



GUIDE TO ASSESSING COMPLYING DEVELOPMENT UNDER THE GENERAL HOUSING CODE OF THE CODES SEPP

This Guide will assist accredited certifiers when using the Complying Development Checklist to assess applications for Complying Development Certificates (CDCs) made under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP).

This Guide relates to applications made under the General Housing Code (Part 3 of the Codes SEPP).

Neither the Guide nor the Checklist replaces the need for an accredited certifier to read and have a full understanding of the Codes SEPP.

Application of the Guide and Checklist

The Guide and Checklist include amendments to the Codes SEPP up to and including 25 February 2011. If further amendments are made to the Codes SEPP, applications for CDCs made under the SEPP must be assessed only against the requirements that are in force *when the application is lodged*. If the Codes SEPP is amended between application lodgement and determination, that amendment will not apply to the application.

Certifying authorities must establish if any further amendments to the Codes SEPP are current at the time an application is received

The numbering of Sections, Points and Tables in the Guide correspond to those in the Checklist for ease of cross reference.

References to clauses in the Codes SEPP are contained in brackets.

For more information:

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23 - 33 Bridge Street Sydney
t. 1300 305 695 or 02 9228 6333
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10 Valentine Avenue
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Section 1 - Introduction

This Section identifies the documents that a certifying authority should have and the processes to follow prior to applying the provisions of the Codes SEPP.

The application

The *Environmental Planning and Assessment Regulation 2000* (the Regulation) requires an application for a CDC, whether made under the Codes SEPP or another environmental planning instrument (EPI), to contain the information and be accompanied by the documents specified in Part 2 of Schedule 1 of the Regulation, including sketches, site plans, building plans and specifications and BASIX certificates.

To ensure an applicant provides all required information and documents, a certifying authority may use an application form. The Regulation requires an application to be either delivered by hand, by post or transmitted electronically to the principal office of the certifying authority. In addition, the Regulation requires the certifying authority to endorse the date of receipt on the application as soon as it is received.

Section 149 Certificate

Although not a statutory requirement, it is recommended that an applicant supply the certifying authority with a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* (EPA Act).

A section 149 certificate specifies whether complying development may be carried out on the land under the Codes SEPP. If complying development may not be carried out on the land because of a requirement under clause 1.19 of the Codes SEPP, the section 149 certificate will specify why.

A section 149 certificate may also include information to help identify whether the land satisfies other requirements under the Codes SEPP, including:

- the local environmental plan (LEP), regional environmental plan (REP) or state environmental planning policy (SEPP) applying to the land,
- the land use zones and purposes for which development may be carried out within those zones,
- whether any applicable development standards set minimum land dimensions for development,
- whether the land is subject to other factors such as critical habitat, conservation areas, environmental heritage, coastal protection, flood controls or bush fire prone land.

Site inspection

A certifying authority must not issue a CDC unless the development site has been inspected by the certifying authority, or by a council or an accredited certifier on behalf of the certifying authority. A record of the inspection must detail information as required by Clause 129C(3) of the Regulation and, if the inspection is undertaken by a council or accredited certifier, the inspection report must be delivered to the certifying authority within two days.

Other approvals

While the Codes SEPP specifies the pre-approvals to be obtained prior to the issue of the CDC, other legislative requirements not specified in the Codes SEPP may need to be met before the CDC can be issued or before work commences. The Department of Planning maintains a list of approvals and legislative requirements that may be required at www.planning.nsw.gov.au.

Section 2 - Determining whether the Codes SEPP applies

More than one EPI may apply to the same development. The Codes SEPP contains specific provisions for when both it and the following EPIs specify the same development as being either exempt or complying development:

- [State Environmental Planning Policy \(Infrastructure\) 2007](#)
- [State Environmental Planning Policy \(Mining, Petroleum Production and Extractive Industries\) 2007](#)
- [State Environmental Planning Policy \(Sydney Region Growth Centres\) 2006](#)
- [State Environmental Planning Policy No 60—Exempt and Complying Development](#)
- [State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#)

The applicant is required to nominate which EPI the application is to be assessed under.

The Codes SEPP also deals with the relationship between it and other SEPPs, LEPs or DCPs.

The provisions of other EPIs may need to be considered when determining whether the proposed development is the “same development” under the other EPIs and the Codes SEPP or whether the proposed development is complying or exempt development under those other EPIs. An example of a development being the “same” could include a deck, which may be the “same development”, even if the size of the deck or its location varies by definition in different EPIs.

If the development is not the same under the other EPI and the Codes SEPP, the Codes SEPP does not affect the operation of the other EPI.

The Codes SEPP also contains transitional provisions which apply to certain EPIs. The following table may be used to determine which EPI the application should be assessed under.

