



New South Wales

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Housing Code) 2016

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Housing Code) 2016

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1 Name of Policy

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Housing Code) 2016*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

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Schedule 1 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

[1] Clause 1.5 Interpretation—general

Insert in alphabetical order in clause 1.5 (1):

attached ancillary development, in Part 3, means any of the following that are not exempt development under this Policy:

- (a) access ramp,
- (b) awning, blind or canopy attached to a dwelling house,
- (c) balcony, deck, patio, pergola, terrace or verandah that is attached to a dwelling house,
- (d) basement,
- (e) carport that is attached to a dwelling house,
- (f) garage that is attached to a dwelling house,
- (g) rainwater tank that is attached to a dwelling house.

attached development means all development that is not more than 900mm from a dwelling house.

detached ancillary development, in Part 3, means any of the following that are not exempt development under this Policy:

- (a) balcony, deck, patio, pergola, terrace or verandah that is detached from a dwelling house,
- (b) cabana, cubby house, fernery, garden shed, gazebo or greenhouse,
- (c) carport that is detached from a dwelling house,
- (d) detached studio,
- (e) driveway, hard stand space, pathway or paving,
- (f) farm building,
- (g) fence or screen,
- (h) garage that is detached from a dwelling house,
- (i) rainwater tank (above ground) that is detached from a dwelling house,
- (j) retaining wall,
- (k) shade structure that is detached from a dwelling house,
- (l) shed,
- (m) swimming pool or spa pool and child-resistant barrier.

parallel road lot means a lot that has boundaries with 2 parallel roads, not including a lane.

principal private open space means an area that:

- (a) is directly accessible from, and adjacent to, a habitable room, other than a bedroom, and
- (b) is at least 3m wide, and
- (c) is not steeper than 1:50 gradient.

standard lot means a lot that is not a battle-axe lot, a corner lot or a parallel road lot.

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[2] Clause 1.5

Omit “General Housing Code” from paragraph (a) of the definition *complying development code*.

Insert instead “Housing Code”.

[3] Clause 1.19 Land on which complying development may not be carried out

Omit “General Housing Code” wherever occurring (including in subclause (1) heading).

Insert instead “Housing Code”.

[4] Part 3

Omit the Part. Insert instead:

Part 3 Housing Code

Note 1. Clause 1.18 (1) (b) states that to be complying development for the purposes of this Policy the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out

Note 2. Schedule 3 contains variations to this code.

Note 3. In addition to the requirements specified for development under this code, adjoining owners’ property rights, the applicable common law and other legislative requirements for approvals, licences, permits and authorities still apply. For example, requirements relevant to development in this code may be contained in the Act, the *Environmental Planning and Assessment Regulation 2000*, various State environmental planning policies, the *Protection of the Environment Operations Act 1997*, the *Roads Act 1993*, the *Swimming Pools Act 1992* and Acts applying to various infrastructure authorities. If the development is in proximity to infrastructure, including water, stormwater and sewer mains, electricity power lines and telecommunications facilities, the relevant infrastructure authority should be contacted before commencing the development.

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Division 1 Requirements for complying development under this code

3.1 Development that can be complying development under this code

- (1) The following development can be complying development under this code:
 - (a) the erection of a new 1 or 2 storey dwelling house and any attached ancillary development,
 - (b) the alteration of, or an addition to, a dwelling house, semi-detached dwelling, attached dwelling or any attached ancillary development,
 - (c) the erection of a new detached development or an alteration or addition to a detached ancillary development.
- (2) This code only applies to complying development on a lot that meets the following requirements:
 - (a) the lot must be in Zone R1, R2, R3, R4 or RU5,
 - (b) the area of the lot must not be less than 200m²,
 - (c) the width of the lot must not be less than 6m measured at the building line,
 - (d) there must only be 1 dwelling house on the lot at the completion of the development,
 - (e) the lot must have vehicular access to a public road at the completion of the development,
 - (f) if the development is on a battle-axe lot—the lot must be at least 12m by 12m (not including the access laneway) and must have an access laneway that is at least 3m wide.
- (3) A secondary dwelling with development consent or a complying development certificate is not a dwelling house for the purpose of subclause (2) (d).
- (4) Attached or detached ancillary development under subclause (1) may be erected on a lot:
 - (a) if a dwelling house exists on the lot—at any time, or
 - (b) if there is a current development consent or complying development certificate for the construction of a dwelling house on the lot—before the construction of the dwelling house.

Note 1. *Attached ancillary development, battle-axe lot, building line, detached ancillary development, development consent and dwelling house* are defined in clause 1.5.

Note 2. *Secondary dwelling* has the same meaning as it has in the Standard Instrument.

Note 3. *Complying development certificate* has the same meaning as it has in the Act.

Note 4. Clauses 1.17A, 1.18 and 1.19 (1) and Schedules 3 and 5 of this Policy contain additional requirements for complying development.

