginal object is discovered on any land (heritage or other) during the course of excavation works, all disturbance to the area must immediately stop and the discovery referred to the Office of Environment and Heritage.

### Heritage conservation area or a draft heritage conservation area

Councils can identify in their local environmental plans areas of special character, including:

- heritage conservation areas
- draft heritage conservation areas
- places of Aboriginal heritage significance
- draft places of Aboriginal heritage significance

Under the State Policy these areas are protected and only limited complying development is allowed for a residential outbuilding or a swimming pool that meet specific development standards. Specific types of exempt development are also restricted on this land.

## Unsewered land

Septic tanks are required for sewerage treatment on unsewered land and these have the potential to impact on water quality in the catchment. Complying development for either new, or additions to existing buildings cannot take place on unsewered land except for residential complying development that does not increase the number of bedrooms on a site, or that involves a site disturbance of less than 250m<sup>2</sup>.

*SEPP (Sydney Drinking Water Catchment) 2011* identifies drinking water catchments in metropolitan Sydney and other EPIs may identify unsewered land in catchment areas where development cannot take place.

## Land reserved for a public purpose by an EPI

Councils may reserve areas for public purposes for the protection or development of community resources and public infrastructure. Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place in these areas. The zoning maps found in a council LEP may assist in identifying this land.

## Buffer areas

Buffer areas provide a separation between urban development and either the natural environment or hazardous and intensive development such as power stations or mines. Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place in areas that are defined as a “buffer area” and mapped in a council LEP.

## River front areas

These areas are similar to buffer areas and protect natural ecosystems occurring in proximity to rivers and waterways. Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place in areas that are defined as a “river front area” and mapped in a council LEP.

## Ecologically sensitive areas

Local councils use this term to identify areas where specific environmental factors are located. Ecologically sensitive areas may be quite specific and not form a recognised pattern like a buffer area. Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place in areas that are defined as an “ecologically sensitive area” and mapped in a council LEP.

## Environmentally sensitive land

This land may exhibit a singular feature that requires specific analysis and assessment. These areas are not the same as environmentally sensitive areas which are separately defined in the Policy. Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place in areas defined as “environmentally sensitive land” and mapped in a council LEP.

## Protected areas

These areas are characterised by specific environmental factors and are currently only found in the Blue Mountains local government area. Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place in areas that are defined as a protected area” and mapped in a council LEP.

## Coastline hazards, coastal hazards and coastal erosion hazards

Areas near coastlines are susceptible to erosion and land instability. Councils generally identify and map these areas using one of the above terms in an LEP, DCP or other policies as development in these areas require specific methods of, or restrictions on construction. Complying development for either new, or additions to existing residential, commercial and industrial buildings cannot take place on this land.

## Foreshore areas

A foreshore area is defined in the Policy as the area between the mean high watermark of a natural water body (normally a river, harbour or ocean) and a foreshore building line (found in a DCP or LEP). This exclusion is to avoid any physical impacts on an adjoining natural water body and limit any visual impacts of development when viewed from that water body.

## What else do I need to consider?

If your proposal does not meet the standards for either exempt or complying development, you may still be able to do the work, as either complying development or development approval. You should contact your local council to discuss your options.

## Further Information

For more information visit the [Exempt and Complying Development Policy website](#)<sup>7</sup> or contact the Department’s Exempt and Complying Development Team on 1300 305 695 or by [email](#)<sup>8</sup>.

## Electronic Housing Code

The Electronic Housing Code 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 the [Electronic Housing Code website](#)<sup>9</sup> to find out if it is used by your local council or for more details.

<sup>7</sup> [www.planning.nsw.gov.au/exemptandcomplying](http://www.planning.nsw.gov.au/exemptandcomplying)

<sup>8</sup> [codes@planning.nsw.gov.au](mailto:codes@planning.nsw.gov.au)

<sup>9</sup> [www.electronichousingcode.com.au/](http://www.electronichousingcode.com.au/)