EPI	Question	Action
Other SEPPs	<i>Is the proposed development Exempt or Complying Development under a SEPP (other than those referred to below) and the Codes SEPP?</i>	If yes , then only the Codes SEPP applies.
Infrastructure SEPP	<i>Is the proposed development Exempt or Complying Development under this SEPP and the Codes SEPP?</i>	If yes , the Codes SEPP does not apply to that development if carried out by a “public authority” which may carry out the development under the Infrastructure SEPP. Note: Additional criteria exists and should be checked if the development relates to an antenna, ariel or communication dish.
Mining SEPP	<i>Is the proposed development Exempt or Complying Development under this SEPP and the Codes SEPP?</i>	If yes , the Codes SEPP does not apply.
Affordable Rental Housing SEPP	<i>Is the proposed development Exempt or Complying Development under this SEPP and the Codes SEPP?</i>	If yes , the Codes SEPP does not apply.
Growth Centres SEPP or the Exempt & Complying Development SEPP	<i>Is the proposed development is Complying Development under either of these SEPPs and either Exempt or Complying Development under the Codes SEPP?</i>	If yes, until 1 September 2011 both SEPPs and the Codes SEPP apply and the applicant may elect which SEPP the application is to be assessed under. <u>After 1 September 2011</u> only the Codes SEPP will apply.
Complying Development under LEPs and DCPs	<i>Is the proposed development Complying Development under a LEP or DCP and also Complying Development under the Codes SEPP? OR Is the proposed development Complying Development under a LEP or DCP and Exempt Development* under the Codes SEPP? **Other than exempt development under Division 2, Part 2 Codes SEPP-City of Sydney Special Events Code</i>	If yes, until 1 September 2011 , the LEP or DCP and the Codes SEPP apply and the applicant may elect which EPI the application is to be assessed under. <u>After 1 September 2011</u> , only the Codes SEPP will apply.

Section 3 - General Requirements and Exclusions

The Codes SEPP deals separately with exempt and complying development. This Section contains notes and definitions, where required to assist when using the Checklist to assess whether the general requirements for complying development are met.

For complying development, the Codes SEPP has separate Parts which set out the general and specific criteria to be met for different types of development:

- Part 1 (General) contains general criteria that must be met for all types of complying development.
- Part 3 (General Housing Code) contains specific development types and development standards for complying development relating to dwelling houses and ancillary structures.

3.2: Concurrence does not include:

- concurrence from the consent authority.
- concurrence from the Director-General of the Department of Environment, Climate Change and Water as referred to in section 79B of the EP&A Act. (1.17A(a))

3.3 “Environmentally sensitive area” is defined under the Codes SEPP (1.5) as:

- (a) the coastal waters of the State
- (b) a coastal lake
- (c) land to which [SEPP No 14—Coastal Wetlands](#) or [SEPP No 26—Littoral Rainforests](#) applies
- (d) land reserved as an aquatic reserve under the [Fisheries Management Act 1994](#) or as a marine park under the [Marine Parks Act 1997](#)
- (e) land within a:
 - (i) wetland of international significance declared under the Ramsar Convention on Wetlands, or
 - (ii) World heritage area declared under the World Heritage Convention
- (f) land within 100m of land to which paragraph (c), (d) or (e) above applies
- (g) land identified in the Codes SEPP or any other EPI as being of high Aboriginal cultural significance or high biodiversity significance
- (h) land reserved under the [National Parks and Wildlife Act 1974](#) or land to which Part 11 of that Act applies
- (i) land reserved or dedicated under the [Crown Lands Act 1989](#) for the preservation of flora, fauna, geological formations or for other environmental protection purposes
- (j) And identified as being critical habitat under the [Threatened Species Conservation Act 1995](#) or Part 7A of the [Fisheries Management Act 1994](#).

3.5: Exempt development

Exempt development provisions (including definitions, general requirements and specified standards) are referred to throughout the Codes SEPP and, in particular, in Part 2 of the Codes SEPP.

3.9: Schedule 5 land.

Development to be carried out on land described or otherwise identified on a map specified in Schedule 5 of the Codes SEPP is excluded from being complying development under the General Housing Code. A copy of Schedule 5 is at **Annexure A** to this Guide. Note: This exclusion expires on 30 November 2015 in respect to any land in Schedule 5 that is in the Mosman local government area.

SECTION 4- Other Approvals required under the Codes SEPP before a CDC may be issued

4.1: A permit or development consent **is not** required for the purpose of the General Housing Code if the tree or vegetation:

- (a) is within 3 m of the proposed development, and
- (b) is less than 6 m high, and
- (c) is not listed on a significant tree register or register of significant trees kept by the council (1.18(1)(h))

Note: The possible need for a permit or development consent as referred to in 4.1 is only an example of approvals that may be required before a CDC may be issued or before work may be commenced.

Section 5 – Land based exclusions

5.1: Land-based exclusions

Clause 1.5 of the Codes SEPP contains definitions.

The following definitions relate to SECTION 5 of the Checklist.

