



NSW Housing Code | Overview

Overview of the NSW Housing Code

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1. About the Code

As part of its ongoing planning reforms, the NSW Government released the first stage of the NSW Housing Code which commenced 27 February 2009. An amendment which will commence on the 7 September 2009 introduces new exempt development types, expands complying development, clarifies existing development standards under the General Housing Code and introduces a new code covering complying development for housing internal alterations.

The NSW Housing Code outlines how owners of lots of 450m² and greater can undertake residential developments such as:

- detached single and double storey dwelling houses;
 - home extensions and renovations; and
 - other ancillary development, such as swimming pools
- as complying development with council or accredited certifier sign-off.

It also outlines how 49 types of low-impact development types (known as “exempt development”) can be undertaken without the need for planning or construction approval. The exempt development code does not stipulate any limits on lot size; however, other legislative requirements for approvals, licences, permits and authorities still apply.



2. How will neighbours' rights be protected?

The NSW Housing Code contains the following provisions to allow homes to proceed without the need for lodgement of a DA, while still protecting neighbours' rights.

Privacy

- Windows in living areas must have privacy screens if they are located more than 1m above ground level, within 3m of a side or rear boundary, and the window has a sill height of less than 1.5m.
- A balcony, deck, patio, pergola, terrace or verandah must have a privacy screen if it has a floor level more than 1m above existing ground level, a floor area of more than 3m², or a setback less than 3m from a side or rear boundary.

Setbacks

- Houses situated on lots between 450m² and 900m² in most residential zones must be set back at least 900mm from the side boundary. This setback increases to up to 2.08m depending on the building height of the house.
- Minimum side setbacks increase to 1.5m for lots above 900m², and to 2.5m for lots above 1,500 m².
- The code also specifies rear setback requirements, which vary by lot size. For lots of 450m² to 600m², the setback is a minimum of 3m. This setback increases to up to 8m, depending on the building height of the house.
- Minimum rear setbacks increase to 5m for lots above 900m², and 10m for lots above 1,500m².

Height, bulk and scale

- Building heights are capped at 8.5m, which is less than, or in keeping with, most council controls across NSW.
- The site coverage of a house is limited to 50 per cent of the lot for lots between 450m² and 900m². This drops to 30 per cent for lots above 1,500m².
- There is also a limit on the maximum floor area of houses, which operates in a similar fashion to a floor space ratio. This limit means the floor area can be no higher than:
 - 330m², if the lot is greater than 450 m² but less than 600m²;
 - 380m², if the lot has an area of at least 600 m² but less than 900m²; or
 - 430m², if the lot has an area of at least 900m².

Houses with dimensions larger than the code standards will require merit assessment through a DA. In addition, the NSW Government has introduced new provisions covering excavation works.

Excavation protection

It is an automatic condition of development consent to ensure that buildings on the neighbouring land are not impacted by any excavation below the base of the footings of a neighbouring building, even if this is not mentioned in the original approval. The landowner is required to protect the neighbouring premises from any possible damage and, where necessary, to underpin the premises to prevent such damage. Councils may issue a stop-work order or a penalty infringement notice against any landowner who fails to comply with this regulation.

3. How does the General Housing Code relate to heritage items and areas?

The General Housing Code is excluded in its entirety from the following items or areas:

- State heritage listed on the State heritage register under the *Heritage Act 1977*.
- Draft or existing local heritage items.
- Land subject to an interim heritage order under the *Heritage Act 1977*.
- Land within a draft or existing heritage conservation area.
- Land within 100 metres or within a world heritage area.
- Land within aquatic reserves and marine parks.

This excludes the complying development code from some 25,000 listed local heritage items, 1,534 State heritage items and dozens of heritage conservation areas across the State.



