



Planning &
Environment

Explanation of Intended Effect

*Amendments to State Environmental
Planning Policies regarding minor
external building alterations
(cladding and decorative work) as
exempt development*

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1. Introduction

Background

The Grenfell fire in London in June 2017 highlighted a significant fire safety risk for buildings that use combustible materials on external walls (refer **Attachment 1 - Context**).

As a result, the Department has reviewed provisions within State Environmental Planning Policies (SEPPs) which currently allow minor external building alterations (cladding and decorative work) to be carried out without planning or building approval (exempt development).

To address the risk that property owners may carry out minor external building alterations using combustible cladding without planning or building approval, it is proposed to amend the exempt provisions in eight SEPPs to:

- specify that cladding, re-cladding and decorative work on external walls cannot be carried out as exempt development on certain high-risk buildings, including residential apartment buildings, boarding houses, shop top housing, seniors housing, commercial buildings and industrial buildings; and
- specify that any cladding undertaken on other buildings (e.g dwelling houses, schools, hospitals and group homes) as exempt development cannot use combustible cladding.

The proposed amendments will reduce the risk of non-compliant, combustible cladding being installed on high fire hazard buildings without any independent expert assessment or approval by an accredited certifier or the local council.

The proposed amendments complement other measures being taken under the 10- Point Plan which was released on 28 July 2017 in relation to cladding, including a new draft Regulation, and which apply to other types of development.

Explanation of Intended Effect

Section 38 of the *Environmental Planning and Assessment Act 1979* (the Act) requires the Minister for Planning, before recommending the making of an environmental planning instrument by the Governor, to take such steps, if any, as the Minister considers appropriate or necessary to publicise an explanation of the intended effect of the proposed instrument and to seek and consider submissions from the public on the matter.

This document has been prepared for the purposes of section 38 and forms an Explanation of Intended Effect of proposed amendments to various SEPPs that allow cladding and decorative work to be carried out as exempt development.

As identified in **Section 2**, the proposals include:

- introducing a new definition for “combustible cladding” (under a draft *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017*);
- amending the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to specify that:
 - any external cladding or decorative work can no longer be undertaken as exempt development on certain high-risk buildings, including residential apartment buildings, boarding houses, shop top housing, seniors housing, commercial buildings and industrial buildings, and
 - where cladding and decorative work is installed on other buildings, such as one and two storey houses, as exempt development, the material used cannot be combustible cladding;
- amending the *State Environmental Planning Policy (Kosciuszko National Park Alpine Resorts) 2007* to prevent the use of combustible cladding as exempt development, except for minor maintenance (e.g. when replacing less than 5 per cent of an external wall);

- amending the following SEPPs to specify that cladding must not be combustible if installed as exempt development: *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, *State Environmental Planning Policy (Three Ports) 2013*, *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* and *State Environmental Planning Policy (Western Sydney Parklands) 2009*.

The proposed amendments will reduce the risk of non-compliant, combustible cladding being installed on high-risk buildings as exempt development. These buildings will now require independent expert assessment or approval by an accredited certifier or the local council. Further explanation of the proposed amendments to each of the eight SEPPs is provided in **Section 2** below.

2. The Proposed Amendments

What is Exempt Development?

Exempt development is very low impact and minor development that does not need planning or building approval provided the proposal meets the prescribed development standards in the relevant SEPP. The development standards include a requirement to comply with the Building Code of Australia (BCA).

Exempt development can be undertaken by a property owner without an independent expert assessment being undertaken. It is up to the property owner to ensure they comply with the development standards.

What are the Proposed Amendments?

A new definition for 'combustible cladding' will be inserted into the *Environmental Planning and Assessment Regulation 2000*. The proposed definition is set out in draft *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017*, available [here](#). This change will be supported by explanatory information the Department will provide.

The proposed amendments outlined in this EIE include:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* will be amended to prevent cladding being installed as exempt development on certain high-risk buildings.
- *State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007* will be amended to prevent the use of combustible cladding as exempt development, except for minor maintenance (e.g. when replacing less than 5 per cent of an external wall).
- The following SEPPs will be amended to specify that combustible cladding cannot be installed on external walls as exempt development:
 - *State Environmental Planning Policy (Infrastructure) 2007*
 - *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*
 - *State Environmental Planning Policy (Three Ports) 2013*
 - *State Environmental Planning Policy (Affordable Rental Housing) 2009*
 - *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*
 - *State Environmental Planning Policy (Western Sydney Parklands) 2009*

It is not proposed to change the arrangements for public authorities undertaking development without consent, under Part 5 of the Act, under the above SEPPs. Public authorities are required to apply the BCA and must consider other environmental factors and hazards when undertaking work.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)

The Codes SEPP sets a consistent state-wide approach for exempt development and complying development.