- **Acid Sulfate Soils Map** is a map in an EPI that identifies land containing acid sulphate soil.
- **ANEF contour** means a noise exposure contour on any Noise Exposure Forecast Contour Map for an airport prepared by the Department of the Commonwealth responsible for airports.
- **Detached studio** means ancillary development that is habitable and is:
 - (a) established in conjunction with a dwelling house, and
 - (b) on the same lot of land as the dwelling house, and
 - (c) separate from the dwelling house.
- **Draft heritage conservation area** is identified as a heritage conservation area or place of Aboriginal heritage significance in a LEP that has been subject to community consultation, other than an item that was consulted on before 1 March 2006, but has not been included in a plan before 27 February 2009.
- **Draft heritage item** means a building, work, archaeological site, tree, place or aboriginal object identified as a heritage item in a LEP that has been subject to public exhibition under section 66 of the EPA Act, other than an area that was exhibited before 1 March 2006, but has not been included in a plan before 27 February 2009.
- **Excluded land identified by an EPI** means land identified as being any of the following land:
 - (a) within a buffer area
 - (b) within a river front area
 - (c) within an ecologically sensitive area
 - (d) within an environmentally sensitive land
 - (e) within a protected area, orland identified by an EPI, a development control plan or a policy adopted by the council as being a coastal erosion hazard
- **Foreshore area** is the land between a foreshore building line and the mean high water mark of an adjacent water body (natural).
- **Heritage conservation area** is an area of land identified as a heritage conservation area or a place of Aboriginal heritage significance, including any heritage items situated on or within that area, in an EPI.

Note: If only a part of a lot is land to which SECTION 5 relates, complying development must not be carried out on any part of that lot. (1.19(4))

SECTION 6: DEVELOPMENT STANDARDS UNDER THE GENERAL HOUSING CODE

Clause 1.5 of the Codes SEPP contains definitions.

The following definitions relate to SECTION 6 of the Checklist.

Dwelling house is defined to mean a building containing one dwelling, an attached dwelling or a semi-detached dwelling, but does not include any part of the building that is ancillary development or exempt development under the Codes SEPP.

Ancillary development means any of the following that are not exempt development under the Codes SEPP and are ancillary to a dwelling house:

- (a) access ramp
- (b) awning, blind or canopy
- (c) balcony, deck, patio, pergola, terrace or veranda that is attached to a dwelling house
- (d) carport that is attached to a dwelling house
- (e) detached studio
- (f) driveway, pathway or paving
- (g) fence or screen
- (h) garage that is attached to a dwelling house
- (i) outbuilding
- (j) rainwater tank that is attached to a dwelling house
- (k) retaining wall
- (l) swimming pool or spa pool and child-resistant barrier.

Outbuilding means:

- (a) 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) farm building,
- (e) garage that is detached from a dwelling house,
- (f) rainwater tank (above ground) that is detached from a dwelling house,
- (g) shade structure that is detached from a dwelling house,
- (h) shed.

6.1(a): Land use zones

References in the Codes SEPP to a lot or land in a named land use zone (e.g. R1, RU5) is a reference to zones specified in the *Standard Instrument* or to a land use zone in which *equivalent land uses* are permitted. (1.6)

Note: In relation to a lot or land in the **Warringah local government area**, until a new principal local environmental plan is made under s.33A(2) EP&A Act, a reference in the Codes SEPP to a lot or land in a named land use zone is a reference to land specified in such a zone in the draft Warringah Local Environmental Plan 20009 that was subject to community consultation under s.57 EP&A Act. (1.6(1A))

6.2(c): Restrictions on basements

To be complying development under the General Housing Code, a basement:

- (a) if constructed on a lot that has a width (measured at the building line) of at least 10 m, must not exceed 45 sq m in area, or
- (b) if constructed on a lot that has a width (measured at the building line) of at least 6 m, but less than 10m, must not exceed 25 sq m in area. (3.4)

6.2(d): Lot restrictions on ancillary development involving balconies, decks etc.

To be complying development, ancillary development that is a balcony, deck, patio, pergola, terrace or verandah that is or will be attached to a dwelling house **cannot be** on a lot of less than 300 sq m and a width (measured at the building line) of 10m or less, unless the development is to the primary road frontage of the lot.

Note: For the purpose of calculating the area of a lot, the area of the access laneway is excluded if it is a battleaxe lot. (3.6)

6.7: MAXIMUM SITE COVERAGE

Calculating site coverage

To calculate the site coverage for the purpose of **Table 6.7**, the area of any of the following is excluded:

- (a) an access ramp,
- (b) that part of an awning, blind or canopy that is outside the outer wall of a building,
- (c) a balcony, deck, patio, pergola, terrace or verandah attached to the dwelling house that is not enclosed by a wall higher than 1.4m above the floor level,
- (d) an eave,
- (e) a driveway,
- (f) a farm building,
- (g) a fence or screen,
- (h) a pathway or paving,
- (i) a rainwater tank that is attached to the dwelling house,
- (j) a swimming pool or spa pool. (1.5)

TABLE 6.7 Maximum site coverage for dwelling houses (including ancillary development (3.9))

Area of Lot (Square metres)	Maximum Site Coverage*
200 ≤ Area < 250	65%
250 ≤ Area < 300	60%
300 ≤ Area < 450	55 %
450 ≤ Area < 900**	50 %
900 ≤ Area < 1500	40 %
Area ≥ 1500	30 %

* Dwelling house and all ancillary development (3.9(1))

****Exception to Table:** In the case of a single storey dwelling house (including all ancillary development), site coverage must not be greater than 55% of the area of the lot if the lot has an area of at least 450 sq m but less than 500 sq m. (3.9(2))