4. How does the new Housing Internal Alterations Code relate to heritage items and areas?

The new Housing Internal Alterations Code allows internal alterations contained entirely within the existing dwelling in heritage conservation areas and draft conservation areas however the code is excluded entirely for:

- State heritage listed on the State heritage register under the *Heritage Act 1977*.
- Draft or existing local heritage items.
- Land subject to an interim heritage order under the *Heritage Act 1977*.
- Land within 100 metres or within a world heritage area.
- Land within aquatic reserves and marine parks.

How does the Exempt Development Code relate to heritage items and areas?

Exempt development typically covers low-impact household items such as sheds, pergolas, fences, rainwater tanks and fixed barbecues.

Exempt development must not be carried out on land that comprises, or on which there is, an item that is listed on the State heritage register under the *Heritage Act 1977*, or that is subject to an interim heritage order under that Act. In addition, many individual development types in the Exempt Development Code contain specific standards relating to heritage items.

5. What about my local area?

To preserve the local character of specific areas, the NSW Housing Code contains provisions which allow for unique areas to be excluded, or for specific development standards to be varied, in order to maintain these area's specific characters.

The Housing Code refers to these provisions as local exclusions and local variations.

Local exclusions can be nominated to the Department of Planning by a local council: for example, a precinct that has been identified as having particular unique attributes that may require a merit assessment of any development proposal. If the local exclusion is approved, some aspects of the general NSW Housing Code will not apply to that area.

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

- front setbacks;
- side setbacks on lots 900m² and greater; and
- percentage of landscaped area.

The Housing Code allows for local variation to these standards to ensure the unique local character of a place is not compromised, while still allowing for faster approvals.

6. How does the code relate to sustainability?

During the development of the Housing Code, the Department reviewed 26 current planning documents in relation to side setbacks and heights that contribute to solar access and overshadowing.

The controls included in the Housing Code are consistent with these current acceptable standards. The NSW Housing Code will enable the NSW Government to implement some important sustainability initiatives. These include:

- limiting the maximum floor area and site coverage of homes, thereby limiting energy consumption;
- requiring minimum landscaped areas, which contribute to biodiversity, housing amenity and soil permeability, which reduces stormwater runoff within the urban environment; and



- ensuring new homes comply with the NSW Government's world-first BASIX initiative, as a means of minimising energy and water usage. BASIX continues to apply to complying development.

The Building Sustainability Index (BASIX)

The NSW Government has introduced the Building Sustainability Index (BASIX) to help households cut energy and water consumption. BASIX ensures that new homes and home alterations are designed to use less potable water and produce fewer greenhouse gas emissions, by setting energy and water reduction targets.

Under the NSW Housing Code new homes, home alterations and additions must comply with BASIX.

7. What rules apply to the demolition of houses?

The code protects heritage houses and houses in heritage conservation areas from demolition. Demolition of houses cannot be undertaken under the NSW Housing Code in relation to State heritage items, or draft or existing local heritage items, or in draft or existing heritage conservation areas. This means that proposals to demolish heritage houses or houses in heritage areas can only proceed following development application approval by the local council and, if applicable, the Heritage Council or the Department of Planning.

Other existing houses (single or two storey) or ancillary development can be demolished as complying development if located in residential or rural zones and located on lots 450m² and greater. Please refer to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) for other specific demolition requirements.

Can non-residential heritage buildings be demolished under the code?

No. Demolition of local heritage items such as commercial buildings, hotels or grandstands cannot proceed under this code

8. How does the NSW Housing Code interact with covenants?

Some areas have covenants on the land title to define particular characteristics of housing development on that land. The NSW Housing Code does not override covenants. It is incumbent on the home owner to ensure that any development undertaken under the NSW Housing Code does not breach the term of any covenant applying to that land.

9. How do accredited certifiers fit into the NSW Housing Code?

Under the NSW Housing Code, a proposed new house on residential zoned land, or additions or renovations on residential or rural zoned land that satisfy the complying development standards, can be approved by either a council or an accredited certifier. The Building Professionals Board (BPB) is the accreditation body for accredited certifiers under the *Building Professionals Act 2005*. To locate an accredited certifier, or to obtain information about accreditation generally, refer to the BPB website at www.bpb.nsw.gov.au.

