

## Exempt and Complying Development

This information sheet explains the new provisions for temporary uses and structures which will allow certain types of events and tent or marquee structures as exempt development. It also covers larger temporary structures that require complying development approval.

### Important note

This information is for guidance only and may not contain all the information relevant to every property in New South Wales. Applicants should refer to the relevant planning controls before work begins, or seek professional advice on how the planning controls apply to their property.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* identifies the majority of development types that can be done as exempt and complying development in NSW.

### What is exempt development?

**Exempt development** refers to minor building works and changes that do not require planning approval under the NSW planning system.

Exempt development must meet the standards specified for the development type and can only be carried out on the appropriate land specified in the policy.

### What is complying development?

**Complying development** is a form of planning approval that can be approved by an accredited certifier or a council under a complying development certificate (CDC). This type of approval combines approval for use of the land and building construction.

The first step for the applicant is to determine what planning controls apply to the land and type of development. Some exempt and complying development types are subject to local exclusions or variations: refer to Schedules 3 – 5 of the policy.

A section 149 planning certificate from council will outline what planning controls apply and whether particular parts of the policy can be used for development on the land.

### What are the general criteria?

Exempt and complying development cannot be carried out on land that is:

- a critical habitat under the *Threatened Species Conservation Act 1995* or *Fisheries Management Act 1994*,
- a wilderness area under the *Wilderness Act 1987*.
- a heritage item listed on the State Heritage Register (SHR) under the *Heritage Act 1977* or that is subject to an interim heritage order under that Act – unless the work is subject to a specific exemption under section 57 of the *Heritage Act 1977*. Development may also be carried out if it is located outside the area of the item as defined on the SHR or in an EPI.

All complying development and some specific types of **exempt development** are also restricted on land which is a local heritage item identified in an environmental planning instrument (EPI) or in a draft EPI which has been on public exhibition.

**Complying development** also cannot be carried out on land that is:

- within an environmentally sensitive area, unless specifically allowed for under the policy, and
- a local heritage item identified in an EPI or in a draft EPI which has been on public exhibition.

Complying development cannot be carried out if the development requires concurrence of the consent authority or a concurrence in relation to a critical habitat or threatened species.

### Temporary uses & structures as exempt development

A range of temporary structures for private or community events, filming, as well as specified temporary uses of land and buildings can be carried out as exempt development under the policy.

To be exempt development the development must:

- have written consent from the owner of the land on which the development is carried out (this includes a council or other public authority)
- not restrict any car parking required by a condition of a development consent applying to the land, or any vehicular or pedestrian access to or from the land
- not redirect the flow of any surface water or ground water, or cause sediment to be transported onto an adjoining property, and
- not result in damage to any protected tree on or adjoining the site.

Temporary structures are to be erected on a firm and level surface able to support the structure and be in accordance with Australian standards. The person carrying out the development must also have a public liability insurance policy for an amount agreed to by the owner of the land.

Note: Under section 68 of the *Local Government Act 1993* (LG Act) certain activities require the approval of the council. Also, a structure on public land or over a public road requires prior approval of the relevant authority under the LG Act or the *Roads Act 1993*.

### Development Standards

There are development standards that must be complied with if constructing or installing various types of temporary structures as exempt development. Some are outlined below; however refer to the appropriate clause in Division 3 of the policy for the full list of relevant development standards.

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### Scaffolding, hoardings and temporary construction site fences

The construction, installation and removal of scaffolding, hoarding or temporary construction site fencing is exempt development when used in connection with a building project that is exempt or complying development. The development standards require the development to enclose the site area and be removed immediately after the work has finished. Temporary construction site fences that adjoin a public space must be covered in chain wire mesh.

Note: the *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2011* contain provisions relating to scaffolds, hoardings and other temporary structures.

### Temporary builder's structures

The construction or installation of a building site shed, office or associated amenities structure is permitted as exempt development as long as the temporary structure is:

- located on the development lot,
- not used for residential purposes, and
- removed at the completion of site works.

### Filming

A number of detailed requirements apply to filming as exempt development and these are set out in clause 2.114 of the policy. Generally the following requirements apply:

- the filming must not create significant interference with the neighbourhood, and
- if filming on private land, the maximum length is 30 days per year.