6.8-6.10: MAXIMUM FLOOR AREAS

6.8 DWELLING HOUSES

Calculating floor area of a dwelling house

The floor area of a **dwelling house** means the total of the areas of each storey of the dwelling house and any carport, garage, balcony, deck, patio, pergola, terrace or verandah, measured at a height of 1.4m above each floor level, that is within the outer face of:

- (a) the external walls of the dwelling house, and
- (b) the walls of the carport, garage, balcony, deck, patio, pergola, terrace or verandah,

but does not include:

- (i) any part of an awning, blind or canopy that is outside the outer wall of a building
- (ii) the eaves
- (iii) a lift shaft
- (iv) a stairway
- (v) a void above a lower storey. (1.5)

TABLE 6.8 Maximum floor area for a dwelling house (3.10)

Area of Lot (Square metres)	Max Floor Area of Dwelling House
$200 \leq \text{Area} < 250$	90% of lot area
$250 \leq \text{Area} < 300$	85% of lot area
$300 \leq \text{Area} < 450$	270 sq m
$450 \leq \text{Area} < 600$	330 sq m
$600 \leq \text{Area} < 900$	380 sq m
$900 \leq \text{Area}$	430 sq m

6.9 OUTBUILDINGS (3.11)

Calculating floor area of an outbuilding

The floor area of an **outbuilding** means the total of the areas of each storey of the outbuilding, measured at a height of 1.4m above each floor level, that is within the outer face of:

- (a) the external walls of the outbuilding if it is enclosed, and
- (b) the supporting columns or posts of the outbuilding if it is not enclosed,

but does not include:

- (i) any part of an awning, blind or canopy that is outside the outer wall of a building,
- (ii) an eave,
- (iii) a stairway.(1.5)

TABLE 6.9 Maximum floor area for an outbuilding

Area of Lot (Square metres)	Max Floor Area of Outbuilding
Area < 300	36 sq m
300 ≤ Area < 600	45 sq m
600 ≤ Area < 900	60 sq m
Area ≤ 900	100 sq m

6.10 BALCONIES, DECKS ETC. (3.12)

Calculating floor area of balconies, decks etc.

The floor area of a **balcony, deck, patio, pergola, terrace or verandah** means the area, measured at the floor level of the structure, within the outer face of:

- (a) the external walls, if the structure is enclosed, or
- (b) the balustrade or other safety barrier, if the structure is not enclosed. (1.5)

6.11: MAXIMUM BUILDING HEIGHT (3.13)

The maximum height of a building is determined by measuring the highest point of the building to the ground level (existing) immediately below (see: definition of “building height (or height of building)” in Clause 1.5 Codes SEPP). Certain structures are excluded from this calculation and are referenced in the definition.

6.12-6.18 SETBACKS

The following definitions, exceptions and calculations apply to determining the setback requirements for the purposes of the General Housing Code:

- A **setback** is the horizontal distance between the relevant boundary of the lot and the building line.
- A **setback area** is the area between the relevant boundary of the lot and the building line.
- The **building line** means the line of the existing or proposed building wall or roof (other than a wall or roof of any building element within an articulation zone), or the outside face of any existing or proposed ancillary development, closest to the relevant boundary of the lot.
- The **articulation zone** is the area within a lot within which building elements are or may be located, that consists of that part of the setback area from a primary road that is measured horizontally for a distance of 1.5m from:
 - (a) the foremost edge of the building line, or
 - (b) a gable or roof parapet having a surface area of more than 10sqm.

Calculating setbacks

- (a) In calculating the setback of an existing dwelling house, any part of an existing garage or carport located between the building line of the dwelling house and a boundary with the primary road, or any existing building element of a dwelling house that is located within the articulation zone, is not included.
- (b) In calculating the setbacks of the nearest two dwelling houses, those dwelling houses must be on the same side of the road as the lot.

- (c) In calculating the setbacks of a new dwelling house, any building element permitted in the articulation zone is not included.
- (d) In calculating the setbacks for a battle-axe block, the setback on the opposite side of the lot to the rear setback is taken to be a side setback.
- (e) In calculating the setback from a road, a reference to ancillary development does not include a driveway, pathway or paving; an eave; a fence or screen; a retaining wall; or any ancillary development that is a building element that is permitted in the articulation zone. (3.20)

Exceptions to Setback Tables

Regardless of the setback requirements in **Table 6.12** (Setback from roads), **Table 6.13** (Setbacks from side boundaries) and **Tables 6.14 and 6.15** (Setbacks from rear boundaries):

- (a) a dwelling house or outbuilding must have a setback of at least 3 metres from a boundary with a public reserve, and
- (b) the side and rear setbacks from the boundary with a road do not apply to the existing parts of a dwelling house or ancillary development where the development proposed is to carry out alterations or additions to an existing dwelling house or alterations or additions to existing ancillary development, and
- (c) the side and rear setbacks from the boundary with a road do not apply to allowable encroachments permitted under clause 3.7.1.7 of Volume 2 of the BCA or any eave or roof overhang with a horizontal width of not more than 450mm. (3.19)

6.12: SETBACKS FROM ROADS (3.14 & 3.15)

For the purpose of calculating setbacks from roads in Point 6.12 of the Checklist, the following definitions apply:

- **Primary road** is the road to which the front of a dwelling house or main building faces or is proposed to face.
- **Secondary road** is the road that is not the primary road on a corner lot.
- In the case of a lot that has boundaries with parallel roads the **Parallel road** is not the primary road.
- **Classified road** is identified in another EPI an applies to a lot and which establishes a minimum setback distance for a dwelling house having a boundary with that road (otherwise a minimum setback distance of 9.0m would apply)

clause 3.14 (4). Clause 3.14 (4) is inconsistent with the setback provisions of clause 3.14 (1) to (3) and the Department is taking steps to have clause 3.14 (4) deleted. The Department has issued a notice on its website advising that accredited certifiers should apply the setback requirements of clause 3.14 (1) to (3) over the setback requirement of 3.14 (4). In terms of Table 6.12, this means that the row which is the subject of this NOTE should be ignored. Further information regarding this NOTE may be obtained by calling the Departments information line on 9228 6157.

6.13 SETBACKS FROM SIDE BOUNDARIES (3.16)

Table 6.13 applies to:

- (a) dwelling houses and any carport, garage, balcony, deck, patio pergola, terrace or verandah attached to the dwelling house (**a “building”**)
- AND
- (b) outbuildings, or alterations and additions to an existing outbuilding (also a **“building”**)

TABLE 6.13 Minimum setbacks from side boundaries

Width of lot at the building line (W)	Height of Building	Minimum setback from side boundary
6 m ≤ W < 10 m	Up to 5.5 m	900 mm
(**See also Exception below)	More than 5.5 m	900 mm + ¼ of the height of the building above 5.5m
10 m ≤ W < 18 m	Up to 4.5 metres	900 mm
	More than 4.5 m	900 mm + ¼ of the height of the building above 4.5m
180 m ≤ W < 24 m	Up to 4.5 metres	1.5 m
	More than 4.5 m	1.5 m + ¼ of the height of the building above 4.5m
24 m ≤ W	Any height	2.5 m (*See also Note below)

* **Note:** In respect of land in the Wingecarribee local government area, for lots with an area of at least 4000 square metres, the minimum setback to a side boundary is 7.5 metres for all building heights. (1.12)

****Exception**

Despite the provisions in this row of the Table applicable to lots - 6 m ≤ Width < 10 m:

- (a) if the lot has a width of at least 6 m, but less than 8 m, the building may be built to **both** boundaries, OR
- (b) if the lot has a width of at least 8 m, but less than 10 m, the building may be built to **one** boundary.

The above Exception **does not apply** if:

- (i) the wall of the adjoining building is not of masonry construction and is within 900mm of the boundary, **OR**
- (ii) the wall of the adjoining building has a window facing the boundary and is within 900mm of the boundary.

Restrictions on walls built under the Exception

(i) Height of wall

A wall of a building built to the boundary under the Exception:

- (a) must not be higher than 3.3 , OR
- (b) must not be higher than any wall built to the boundary on the adjoining lot, OR
- (c) if a single complying development certificate has been issued under clause 126(4) EP&A Regulation 2000 for the building and the adjoining lot, the wall must not higher than the height of the wall on the adjoining lot,
- (d) **regardless of (a) to (c)**, the wall must not be higher than 8.5 m.

(ii) Length of Wall

A wall of a building built to the boundary under the Exception:

- (a) together with the length of any other boundary walls of any other buildings on the lot, must not have a length totalling more than 20m, or 50% of the depth of the lot, whichever is the lesser.
OR
- (b) must not be longer than any wall built to the boundary on the adjoining lot, OR
- (c) if a *single complying development certificate* has been issued under clause 126(4) EP&A Regulation 2000 for the building and the adjoining lot, the wall must not be longer than the length of the wall on the adjoining lot,

SETBACKS FROM REAR BOUNDARIES-DWELLING HOUSES AND ATTACHED CARPORTS, GARAGES ETC (3.16)

Table 6.14 applies to dwelling houses and any carport, garage, balcony, deck, patio pergola, terrace or verandah attached to the dwelling house (**a “building”**).

TABLE 6.14 Minimum setbacks from rear boundaries

Area of lot	Height of Building Part	Minimum setback from rear boundary
200 sq m ≤ Area of lot < 900 sq m	Up to 4.5 metres	3.0 m
200 sq m ≤ Area of lot < 300 sq m	More than 4.5 m	(a) If there are 2 adjoining dwelling houses with a height greater than 4.5 m-the minimum set back must be the lesser of the following : (i) 10 m, or (ii) the average distance setback from the rear boundary of that part of the adjoining dwelling houses which is greater than 4.5 m, (b) If there are not 2 adjoining dwellings as referred to in (a), the minimum setback is 10 m.
300 sq m ≤ Area of lot < 900 sq m	More than 4.5 m	8 m
900 sq m ≤ Area of lot < 1500 sq m	Up to 4.5 m 4.5 m or more	5 m 12 m
1500 sq m ≤ Area of lot	Up to 4.5 m 4.5 m or more	10 m 15 m

Note Despite the provisions of **Table 6.14**, if the lot has a rear boundary with a lane, the building may have a building line that abuts that boundary for not more than 50% of the length of the boundary.