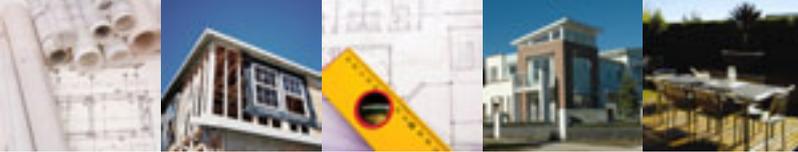
If the development does not satisfy the requirements for complying development, a Development Application must be lodged with the local council, which was then assessed and either approved or refused by the council.

A complying development certificate must be issued within 10 days, making the process much faster than the DA process.

10. How will the rights of neighbours and local communities be protected?

The NSW Housing Code has been drafted with careful consideration for the rights of neighbours, sustainability, and protection of heritage values and the character of an area. Different rules apply to different lot sizes.

The code protects the amenity of neighbours by limiting heights and requiring setbacks. In addition, councils will be able to incorporate local variations to certain standards to maintain local character.



The code will be reviewed regularly – it is a living document.

11. How much money will the NSW Housing Code help me save?

In 2008, about 90 per cent of new detached houses in NSW required the lodgement of a Development Application (DA). The average time for a council to process a DA in Sydney ranges from 34 to 254 days. If your house design meets the standards in the NSW General Housing Code, you will not need to lodge a DA and you may get a complying development certificate within 10 days.

The Housing Industry Association (HIA) has suggested that homeowners in the Sydney metropolitan area could achieve the following savings:

- \$3,345 in **direct cost savings** due to lower vacant land mortgage payment holding costs following reduced assessment times.
- \$3,300 in **indirect cost savings** resulting from reduced fees, documentation, amendments and time spent tracking DAs.

That adds up to a possible total saving of **\$6,645**.

Based on the same assumptions, homeowners in regional areas will save a total of approximately **\$2,549**.

How does the Exempt Development Code save me time and money?

The introduction of the Exempt Development Code provisions of the NSW Housing Code will significantly reduce the number of DAs requiring council approval.

If a proposed small scale alteration, improvement or landscaping work falls within the scope of the Exempt Development Code, no DA or complying development certificate will be required. Work can commence immediately, without the need for any form of planning or construction approval. Other legislative or approvals licences, permits and authorities may still apply. The increase in exempt developments will result in significant time and money savings for owners.

Does the NSW Housing Code deliver other savings?

The increasing use of exempt or complying development will reduce local councils' development assessment workload. This will save councils time and money and free up council resources to concentrate on more complex development applications and strategic planning for their local government area.

12. What training on the NSW Housing Code is available?

During February and March 2009, the Department of Planning held a series of Implementation Workshops for practitioners, council officers and community members. Excerpts from these sessions can be viewed on the Department of Planning website www.planning.nsw.gov.au/housingcode.

An e-learning course is being developed which will explain the process for undertaking exempt or complying development under the NSW Housing Code. The course is being designed for use by accredited certifiers, practitioners and council staff. These modules will be available online via the Department of Planning's website from late 2009.

The Department has also prepared a User Guide and various other resources to assist practitioners, council officers and community members in understanding the various requirements of the Housing Code. These resources are continually being updated and added to and are available at www.planning.nsw.gov.au/housingcode.

13. How do I find out more about the NSW Housing Code?

For a wealth of information and resources log on to the Department of Planning website at www.planning.nsw.gov.au/housingcode or contact the Department's Information Centre on 1300 305 695 or contact codes@planning.nsw.gov.au.



For up-to-the-minute updates sign up for the Department's Enews email service, the latest information delivered direct to your inbox. Visit <http://www.planning.nsw.gov.au/eneews/index.asp> to sign up, it's easy and it's free.

Important note: This fact sheet does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this fact sheet.

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