



Effective as of September 2011

FACT SHEET 16 – Codes SEPP 2008 - End of the transition period 1 September 2011 and its possible extension

About the Codes SEPP

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) is an important policy initiative put in place by the NSW Government to remove red tape for low risk and low impact development and directly results in significant time and cost savings for home owners and small business.

The Codes SEPP has already been amended a number of times to include more development types. It is proposed that over the next 12 months more amendments will be made to add more development types to the Codes.

About transition periods

The purpose of this Fact Sheet is to provide councils, accredited certifiers and the community with advice about a proposed amendment to the Codes SEPP to extend the concurrent operation of the Codes SEPP and other complying development provisions within environmental planning instruments (EPIs), development control plans (DCPs) and some State planning policies.

What is the transition period?

Clauses 1.8 and 1.9 of the Codes SEPP allowed the concurrent operation of existing complying development provisions in local DCPs and EPIs, SEPP 60 and Growth Centres SEPP for the same development types covered by the Codes SEPP.

This concurrent operation of the local DCPs, EPIs, SEPP 60 and Growth Centres SEPP for the development types covered by the Codes SEPP ended on 1 September 2011.

This means that as of 1 September 2011, if a person proposes carrying out a type of complying development that is covered in both the Codes SEPP and the council complying development DCP/EPI, the development can only proceed as complying development under the Codes SEPP.

Council complying development DCPs/EPIs are switched off to the extent that the same development types are covered in the Codes SEPP. SEPP 60 and complying development provisions within the Growth Centres SEPP are similarly switched off.

Is the transition period to be extended further?

The NSW Government is keen to ensure the overall number of complying development certificates (CDCs) for low risk and low impact applications continues to increase, and as many home owners and small businesses as possible can obtain the benefits of a more streamlined and certain assessment process.

The Department is now preparing further additions to the Codes SEPP. These additions have already been exhibited for public comment during late 2010 and early 2011.

In these circumstances the NSW Government has prepared an amendment to the Codes SEPP seeking to extend the concurrent operation of the Codes SEPP with council DCPs and EPIs. This amendment is being publicly exhibited for a two week period from 5 September to 19 September 2011.

All submissions received during this exhibition period will be reviewed and the amendment to extend the transition provisions will be finalised as a matter of priority after review of the submissions. At this stage the amendment to the Codes SEPP is unlikely to be made before mid October 2011.

What rules apply once my council has a standard instrument LEP?

Under the proposed amendment, once a standard instrument LEP is made for a particular local government area then the council DCP or EPI for exempt and complying development will no longer apply. Where there is an exempt or complying development type unique to the local area then this will be included in schedule 2 or 3 of the council's LEP provided it is not already covered in the Codes SEPP.

Why is the ongoing ability of people to choose between council or State codes for the same development type (as outlined in the amendment) not available where the council has a comprehensive standard instrument LEP?

As of September 2011, 26 local government areas have a standard instrument LEP applying for the whole of their local government area. The NSW Government has a program to encourage more councils to have comprehensive LEPs in line with the standard instrument format.

LGAs with a standard instrument local environmental plan	
Albury	Nambucca
Auburn	Port Macquarie - Hastings
Balranald	Ryde
Bellingen	Tamworth
Camden	Taree
Canada Bay	Temora
Coolamon	Tumbarumba
Gloucester	Upper Lachlan
Goulburn Mulwaree	Wagga Wagga
Harden	Wingecarribee
Lane Cove	Wollondilly
Liverpool	Wollongong
Muswellbrook	Young

Since the introduction of the Codes SEPP in 2009, the NSW Government has ensured that, when a comprehensive standard instrument LEP is made, it is consistent and properly integrated with the Codes SEPP and the two instruments don't duplicate controls on the same development type.

As such, people in an area where a comprehensive standard instrument LEP is in place first need to check the Codes SEPP to see whether the development type they wish to apply for is included. If it is not included, then they check the council LEP to see if it includes provisions for that development type.

What if the rules in the council policy are different to the rules in the Codes and I've met the council rules?

Where an application for a CDC has been designed to fit the rules of a council DCP/EPI rather than the Codes SEPP then, until the proposed amendment to the Codes SEPP is made, the CDC cannot be issued by the certifying authority (accredited certifier – either council or a private certifier) under the council's DCP/EPI.

If the proposal meets or can be modified to meet the Codes SEPP's controls then the application can be issued under the Codes SEPP.

How will I know which rules apply now?

From 1 September 2011 and until the proposed amendment is made, development can be carried out under the following policies:

- exempt development under the Codes SEPP;
- complying development under the Codes SEPP;
- exempt or complying development for any development type that is a development **not** included in the Codes SEPP but is in a council DCP/EPI as either exempt or complying development;
- exempt or complying development in any State planning policy other than SEPP 60 and Growth Centres SEPP (ie the Infrastructure SEPP); or
- any development type that is a development **not** included in the Codes SEPP but is included in SEPP 60 and Growth Centres SEPP as either exempt or complying development.

For example if a council DCP has 'addition to a commercial building' as a development type in its DCP/EPI then the DCP/EPI **can** still be used to apply for a CDC. This is because 'addition to a commercial building' is a development type not currently covered by the Codes SEPP.

If, however, a council has 'internal alterations to a dwelling' as a development type in its DCP/EPI then the DCP/EPI **cannot** be used. This is because 'internal alterations to a dwelling' is a development type covered in the Codes SEPP. Where a development type is covered in both the Codes SEPP and the council DCP/EPI, the council DCP/EPI ceases to operate after 1 September 2011 until the proposed amendment is made.

How will I know which rules apply after the amendment is made?

Once the amendment is made the rules that apply for lodging a CDC will be the same as prior to 1 September 2011. That is, a person can choose between the Codes SEPP or the council's DCP/EPI for complying development. In councils where SEPP 60 applies then a person can choose between the Codes SEPP and SEPP 60. For land where Growth Centres SEPP applies then the landowner can choose between the Codes SEPP and complying development provisions within the Growth Centres SEPP.

How do I make a submission to the exhibition period?

The exhibition period is from 5 September to 19 September 2011. To make a submission on this draft SEPP:

- Email codes@planning.nsw.gov.au; or
- Mail the Codes SEPP team, GPO Box 39 Sydney NSW 2001.

Submissions will be made publicly available. If you are a private individual and do not wish your personal details to be released or believe your submission contains sensitive commercial information, please state this in the first line of your submission and it will not be made public. For further information, phone (02) 9228 6491.