6.15 SETBACKS FROM REAR BOUNDARIES-OUTBUILDINGS AND ALTERATIONS ETC

Table 6.15 applies to new outbuildings, or alterations and additions to an existing outbuilding (an “outbuilding”)

TABLE 6.15 Minimum setbacks of outbuildings from rear boundaries

Area of lot	Height of Outbuilding	Minimum setback from rear boundary
200 sq m ≤ Area of lot < 300 sq m (*See Additional Requirements below)	Up to 3.3 m 3.3 m or more	Up to the rear boundary ¼ of the height of the outbuilding above 3.3 m
300 sq m ≤ Area of lot < 900 sq m	Up to 3.8 m 3.8 m or more	900 mm 900 mm + ¼ of the height of the outbuilding above 3.8 m
900 sq m ≤ Area of lot < 1500 sq m	Up to 3.8 m 3.8 m or more	1.5 m 1.5 m + ¼ of the height of the outbuilding above 3.8 m
1500 sq m ≤ Area of lot	Up to 3.8 m 3.8 m or more	2.5 m 2.5 m + ¼ of the height of the outbuilding above 3.8 m

***Additional Requirements**

Despite the provisions in this row of the Table applicable to lots - 200 sq m ≤ Area of lot < 300 sq m, if:

- (a) the wall of the adjoining building is not of masonry construction and is within 900mm of the boundary
OR
- (b) the wall of the adjoining building has a window facing the boundary and is within 900mm of the boundary.

the outbuilding must have a setback from the rear boundary of at least:

- (i) for any part of the outbuilding with a height of up to 3.8 m - 900mm
- (ii) for any part of the outbuilding with a height of more than 3.8 – 900mm plus ¼ the height of the outbuilding over 3.8 m.

Note

Despite the provisions of **Table 6.15**, if the lot has a rear boundary with a lane, the outbuilding may have a building line that abuts that boundary for not more than 50% of the length of the boundary.

A **lane** is a public road, with a width greater than 3 m but less than 7 m, that is primarily for access to the rear of premises, and includes a nightsoil lane.

Articulation zone

6.18: Articulation zone is an area within a lot within which building elements may be located, that consists of that part of the setback area from a primary road that is measured horizontally for a distance of 1.5 m from:

- (a) the foremost edge of the building line, or
- (b) a gable or roof parapet having a surface area of more than 10 sq m.

A dwelling house (other than one with a setback from a primary road of less than 3.0m) may incorporate an articulation zone to a primary road. (1.5)

6.18: The following building elements are permitted in an articulation zone:

- (a) an entry feature or portico
- (b) a balcony, deck, patio, pergola, terrace or veranda
- (c) a window box treatment
- (d) a bay window or similar feature
- (e) an awning or other feature over a window
- (f) a sun shading feature.(3.22)

Privacy

6.20 “Privacy screen” means a screen that:

- (a) faces a boundary, and
- (b) is 1.5m high, measured from the floor level, and
- (c) has no individual opening more than 30mm wide, and
- (d) has a total of all openings less than 30% of the surface area of the screen. (1.5)

Landscaping

TABLE 6.23 Minimum landscaping requirements (3.24)

Area of Lot (Square metres)	Minimum Landscaped Area of Lot
200 ≤ Area < 300	10%
300 ≤ Area < 450	15%
450 ≤ Area < 600	20 %
600 ≤ Area < 900	30 %
900 ≤ Area < 1500	40 %
Area ≥ 1500 (*See also Note below)	45 %

Note: In respect of land in the Wingecarribee local government area:

- (a) for lots with an area of at least 1500 sq m but less than 4000 sq m, the minimum landscaped area is 45%.
- (b) for lots with an area of at least 4000 sq m, the minimum landscaped area is 75%. (1.12)

6.28: 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 3 m wide, and
- (c) is not steeper than 1:50 gradient

Car parking

6.30: Exceptions: The requirement for the provision of at least one off-street car parking space does not apply to lots that have a width (measured at the building line) of less than 8 metres, unless the land is in the local government areas of Fairfield City or Holroyd City.

6.31: For the purpose of 6.31, a car parking space may be an open hard stand or a carport or garage, whether attached to or detached from the dwelling house.

Hard stand space means an area of concrete, paving or other hard material at ground level designed solely for parking a motor vehicle.

Garages

6.34: Exceptions The requirement that a lot must have a width (measured at the building line) of at least 8 meters in order for a garage to be erected does not apply to land in the local government areas of Fairfield City or Holroyd City.

Run-off and erosion controls

6.44: Run-off and erosion controls to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land must be implemented by

- (a) diverting uncontaminated run-off around cleared or disturbed areas, and
- (b) erecting a silt fence to prevent debris escaping into drainage systems and waterways, and
- (c) preventing tracking of sediment by vehicles onto roads, and
- (d) stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot

6.46 -6.49 DETACHED STUDIOS ADJOINING LANES

Note: Tables 6.47 and 6.48 only apply to detached studios that adjoin a lane.

A **lane** is a public road, with a width greater than 3 m but less than 7 m, that is primarily for access to the rear of premises, and includes a nightsoil lane.

