

Fact Sheet No 1: Exempt and Complying Development in Pearl Beach Jenny Dennis, BTP, MEL, MPIA September 2021

Summary

The NSW Government has been implementing a series of state-wide planning codes, to fast track the approval of certain types of straightforward development, referred to as complying development. Complying development enables certifiers (private or council) to by-pass the DA approval process, to approve houses and more recently attached development, that meets the common standards of the state-wide codes.

The aim of the NSW Government is to both standardize development controls, as well as make the assessment process faster. This has been in progress for over a decade.

This sheet provides a quick overview of current complying development rules in Pearl Beach. Some information has also been provided on tree management.

The rules for complying development are currently clustered under:

- the *State Environmental Planning Policy (Exempt and Codes Complying Development Codes) 2008* 2008 called the Codes SEPP; and
- the Affordable Rental Housing SEPP for dual occupancy (soon to be re-grouped under the Housing SEPP).

This sheet is for educative purposes to assist the Environment Group only. For individual circumstances please seek professional advice.

The Codes SEPP

Within the Codes SEPP are two distinct categories of development called exempt and complying.

- *Exempt development* – means that no approval is required. These are minor projects such as barbecues, pergolas and cubby houses (under a certain specified size). For full details go to Part 2 of the Codes SEPP at <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2008-0572>
- *Complying Development* – is where a certifier (council or private), may approve the development, as a Complying Development Certificate (CDA). A CDA must comply with the site requirements and numerical standards of the relevant code. This assessment is referred to a 'tick the box' assessment process in contrast with a merits assessment, that is applied to the Development Application (DA) process. A merits assessment allows for professional judgement of the numeric of the DA to the objectives of the Development Control Plan. The main codes that apply to Pearl Beach is the Housing Code (Pt 3) and the Housing Alterations Code (Pt 4). <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2008-0572>

Complying development only applies to certain sites

There are pre-requisites for the using the Housing Code such as:

- the proposed development must comply with the zoning
- the site must comply with certain dimensions – see Part 3.3.1
- the site must not be Bush fire prone land or flood liable – see Part 3.3.4/5
- further requirements – see Part 1.1.17- 1.1.20

Useful site information is available on the NSW Planning Portal at <https://pp.planningportal.nsw.gov.au> or obtain a zoning certificate from council.

The Complying Development Process

- The applicant may use the council or a private certifier.
- Approval is based on a 'tick the box' assessment of the application against the development standards of the relevant Code.
- The certifier is required to inform adjoining owners of a Complying Development Application (CDA). Neighbours do not have a right of objection. The certifier is required to give 7 days notice of commencement of building works to the neighbours.

Useful websites:

<https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Complying-development>

Affordable Rental Housing SEPP

Secondary dwellings, where permissible in the zoning, can be approved as complying development under the Affordable Rental Housing SEPP. The R2 zoning permits 'self-contained accommodation within, attached or separate to an individual dwelling'. The following requirements for such development apply:

- (1) The floor area of a secondary dwelling (excluding any ancillary development) must not be more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.
- (2) The floor area of a principal dwelling, secondary dwelling and any carport, garage, balcony, deck, patio, pergola, terrace or veranda attached to either dwelling and enclosed by a wall (other than the external wall of a dwelling) higher than 1.4 metres above the floor level on a lot must not be more than the following—
 - (a) 330 square metres, if the lot has an area of at least 450 square metres but not more than 600 square metres,
 - (b) 380 square metres, if the lot has an area of more than 600 square metres but not more than 900 square metres,
 - (c) 430 square metres, if the lot has an area of more than 900 square metres.

Where a development is unable to meet this criteria, council's secondary dwellings rules apply.

Information about trees

Trees protection measures where a CDA is used for consent

A CDC can generally include the removal or pruning of trees less than 8 m high (or 6 m high got a development that is not a dwelling house) without requiring a Tree Works Permit. Go to:

<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2008-0572#sec.3.33> and <https://cdn.centralcoast.nsw.gov.au/sites/default/files/documents/general-information/trees-and-gardens/factsheet-privatetreeworksapplicationfaqfinalcopy.pdf>

Protection of all trees on site is required during the construction phase of a dwelling approved as a CDC. The conditions for consent require trees to be adequately protected during the construction phase. For details go to: <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2008-0572#sch.6>

Further information is at: <https://pp.planningportal.nsw.gov.au/development-assessment/complying-development/tree-removal-and-protection>

Bushfire Risk and Trees

The Rural Fire Services as a 10/50 Vegetation Clearing Code. Details are at <https://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing>

You cannot use the 10/50 rule if your tree is within 10 metres of a waterway that is more than 2 metres wide.

Shared trees between neighbours

Rules apply to manage shared trees or a tree that is close to the boundary under the *Trees(Disputes Between Neighbours) Act 2006*. The Environmental Defenders Office provides a useful fact sheet at: <https://www.edo.org.au/publication/tree-disputes-in-nsw/>