If filming is carried out for longer than 2 consecutive days:

- a filming management plan must be lodged with the consent authority 5 days prior to filming commencing on site, and
- the person carrying out the filming must give notice in writing of the filming to residents within 50m of the location 5 days prior to filming starting.

Filming may only be carried out on land with a heritage item, within a heritage conservation area or an environmentally sensitive area if the filming meets additional specific requirements.

The construction or installation of a temporary structure (other than a tent or marquee), and a temporary alteration or addition to a building or work solely for filming purposes is also provided for as exempt development. The development standards require that the development must not be accessed by the general public, can remain for a maximum of 30 days for every calendar year for each location, and alterations to buildings must be removed after 30 days

### Extension of trading hours prior to Christmas

This allows the operation of a lawful retail premises for 24 hours a day 2 weeks prior to Christmas Day. This only applies to retail in a business zone and does not include licensed food and beverage premises or mixed use developments. This provision only applies to businesses with existing development consent. Except for any condition specifying trading hours, all other conditions of consent must continue to be complied with during the extended trading period.

Note: if the conditions of the consent do not specify hours for the loading or delivery of goods or the removal of waste, the policy restricts these activities to 7am to 7pm.

### Temporary extension of trading hours for licensed premises

Exempt development also includes the operation of a licensed premises (with development approval to operate) to extend hours of trading for an authorised special occasion of local, state or national significance where approved under the *Liquor Act 2007*. Note: the premises cannot be in the freeze precinct under the *Liquor Act 2007*.

### Major events sites – additional temporary development

Temporary uses in the public domain are permitted as exempt development in major events sites. Temporary uses include community events, commercial events, trading for retail and other commercial purposes (including temporary dining and drinking areas).

'Major events sites' refers to Circular Quay, Darling Harbour, The Rocks, the Overseas Passenger Terminal at Circular Quay, Sydney Olympic Park and the Barangaroo site. The development standards are covered in clause 2.126 of the policy.

### Sydney Cricket Ground – additional temporary development

Exempt development also includes temporary outdoor non sporting events such as concerts and associated equipment, structures and facilities (stages, public address systems, food and beverage outlets, video screens and information or ticket booths) are permitted at the Sydney Cricket and Sports Ground. The development standards are covered in clause 2.128 of the policy.

### Tents, marquees and booths

There are general development standards for tents, marquees and booths, and some additional requirements that apply when used for specific purposes.

Most of these standards are outlined in Table 1. However please also note that temporary structures:

- must maintain an unobstructed pedestrian circulation area of at least 1.5m wide around the outside tents or marquees, (unless the tents are side by side)

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- must have the required number of exits (refer to clauses 2.118 and 2.120 for details), and
- if internal seating, stalls, tables or other elements are included, a clear path to the exits no longer than 40m required. Note, tiered seating is not permitted.

### Stages or platforms

The development standards for stages and platforms are also outlined in Table 1. Stages and platforms must also display a notice indicating the actual distributed and concentrated design loading.

## Temporary uses and structures as complying development

### Tents, marquees or booths for community events

The construction or installation of larger tents, marquees or booths up to 500m<sup>2</sup> for community events can be constructed as complying development.

Further to the development standards outlined in Table 1, structures must be situated to provide required spacing for pedestrian circulation. An unobstructed gap of 1.5m must be provided between neighbouring structures (unless arranged side by side, in which case the 1.5m gap applies to the perimeter of the combined structures).

If the floor area of the structure is larger than 300m<sup>2</sup>, each structure must be located at least 6m away from any other tent or marquee and must contain an emergency lighting and power supply system.

Structures must also have the required exits. Refer to clause 4A.6 for details. Structures with a floor area up to 150m<sup>2</sup> must have an exit at least 850mm wide and 1m for structures with larger floor areas. Structures must also have internal unobstructed paths no longer than 40m to the exits.

### Stages or platforms for community events

The construction or installation of larger stage or platform of up to 100 m<sup>2</sup> for community events can also be carried out as complying development.

Further to the development standards outlined in Table 1, the stage or platform must resist loads determined in accordance with Australian standards.