TABLE 6.47 Maximum floor area of a detached studio

Width of Lot at the Building Line	Maximum Floor Area
6 m ≤ Width <12 m	60 sq m
12m ≤ Width <15 m	75 sq m
15 m ≤ Width Lot	100 sq m

TABLE 6.48 Minimum side setback for a detached studio (See also *Exception below)

Width of lot at the building line	Building height of detached studio	Minimum setback from side boundary
6 m ≤ Width of lot < 15 m	Up to 4.5 m	900 mm
	4.5 m or more	1.2 m
15 m ≤ Width of lot < 18 m	Up to 4.5 m	900 mm
	4.5 m or more	1.5 m
18 m ≤ Width of lot	Up to 4.5 m	1.5 m
	4.5 m or more	2.5 m

***Exception**

Despite the provisions of this Table:

- (a) if the lot has a width of at least 6 m, but less than 8 m, the building may be built to **both** boundaries, OR
- (b) if the lot has a width of at least 8 m, but less than 10 m, the building may be built to **one** boundary.

Note

The above Exception does not apply if:

- (i) the wall of the adjoining building is not of masonry construction and is within 900mm of the boundary OR
- (ii) the wall of the adjoining building has a window facing the boundary and is within 900mm of the boundary.

Restrictions on walls built under the Exception

Height of wall

A wall of a detached studio built to the boundary under the Exception:

- (a) must not be higher than 3.3 , OR
- (b) must not be higher than any wall built to the boundary on the adjoining lot, OR
- (c) if a single complying development certificate has been issued under clause 126(4) EP&A Regulation 2000 for the detached studio and the adjoining lot, the wall must not higher than the height of the wall on the adjoining lot,
- (d) regardless of (a) to (c), the wall must not be higher than 8.5 m.

Length of Wall

A wall of a building built to the boundary under the Exception:

- (i) together with the length of any other boundary walls of any other buildings on the lot, must not have a length totalling more than 20m, or 50% of the depth of the lot, whichever is the lesser. OR
- (ii) must not be longer than any wall built to the boundary on the adjoining lot, OR
- (iii) if a *single complying development certificate* has been issued under clause 126(4) EP&A Regulation 2000 for the detached studio and the adjoining lot, the wall must not longer than the length of the wall on the adjoining lot.

Privacy

Any inward facing window to a detached studio needs to be provided with a privacy screen in accordance with privacy provisions.

Swimming Pools

6.50: If a swimming pool is constructed after, and a different time to, the erection of a dwelling house on a lot, the Development Standards in SECTION 6, other than those in 6.7 (Site coverage) and **6.23 to 6.27** (Landscaping) do not apply to the construction. (3.34(7))

Development standards for bush fire prone land

6.72 Development on bush fire prone land must meet the following:

- (a) the development conforms to the specifications any requirements of the following that are relevant to the development:
 - (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* (ISBN 0 9751033 2 6, published by NSW Rural Fire Service in 2010) to *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6),
 - (iii) if another document is prescribed by the regulations for the purposes of section 79BA of the *Environmental Planning and Assessment Act 1979*—that document, and
- (b) the part of the lot on which the development is to be carried out and any associated access way is not in bush fire attack level–40 (BAL–40) or the flame zone (BAL–FZ), and
- (c) the lot has direct access to a public road or a road vested in or maintained by the council, and
- (d) the development is located within 200m of that road, and
- (e) there is sufficient access designed in accordance with the acceptable solutions identified in clause 4.1.3 (2) of *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6) published by the NSW Rural Fire Service in December 2006, and
- (f) a 20,000L water supply with 65mm metal Storz outlet with a gate or ball valve is provided for fire fighting purposes on the lot (the gate or ball valve, pipes and tank penetrations are to be designed to allow for a full 50mm inner diameter water flow through the Storz fitting and must be of a metal construction), and
- (g) reticulated or bottled gas on the lot is installed and maintained in accordance with AS/NZS 1596:2008, *The storage and handling of LP Gas* and the requirements of relevant authorities (metal piping must be used), and
- (h) all fixed gas cylinders on the lot are located at least 10m from flammable materials and are enclosed on the hazard side of the installation, and
- (i) any gas cylinders on the lot that are within 10m of a dwelling house:
 - (i) have the release valves directed away from the dwelling house, and
 - (ii) have metal connections to and from the cylinders, and
- (j) there are no polymer sheathed flexible gas supply lines to gas meters adjacent to the dwelling.

Note. The requirements of AS 3959–2009, *Construction of buildings in bushfire-prone areas* set out in the *Building Code of Australia* also apply.

A standard specified in (b) above is satisfied if one of the following certifies that the development is not in bush fire attack level–40 (BAL–40) or the flame zone (BAL–FZ):

- (a) until 25 February 2012—the NSW Rural Fire Service, or
- (b) a person who is recognised by the NSW Rural Fire Service as a suitably qualified consultant in bush fire risk assessment, or
- (c) the council.

Note. More information about the categories of bush fire attack, including the flame zone, can be found in Table A3.4.2 of *Addendum: Appendix 3* (ISBN 0 9751033 2 6 and published by NSW Rural Fire Service in 2010) to the publication titled *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6) published by NSW Rural Fire Service in 2006.

