

E – BRIEF



NSW Parliamentary Library Research Service

February 2009 E-Brief 2/09

The NSW Housing Code

by Stewart Smith

1 Introduction

The Housing Code provides for new detached houses and additions to be approved within 10 days. In contrast, the average metropolitan Sydney council approval time for a new dwelling is 121 days.

The Housing Code is found within the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#). The SEPP commences on 27 February 2009, and is divided into three parts. Part 1 sets out the purpose of the Code and the extent of its application, including definitions.

Part 2 of the SEPP contains details of minor housing developments that, if they meet the Code specification, do not require development approval. This is known as exempt development. There are 41 exemptions listed, ranging from access ramps and aerials to water features and windmills.

Part 3 of the SEPP contains details of the General Housing Code. The Code provides for complying development, so that if a development application meets the requirements of the code, it is automatically approved. Hence the application does not require merit based assessment. The development application may be approved either by a council or a private certifier.

A Complying Development Certificate application must be determined within ten days. Two days must then be

allowed to notify neighbours that a Certificate has been issued. The result is that 12 days after lodgement for a Certificate, building may commence.

If a development cannot be approved under the Housing Code because it does not satisfy its requirements, or is in an area where the Code does not apply [see page 2], the applicant will have to lodge a development application with the local council.

The Government hopes that the planning reforms will increase the uptake of complying development from 11% to 50% across NSW over the next four years.

2 Application of the Housing Code

The Housing Code has been developed using four main lot types, each based on a range of lot sizes. The lot types are:

- Type A. Lot size 450 m² up to 600 m² and minimum primary road frontage of 12 metres wide;
- Type B. Lot size 600 m² up to 900 m² and minimum primary road frontage of 12 metres wide.
- Type C. Lot size 900 m² up to 1500 m² and minimum primary road frontage of 15 metres wide.
- Type D. Lot size 1500 m² and greater, with minimum primary

road frontage of 18 metres wide.

In addition to the above lot size requirements, the following must also be adhered to: only one dwelling house on an allotment; does not include the construction of a basement; and must have lawful access to a public road.

For a new single storey and two storey house, the Code applies in the following land use zones:

- General residential;
- Low density residential;
- Medium density residential;
- High density residential.

For alterations and additions to existing houses, the code applies to the above land use zones as well as the following:

- Large lot residential in a rural setting;
- Primary production;
- Rural landscape;
- Forestry;
- Rural small holdings;
- Village.

Hence the SEPP provides this fast approval process both for new homes and for additions to existing homes. However, for additions to be approved under the Code, the house which is being amended or added to must also comply with the Code (ie, the whole dwelling needs to comply with the Code, not just the additions).

The SEPP established standard exclusion areas across the State where exempt or complying development under the Housing Code will not apply. For instance, exempt or complying development must not be carried out on land that is an environmentally sensitive area. This is

defined in the SEPP and includes coastal waters; wetlands; critical habitat and land containing a State listed heritage item.

The SEPP defined where complying development under the Housing Code must not be carried out. This included land:

- On which a heritage item is located or in a heritage conservation area;
- Within a wilderness area;
- That is bush fire prone.

Hence any development relating to a heritage item must be processed in the normal way, ie, a development application needs to be made to the consent authority (usually the local council) for merit based determination.

In addition, local exclusions can be nominated by a local council. These are areas identified as having particular attributes that may require a merit assessment of any development proposal. The exclusion areas nominated by a local council need Government approval before they are mapped and identified in a schedule to the SEPP.

The Minister for Planning the Hon Kristina Keneally MP [claims](#) that the Housing Code covers 80% of all project homes available on the market.

3 The key rules

The Code includes seven key rules that must be satisfied, as outlined below.

3.1 Site requirements

This includes both site coverage and maximum floor area.

The total area of the lot that can be covered by a dwelling house and all

ancillary development (eg, garage, car port, shed) is 50% for Lot types A and B (the smaller lots), 40% for Lot type C and 30% for Lot type D ($\geq 1500 \text{ m}^2$).

The calculation of site coverage does not include: access ramps; awnings; eaves; unenclosed verandahs; decks; pergolas; driveways; swimming pools or development where the Exempt Development Code (Part 2 of the SEPP) applies.

The floor area of a dwelling house is the total area of both the ground and upper floor (if there is one) of a house, not including awnings, eaves or stairway. The calculation of floor area does include any carport, garage, balcony or verandah attached to the house with an inclosing wall of at least 1.4m above floor level.

The maximum floor area of a house must not exceed: 330 m^2 for Lot type A; 380 m^2 for Lot type B; and 430 m^2 for Lot types C and D.

3.2 Building heights

The maximum building height for a dwelling house must not exceed 8.5 metres, for all Lot types.