3.2 Development that is not complying development under this code

- (1) The following development is not complying development under this code:
 - (a) the erection or alteration of, or an addition to, a roof terrace on the top most roof of a building,
 - (b) development that is complying development under the Housing Alterations Code,
 - (c) development that is attached to a secondary dwelling or group home,

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- (d) the erection of a building over a registered easement, other than the following parts of the building that are in the airspace over the easement (if the easement permits them):
 - (i) an aerial,
 - (ii) an antenna,
 - (iii) an awning,
 - (iv) a chimney pipe,
 - (v) a cooling or heating appliance,
 - (vi) a down-pipe,
 - (vii) the eaves,
 - (viii) a flue,
 - (ix) guttering,
- (e) the construction of a basement that will have an area that exceeds the limits shown in the following table:

Lot width measured at the building line	Maximum area of basement
6–10m	25m ²
>10m	45m ²

- (f) the erection of a common wall.

Note 1. *Attached, building line, common wall* and *Housing Alterations Code* are defined in clause 1.5.

Note 2. *Basement, building, group home* and *secondary dwelling* have the same meanings as they have in the Standard Instrument.

3.3 Development standards for complying development under this code

The development standards for development that can be complying development under this code are shown in the following table:

Type of complying development	Location of development standards
The erection of a new 1 or 2 storey dwelling house and any attached ancillary development	The development standards in Divisions 2 and 5
The alteration of, or an addition to, a dwelling house or any attached ancillary development	The development standards in Divisions 3 and 5
The erection of a new detached development or an alteration or addition to a detached ancillary development	The development standards in Divisions 4 and 5

Note. *Attached ancillary development, detached ancillary development* and *dwelling house* are defined in clause 1.5.

3.3A Determining lot type

In this code, a reference to a lot is a reference to any of the following lots:

- (a) standard lot,
- (b) corner lot,

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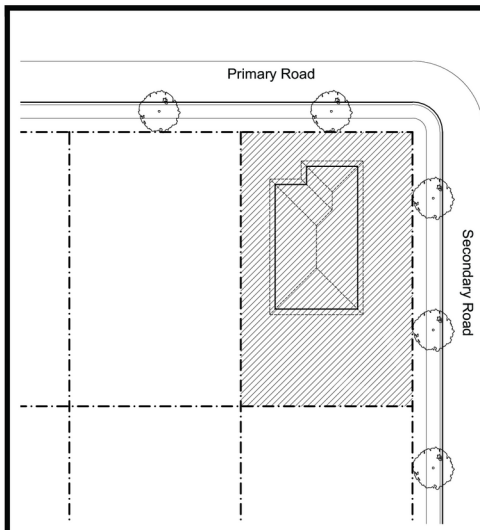
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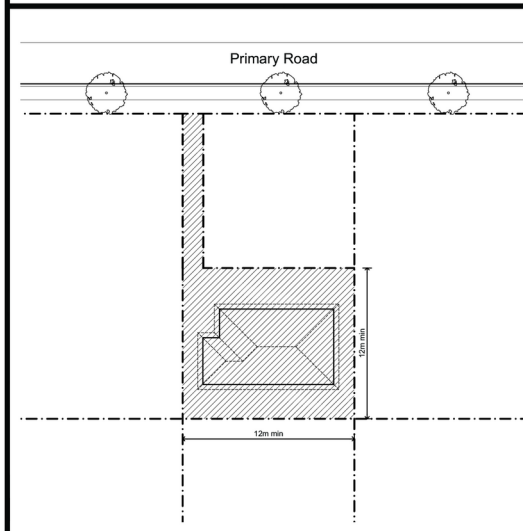
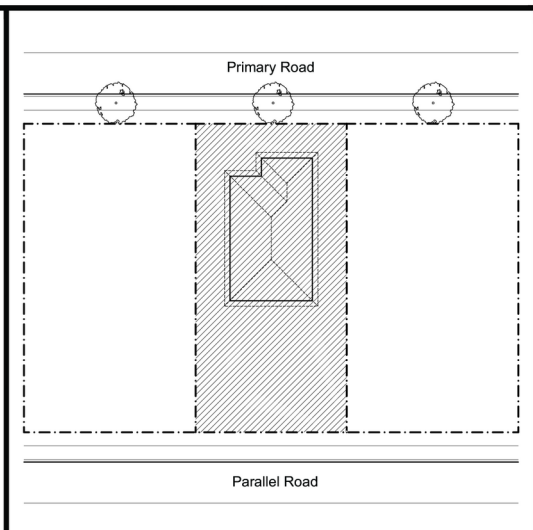
- (c) parallel road lot,
- (d) battle-axe lot.

Note. The setbacks for each type of lot are set out in clauses 3.9 (standard lots), 3.10 (corner lots), 3.11 (parallel road lots) and 3.12 (battle-axe lots).