Exempt Development

The Codes SEPP currently allows minor external building alterations to roofs and walls, including the installation, repair or replacement of cladding and decorative work, to be undertaken as exempt development on any building. The Codes SEPP specifies development standards for this work, however there are no restrictions on the type or size of buildings that can be cladded or on the material that can be used.

Effect of Proposed Amendment:

It is proposed to amend the Codes SEPP to:

- specify that cladding, re-cladding and decorative work on external walls cannot be carried out as exempt development on high-risk buildings, including residential apartment buildings, boarding houses, shop top housing, seniors housing, commercial buildings and industrial buildings; and
- specify that where cladding and decorative work can be installed on other buildings as exempt development under the Codes SEPP, the materials used must not be combustible cladding.

Complying Development

Complying development is a fast-track approval process for straightforward residential, commercial and industrial development. If the application meets the development standards in the Codes SEPP, a council or an accredited certifier can issue a complying development certificate.

The Codes SEPP allows external alterations (including cladding) of existing residential, commercial and industrial buildings to be carried out as complying development, subject to meeting relevant development standards. These development standards include complying with fire safety requirements in the BCA. Complying development must be approved by a council or an accredited certifier.

The following external alterations can currently be carried out as complying development under the Codes SEPP:

- external alterations to existing dwelling houses under Subdivision 2 of Part 4 Housing Alterations Code;
- external alterations to residential accommodation other than dwelling houses (such as apartments, shop top housing, dual occupancies, granny flats, boarding houses and seniors housing) under Subdivision 2A of Part 4 Housing Alterations Code;
- external alterations to a major event venue at Sydney Olympic Park under Subdivision 5 Part 4A of the General Development Code;
- external alterations to or the repair or replacement of an existing shop front or awning under Subdivision 5 of the General Development Code;
- external alterations to buildings for the purposes of industry or existing commercial premises (such as child care facilities or a business) under Division 1 of Part 5A Commercial and Industrial (New Buildings and Additions) Code.

If a proposal for minor external building alterations cannot be carried out as exempt development under the Codes SEPP, it may be carried out under complying development. It is not proposed to amend any provisions that allow minor external alterations, including cladding, to be carried out as complying development under the Codes SEPP. These provisions are sufficient to enable cladding that cannot be carried out as exempt development under the Codes SEPP to be undertaken as complying development.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP assists the NSW Government, local councils and the communities they support by simplifying the process for providing infrastructure such as hospitals, roads, railways, emergency services, water supply and electricity delivery.

The ISEPP includes specific planning controls for infrastructure and plays a key role in delivering the NSW Government's infrastructure works.

The ISEPP currently allows minor external alterations including re-cladding of walls to be undertaken by a public authority as exempt development (under Schedule 1), subject to meeting relevant development standards.

Effect of Proposed Amendment:

Amendments are proposed to the ISEPP to specify that public authorities installing cladding on the external walls of buildings can be undertaken as exempt development, only where the material used is not combustible cladding.

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP)

The Education SEPP came into force on 1 September 2017 and aims to make it easier and more cost effective for child-care providers, schools, TAFEs and universities to build new facilities and improve existing ones by streamlining approval processes across NSW.

The Education SEPP currently allows public authorities to undertake external building alterations which include re-cladding of walls as exempt development in connection with an existing educational establishment, subject to meeting relevant development standards.

Effect of Proposed Amendment:

An amendment is proposed to the Education SEPP to specify that the installation of cladding and decorative work on external walls can be undertaken as exempt development, only where the material used is not combustible cladding.

State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP)

The Three Ports SEPP enables essential, day-to-day development on land within the lease areas of Port Botany, Port Kembla and the Port of Newcastle to be undertaken as exempt or complying development (subject to specified development standards and conditions), thereby promoting the efficient operation of the ports.

The Three Ports SEPP currently allows non-structural external building alterations which includes cladding to be undertaken as exempt development within the mapped lease areas. The lease area is the land leased to a private port operator under the *Ports Assets (Authorised Transactions) Act 2012*.

Effect of Proposed Amendment:

An amendment is proposed to the Three Ports SEPP to specify that the installation of cladding on external walls can be undertaken as exempt development only where the material used is not combustible cladding.

State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing SEPP)

The Affordable Rental Housing SEPP is in place to outline planning controls and encourage the production of different housing types. The State Policy also aims to deliver and maintain affordable housing across NSW.

The Affordable Housing SEPP currently permits non-structural renovations and building alterations to be carried out by or on behalf of the Land and Housing Corporation in relation to housing as exempt development. It also allows minor external alterations including re-cladding of walls for an existing group home by or on behalf of a public authority as exempt development if it meets prescribed development standards.