Development standards for flood control lots

6.73 Development on flood control lots must meet the following:

(1) The development must not be on any part of a flood control lot that has been certified by the council or a professional engineer who specialises in hydraulic engineering as:

- (a) a flood storage area,
- (b) a floodway area,
- (c) a flow path,
- (d) a high hazard area,
- (e) a high risk area.

(2) The development must, to the extent it is within a flood planning area:

- (a) have all habitable rooms no lower than the floor levels set by the council for that lot, and
- (b) have the part of the development at or below the flood planning level constructed of flood compatible material, 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 flood affectation elsewhere in the floodplain, and
- (e) have reliable access for pedestrians and vehicles from the development, at a minimum level equal to the lowest habitable floor level of the development, to a safe refuge, and
- (f) have open car parking spaces or carports that are no lower than the 20-year flood level, and
- (g) have driveways between car parking spaces and the connecting public roadway that will not be inundated by a depth of water greater than 0.3m during a 1:100 ARI (average recurrent interval) flood event.

A standard specified in subclause (2) (c) or (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 confirms that the development:

- (a) can withstand the forces of floodwater, debris and buoyancy up to the flood planning level (or if onsite refuge is proposed, the probable maximum flood level), or
- (b) will not increase flood affectation elsewhere in the floodplain.

Note: A word or expression used above has the same meaning as it has in the Floodplain Development Manual, unless it is otherwise defined below:

flood compatible material means building materials and surface finishes capable of withstanding prolonged immersion in water.

Floodplain Development Manual means the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

flow path means a flow path identified in the council's flood study or floodplain risk management study carried out in accordance with the Floodplain Development Manual.

high hazard area means a high hazard area identified in the council's flood study or floodplain risk management study carried out in accordance with the Floodplain Development Manual.

high risk area means a high risk area identified in the council's flood study or floodplain risk management study carried out in accordance with the Floodplain Development Manual.

Section 7 – BCA compliance

This Section considers whether development that has satisfied all the other previous requirements under the Checklist also complies with the Building Code of Australia (BCA).

Building Code of Australia

The development must meet the relevant provisions of the *Building Code of Australia*. If it doesn't, it is not complying development under the Codes SEPP.

Section 8 – Other requirements

This section sets out the other legislative requirements which should be checked prior to issuing a CDC for a development assessed as complying development under the Codes SEPP.

Compliance certificate or report by a fire safety engineer

There are special requirements under Clauses 130(2A), (2B) and (2C) of the Regulation which apply to certain buildings for which an alternative solution in respect of specific fire safety requirements under the BCA are proposed. Where these provisions apply, the alternative solution must be approved by a fire safety engineer issuing a compliance certificate and/or a report.

A certifying authority must not issue a CDC where these provisions apply unless the certifying authority has obtained or been provided with the required compliance certificate and/or report.

Report by an accredited certifier

Clauses 130(2E) of the Regulation provides that in respect of proposed development comprising internal alterations to, or a change of use of, an existing building that is subject to an alternative solution relating to a fire safety requirement under the BCA, a CDC cannot be issued unless the certifying authority has been provided with a written report by an accredited certifier (who is accredited for the purpose of issuing a CDC for a building of that kind) which includes a statement that the proposed development is consistent with the alternative solution.

Development standards

Under Division 2, Part 7 of the Regulation, certain development standards are set out which are applicable to various types of complying development. These include an important requirement relating to certain renovation work to existing buildings where, on completion, the fire protection and structural capacity of the building will not be reduced.

Notification of determination

When a certifying authority determines an application for a CDC, notification must be given to:

- The applicant
- The council (unless the council is the certifying authority).

Clause 130 of the Regulation contains details as to the time, form and the documents required to be provided to the council and near neighbours.

Form and Content of CDC

Clause 134 of the Regulation sets out the information that a CDC is required to contain, whether it is issued under the Codes SEPP or another EPI. This includes details of the applicant, the certifying authority issuing the certificate, the class of building and the date of lapsing of the certificate.

A CDC issued for development under the Codes SEPP must also contain certain land zoning information.

Conditions

Complying development under the Codes SEPP is subject to conditions which may be imposed by the EPA Act, the Regulation and the Codes SEPP. The relevant conditions are set out in Division 3, Part 3 of the Codes SEPP.

Division 2A, Part 7 of the Regulation sets out conditions which may be required to be imposed under the Regulation.

Section 85A(9) EPA Act requires a certifying authority to impose a condition under Division 6 of the EPA Act relating to contributions plans. Applicants may be required to contribute to the provision of local infrastructure and facilities. This information should be contained in the s.149 certificate.

Endorsement of plans

When a CDC is issued, evidence of the issue of the certificate must be endorsed by the certifying authority on the plans, specifications and any other documents provided with the application.

Long Service Levy payments

Section 85A(10A) of the EPA Act provides that where a certifying authority completes a CDC, the CDC must not be given to the applicant unless any long service levy payable under s.34 of the *Building and Construction Industry Long Service Payments Act 1986* (or where such a levy is payable by instalments, the first instalment) has been paid.