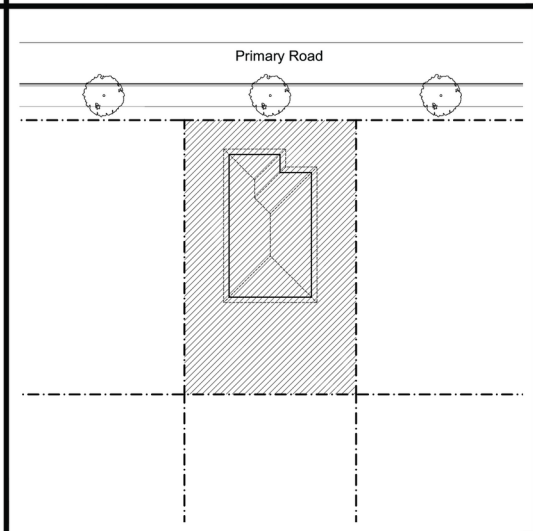
Corner lot



Parallel lot



Battle-axe lot



Standard lot

Note. *Battle-axe lot*, *corner lot*, *parallel road lot*, *setback* and *standard lot* are defined in clause 1.5.

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3.4 Complying development on bush fire prone land

- (1) This clause does not apply to the following complying development under this code:
 - (a) a non-habitable attached or detached development that is more than 10m from any dwelling house,
 - (b) a landscaped area,
 - (c) a non-combustible fence,
 - (d) a swimming pool.
- (2) If complying development under this code is carried out on bush fire prone land, all of the following development standards also apply:
 - (a) the development will not be located on any part of the lot that is bush fire attack level-40 (BAL-40) or in the flame zone (BAL-FZ),
 - (b) the lot on which the development is to be carried out must have direct access to a public road or a road vested in or maintained by the council,
 - (c) development on the lot must be able to be connected to mains electricity,
 - (d) if reticulated or bottled gas is installed and maintained on the lot:
 - (i) it must be installed and maintained in accordance with AS/NZS 1596:2008, *The storage and handling of LP gas*, and
 - (ii) the storage and handling of any LP gas on the lot must comply with the requirements of the relevant authorities (including the use of metal piping),
 - (e) any gas cylinder stored on the lot within 10m of any dwelling house must:
 - (i) have its release valves directed away from the dwelling house, and
 - (ii) be enclosed on the hazard side of the installation, and
 - (iii) have metal connections to and from the cylinder,
 - (f) there must not be any polymer sheathed flexible gas supply lines to gas meters adjacent to the dwelling,
 - (g) if the development is on a lot in Zone RU5, there must be:
 - (i) a reticulated water supply connection to the lot or a 10,000 L capacity water tank on the lot, and
 - (ii) a fire hydrant within 60m of any part of the development,
 - (g) the development must comply with the requirements of all of the following:
 - (i) *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6) published by the NSW Rural Fire Service in December 2006,
 - (ii) Addendum: Appendix 3 (published by NSW Rural Fire Service in 2010) to *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6),
 - (iii) AS 3959–2009, *Construction of buildings in bushfire-prone areas*,

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- (iv) any other document required by the *Environmental Planning and Assessment Regulation 2000* (in accordance with section 79BA of the Act).

Note 1. Attached development, bush fire attack level-40 (BAL-40), council, detached, dwelling house and flame zone (BAL-FZ) are defined in clause 1.5.

Note 2. Bush fire prone land, council, landscaped area, road and swimming pool have the same meanings as they have in the Standard Instrument.

- (3) A development standard specified in subclause (2) (a) is satisfied if the council or a person who is recognised by the NSW Rural Fire Service as a suitably qualified consultant in bush fire risk assessment certifies that the development is not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ).

3.5 Complying development on flood control lots

- (1) A complying development certificate must not be issued for complying development on any part of a flood control lot unless the council, or a professional engineer who specialises in hydraulic engineering, certifies that the part of the lot where the development is to be carried out is not any of the following:
 - (a) a flood storage area,
 - (b) a floodway area,
 - (c) a flow path,
 - (d) a high hazard area,
 - (e) a high risk area.
- (2) If complying development under this code is carried out on a flood control lot, or part of a flood control lot, that is not affected by subclause (1), the development must:
 - (a) not have any habitable rooms lower than the flood levels set by council for that lot, and
 - (b) be constructed of flood compatible material if it is at or below the flood levels set by the council for that lot, and
 - (c) be able to withstand the forces of floodwater, debris and buoyancy up to the flood planning level (or if on-site refuge is proposed, the probable maximum flood level), and
 - (d) not increase flooding elsewhere in the floodplain, and
 - (e) have pedestrian and vehicular access to a safe refuge at a level equal to or higher than the lowest habitable floor level of the development, and
 - (f) have vehicular access that will not be inundated by water to a level of more than 0.3m during a 1:100 ARI (average interval) flood event.
- (3) A requirement under subclause (2) (c) and (d) is satisfied if a joint report by a professional engineer (who specialises in hydraulic engineering) and a professional engineer (who specialises in civil engineering) states that the development:
 - (a) can withstand the force of floodwater, debris and buoyancy up to the flood planning level (or if an on-site refuge is proposed, the probable maximum flood level), and

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(b) will not increase flooding elsewhere in the floodplain.

Note 1. *Council*, *flood control lot*, *habitable room* and *professional engineer* are defined in clause 1.5.

Note 2. A section 149 certificate from a Council will state whether or not a lot is a flood control lot.

Note 3. *Complying development certificate* has the same meaning as it has in the Act.