3.3 Setbacks

A dwelling house must be setback from its primary road frontage:

- Where there are existing neighbouring houses within 40m, an average of the front setbacks of the nearest two neighbouring houses, (which have the same primary road frontage);
- Where there are no neighbour dwellings within 40m, a minimum setback from the primary road frontage will vary from 4.5m with Lot types A and B, 6.5m for Lot type C and 10m for Lot type D.

A new dwelling house must have a window to a living area or a bedroom and a front door facing the primary road. Within the front setback area of a new dwelling an 'articulation zone' may be incorporated where the dwelling has a primary road setback of at least 3m. The zone is an area projecting 1.5m forward of the front building line within which additional building elements such as entry features, balconies, decks and bay windows may be built. Up to 25% of the width of the articulation zone may contain building elements.

Side Setbacks

The minimum side setback varies with Lot type and building height. A lower building can be closer to the side boundary than a taller one.

For Lot types A and B, the minimum side setback is 0.9m for a building height of 3.8m. Over that height, the setback is 0.9m plus one quarter of the building height which is above 3.8m. For example, for Lot type A and B, a dwelling with a building height of 6.2m will have a minimum side setback of 1.5m $[0.9\text{m} + (6.2\text{m}-3.8\text{m} / 4)]$.

For Lot type C the minimum setback is 1.5m plus the above formula, and Lot type D it is 2.5m plus the above formula.

Rear setbacks

Like the side setback, the minimum rear setback varies with Lot type and building height. The aim of the rear setback guideline is to ensure any second storey is well setback from the rear boundary. Again a formula is used to determine the setback, with the minimum setback established for a rear building height of 3.8m. For Lots A and B, the minimum rear setback is 3m plus formula to a maximum requirement of 8m. For Lot type C the

minimum is 5m plus formula to a max of 12m. For Lot type D the minimum is 10m plus formula to a max of 15m. The 'formula' is three times the additional height of the rear of the dwelling over 3.8m.

3.4 Landscaping

The Code includes a requirement for a minimum landscaped area, which refers to a permeable area capable of growing plants, grasses and trees. To be included in the 'landscaped area', it must have a minimum dimension of 2.5m. Lot type A must have a minimum landscaped area of 20% of the total lot area; Lot type B 25%, Lot type C 35% and Lot type D 45%. At least 50% of the landscaped area must be located behind the building line to the primary road boundary.

3.5 Outdoor living area

The outdoor living area is defined as a flat area at existing ground level which is directly accessible from a living area.

A new dwelling (for all Lot categories) must have a minimum outdoor living area of 24m² with a minimum width of 4m and be no steeper than 1:50.

3.6 Car parking and access

Garages and carports must be setback at least 5.5m from the road boundary, and 1m from the front building line.

Garage doors must: have a total maximum width of 6m; and be not more than 50% of the dwelling width.

3.7 Earthworks and drainage

The maximum allowable depth of excavation on site is 1m. The maximum infill is also 1m, and must be contained within the external walls of the building.

3.8 Local variations

To help preserve the character of an area, councils can apply to the Department of Planning to seek a local variation to specific Housing Code standards. The Code allows for local variations in the following areas:

- front setbacks;
- side setbacks on lots 900sq/m and greater;
- percentage of landscaped area.

The Department of Planning states that the nominated variation will be reviewed by a panel of independent experts which will make a recommendation to the Department. If approved by the Minister it will be included as a local variation in Schedule 3 of the SEPP.

4 Other factors

New housing and alterations in NSW must also comply with BASIX – the building sustainability index. BASIX sets key standards for energy reduction, water usage and thermal comfort.

Any land title that has a covenant to define particular characteristics of a housing development must also be complied with.

5 Responses to the SEPP

The [Local Government and Shires Associations of NSW](#) warned that the Housing Code had no trial on a Council level to make certain that it was workable. The President of the Associations Cr McCaffrey stated: "A neighbour's right to privacy, sunlight or views are not properly protected in the Code and [it] overrides neighbours' rights to be informed on developments next door that will affect their property and the character of their street. Furthermore, these cookie cutter codes don't recognise the rich variety

of neighbourhoods across our State. Acknowledgement of the differing characters of our suburbs and towns should be built into the code, rather than added on as a variation as an afterthought.”

In contrast, the property industry is supportive of the code. The Executive Director of the [Urban Taskforce](#), a property development industry group, supported the Code, stating that it will help ‘mum and dad’ home builders get past local council delays. Architect [Tone Wheeler](#) was involved in the negotiations over the Housing Code. He noted that it had undergone extensive testing on pre-existing housing stock to ensure that the Code resulted in reasonable design outcomes. He commented that whilst it was a compromise, it will allow for good housing design.