Effect of Proposed Amendment:

It is proposed to amend the Affordable Housing SEPP to specify that building renovations and alterations that involve the installation of cladding on external walls can be undertaken as exempt development, only where the material used is not combustible cladding.

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)

The Mining SEPP aims to provide for the proper management and development of mineral, petroleum and mineral resources to promote the social and economic welfare of the State.

The policy currently allows non-structural external building alterations including cladding to be undertaken as exempt development on the site of an approved mine, petroleum production facility or extractive industry.

Effect of Proposed Amendment:

It is proposed to amend the Mining SEPP to specify that the installation of cladding on external walls can be undertaken as exempt development, only where the material used is not combustible cladding.

State Environmental Planning Policy (Western Sydney Parklands) 2009 (Western Sydney Parklands SEPP)

The Western Sydney Parklands SEPP provides standards for land covered by the Western Sydney Parklands.

The Western Sydney Parklands SEPP currently allows minor external building alterations other than to a public building, which includes the re-cladding of walls, providing the work meets the relevant development standards in Schedule 2 of the policy.

Effect of Proposed Amendment:

It is proposed to amend the Western Sydney Parklands SEPP to specify that the installation of cladding or re-cladding on external walls can be undertaken as exempt development, only where the material used is not combustible cladding.

State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007 (Alpine Resorts SEPP)

The Alpine Resorts SEPP aims to protect the natural and cultural heritage of land within the Alpine resorts and to encourage environmentally sustainable development.

The NSW alpine resort areas include Thredbo, Perisher Range (including Bullocks Flat), Mount Selwyn, Charlotte Pass, Kosciuszko Mountain Retreat, Ski Rider and Sponars Chalet, located within the unique and environmentally-significant setting of Kosciuszko National Park.

The Alpine Resorts SEPP currently allows the minor repair of deteriorated or damaged material or the replacement of material on the wall of a building in the NSW alpine resort areas to be carried out as exempt development, within certain specified limits.

Effect of Proposed Amendment:

It is proposed to clarify in the area to which the Alpine Resorts SEPP applies that minor repair or replacement of a wall using like-for-like materials can be undertaken as exempt development only where it does not involve the use of combustible cladding affecting more than 5 per cent of an external wall. This is consistent with the existing standard for exempt development involving minor wall repairs using different materials.

3. *Have your say*

Feedback and discussion is encouraged to further explore the Department's proposed amendments to SEPPs regarding the use of cladding and decorative panels on buildings across NSW as exempt development.

All feedback and submissions will be reviewed and the results will be used to inform any changes to SEPPs or other legislation.

Further information on the Policies can be found on the Department's website www.planning.nsw.gov.au and the Department's NSW Planning Portal at www.planningportal.nsw.gov.au or by calling 1300 305 695.

If you cannot make a submission online, you can write to us via:

Email: codes@planning.nsw.gov.au

Post: GPO Box 39 Sydney NSW 2001

Attachment 1- Context

The Grenfell fire in London in June 2017 highlighted a significant fire safety risk for buildings that use combustible materials on external walls. The Department of Planning and Environment is investigating the opportunity to minimise fire risks associated with the use of combustible cladding and decorative works on buildings.

On 28 July 2017, the Minister for Innovation and Better Regulation announced the NSW Government release of a wide-ranging fire safety package. The fire safety package included a 10-Point Plan in response to the issues around the Grenfell Tower fire in June 2017. The 10-Point Plan includes:

1. A comprehensive building product safety scheme that would prevent the use of products on buildings.
2. Identifying buildings that might have aluminium or other cladding.
3. Writing to the building / strata managers or owners of those buildings to encourage them to inspect the cladding and installation of cladding, if it exists.
4. NSW Fire and Rescue visiting all buildings on the list, as part of a fire safety education program. This will allow them to gather information they need to prepare for a potential fire at that building, and provide additional information to building owners.
5. Creating a new fire safety declaration that will require high rise residential buildings to inform state and local governments as well as NSW Fire and Rescue if their building has cladding on it.
6. Expediting reforms to toughen up the regulation of building certifiers.
7. Reforms to create an industry based accreditation, that will ensure only skilled and experienced people do fire safety inspections.
8. Establishing a whole of government taskforce that will coordinate and roll out the reforms.
9. Instructing all government departments to audit their buildings and determine if they have aluminium cladding, with an initial focus on social housing.
10. Writing to local councils to follow up on correspondence they received from the state government in 2016, after Melbourne's Lacrosse Tower fire in.

A media release published by the Minister for Innovation and Better Regulation is available at:
<https://www.finance.nsw.gov.au/about-us/media-releases/fire-safety-reforms-put-consumers-first>.

The amendments proposed in this Explanation of Intended Effect complement the 10-Point Plan by addressing potential fire risks from the inappropriate use of combustible cladding on external walls.