## Conditions that apply

All complying development for temporary structures under this policy must comply with the prescribed conditions contained in the *EP&A Regulation 2000*, and the standard conditions located in Schedule 7 of the policy.

The Principal Certifying Authority must be satisfied that all conditions are met prior to work commencing on site

Note: The operating hours for all tents, marquees or booths stages or platforms for filming, private functions or community events, whether being carried out as Exempt or Complying Development, are:

- Monday to Thursday: 7:30am to 11pm,
- Friday to Saturday: 7:30am to midnight
- Sunday: 8am to 8pm

The only exception to this is if the event is carried out on a major event site where additional hours are permitted for some major events, for example New Year's Eve and Australia Day celebrations.

## Further information

Visit [www.planning.nsw.gov.au/exemptandcomplying](http://www.planning.nsw.gov.au/exemptandcomplying) for more information sheets or to view the policy.

Contact the department's Exempt and Complying Development Team on 1300 305 695 or email [codes@planning.nsw.gov.au](mailto:codes@planning.nsw.gov.au).

## Electronic Housing Code

A number of NSW councils are now utilising the EHC.

The EHC website helps applicants determine whether the proposed development qualifies as exempt or complying development and the standards that must be met.

Applications for complying development can also be lodged and tracked online for those council areas which are using the Electronic Housing Code. Visit [www.electronichousingcode.com.au](http://www.electronichousingcode.com.au) to find out if it is used by your local council or for more details.

**TABLE 1**

Development Standard and Development Type	Exempt Development				Complying Development	
	Tents, marquees and booths for community events	Tents, marquees and booths for private functions and filming	Stages and platforms for community events	Stages and platforms for private functions	Tents, marquees or booths for community events	Stages or platforms for community events
<b>Permissible zones</b>	Cannot be carried out on land zoned rural, residential or environmental protection.	Can be carried out on land zoned rural, residential or environmental protection that is used for residential purposes, crown land, and land under the control of a council or public authority.	Cannot be on land zoned rural, residential or environmental protection	Can be carried out on land zoned rural, residential or environmental protection used for residential purposes, crown land, and land under the control of a council or public authority.	Can be carried out on land zoned for business or industrial (not heavy industrial), open space, special purpose zone, or unzoned land,	Cannot be on land zoned rural, residential or environmental protection
<b>Maximum Height</b>	Maximum wall height is 4m. Maximum height from ground level is 6m	Maximum wall height is 4m. Maximum height from ground level is 6m	Maximum height above floor level is 2m.	Maximum height above floor level is 2m.	Maximum wall height of structure is 6m. Maximum height of roof at highest point of 8m	Maximum height above floor level is 2m
<b>Maximum Floor area</b>	Maximum floor area of 300m <sup>2</sup>	If in residential zones can have a maximum floor area of 200m <sup>2</sup> If not in a residential zone, can have a maximum floor area of 300m <sup>2</sup>	Maximum floor area of 50m <sup>2</sup>	Maximum floor area of 50m <sup>2</sup>	Maximum floor area of nomore than 500m <sup>2</sup> per tent with a maximum floor area of all tents of 1000m <sup>2</sup>	Maximum floor area of 100m <sup>2</sup>
<b>Minimum Setback</b>	Maximum floor area of 300m <sup>2</sup>	If not in a residential zone, can have a maximum floor area of 300m <sup>2</sup>  If in a residential zone, must be setback 1m from any boundary	Must be at least 3m away from any boundary	If not in a residential zone, can have a maximum floor area of 300m <sup>2</sup>  If in a residential zone, must be setback 1m from any boundary	Must be at least 3m away from any boundary	Must be setback 3m from any boundary unless approval has been issued by the council or public authority that own or manage the land
<b>Duration on site</b>	On site for a total of 7 days and must be removed 2 days after the use has finished.	On site for a total of 7 days and must be removed 2 days after the use has finished.  Maximum 30 days on site per calendar year	On site for a total of 7 days and must be removed 2 days after the use has finished.	On site for a total of 7 days and must be removed 2 days after the use has finished.  Maximum 30 days on site per calendar year	On site for a total of 7 days and must be removed 2 days after the use has finished.	On site for a total of 7 days and must be removed 2 days after the use has finished.