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## **Checklist for *Swimming Pools* under the NSW Housing Code Zones R1 - 4 and RU5**

### **Introduction**

In 2008, the NSW State Government introduced a new provision for the assessment of development of a minor nature that, if it meets certain prescribed standards, will have minimal environmental impact. The provisions are contained in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the SEPP). The SEPP includes a document entitled the Housing Code (the Code).

The SEPP restricts development under the Code by limiting the application of the Code to certain land that is not of an environmentally sensitive nature or to sites that are not otherwise affected by such restriction as significant heritage issue or high levels of aircraft noise levels.

These land restrictions can be identified through a Section 10.7 Planning Certificate that can be generally applied for online from your local council. It is important to identify early whether any restrictions effect your site – so apply for the certificate as your first step in considering complying development.

The Code includes development standards applicable to development that, if complied with, will enable applicants to apply for a complying development certificate instead of applying for a development consent and construction certificate.

This will enable applicants to save valuable time and money when undertaking house renovations and construction of new homes that meet the strict requirements contained in the Code.

This edition of the checklist includes all amendments to the SEPP at the time of printing (including those that took effect on 1 September 2022).

The following checklist is a summary of the requirements of the SEPP and Housing Code and is to be used primarily for the assessment of development for compliance with the Code. The Code includes diagrams that may assist in further understanding the development standards of the Code. The diagrams and Notes in the Code and this checklist are for advisory purposes only.

When you are considering designing your development to comply with the Code you should obtain a copy of the Code and the SEPP from the NSW Department of Planning or through their website.

## Important definitions

**ancillary development** means any of the following that are not exempt development under this Policy:

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

**attached** in relation to a building or structure means not more than 900mm from another building or structure.

**attached development** means any of the following, if it is situated not more than 900mm from a dwelling house to which it relates and is not exempt development for the purposes of this Policy:

- a) access ramp, retaining wall, driveway, pathway, paving, awning, blind, canopy and retaining wall,
- (b) garage, carport, hardstand, rainwater tank, balcony, a basement, deck, patio, pergola, terrace or verandah,
- (c) driveway, hardstand space, pathway or paving,
- (d) cabana, shed, cubby house, fernery, garden shed, gazebo or greenhouse.

**battle-axe lot** means a lot that has access to a road by an access laneway.

**building line** means the line of the existing or proposed external wall of a building (other than any ancillary development, attached development or detached development) closest to the property boundary adjacent to:

- (a) the primary road of the lot, or
- (b) in the case of a battle-axe lot, the rear boundary of the dwelling house on the lot in front of the battle-axe lot, or
- (c) any other stated boundary of the lot.

**detached** - in relation to a building or structure that is complying development, means more than 900mm from another building or structure.

**detached development** means any of the following, if it is situated more than 900mm from a dwelling house to which it relates and is not exempt development under this Policy:

- (a) access ramp, pathway, paving driveway, hard stand space,
- (b) garage, carport, shed, cabana, cubby house, fernery, garden shed, gazebo or greenhouse, detached studio,
- (c) awning, blind or canopy, deck, patio, pergola, terrace or verandah, screen, shade structure,
- (d) rainwater tank (above ground) and retaining wall,

and any fence, swimming pool or spa pool and child-resistant barrier that is not exempt development under the Policy.

**dwelling house** means 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, attached development, detached development or exempt development under this Policy.

**flood control lot** means a lot to which flood related development controls apply in respect of development for the purposes of industrial buildings, commercial premises, dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (other than development for the purposes of group homes or seniors housing).

**landscaped area** means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

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

**parallel road** means, in the case of a lot that has boundaries with parallel roads, the road that is not the primary road.

**parallel road lot** means a lot that has boundaries with 2 parallel roads, not including a lane.

**primary road** means the road to which the front of a dwelling house, or a main building, on a lot faces or is proposed to face, and includes any road that intersects with that road at an angle of more than 135 degrees and with which the dwelling house or main building has contiguous boundaries.

**secondary road** means, in the case of a corner lot that has boundaries with adjacent roads, the road that is not the primary road.

**setback** means the horizontal distance between the relevant boundary of the lot and the building line.

**setback area** means the area between the building line and the relevant boundary of the lot.

## General requirements for complying development

To be complying development, the development must:

- a) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is proposed and not be Exempt Development under the Policy.
- b) not be on land that is critical habitat, or
- c) not be on land that is wilderness area, or
- d) not be carried out on land that:
  - (i) comprises an item that is listed on the State Heritage Register under the Heritage Act 1977 or on which such an item is located, or
  - (ii) is subject to an interim heritage order under that Act or on which is located an item that is so subject, or
  - (iii) is identified as an item of environmental heritage or a heritage item by an environmental planning instrument (EPI) or on which is located an item that is so identified,

Despite the above, if development meets the requirements and standards specified by this Policy and that development has been granted an exemption under the Heritage Act 1977, or is subject to an exemption under the Act the development is complying development under this Policy.

If an item listed on the State Heritage Register is not located on, or does not comprise, the whole of the relevant land the exclusion only applies to the part of the land that is described and mapped on that register.

If the item is only located on part of a lot and only identified as an item of environmental heritage in an EPI, the exclusion applies only to the part of the land that is described and mapped on that EPI.

- e) except as otherwise provided by this Policy, not be on land that is within an environmentally sensitive area.
- f) to be complying development for the purposes of this Policy, the development must:
  - i) not be exempt development under this Policy, and
  - ii) meet the relevant provisions of the *Building Code of Australia*, and
  - iii) must not require an environment protection licence within the meaning of the Protection of the Environment Operations Act, and
  - iv) must not be designated development, and

v) before the complying development certificate is issued, have an approval, if required by the Local Government Act 1993, for:

(A) an on-site effluent disposal system if the development is undertaken on unsewered land, and

(B) an on-site stormwater drainage system, and

vi) before the complying development certificate is issued, have written consent from the relevant roads authority (if required under section 138 of the Roads Act 1993) for the building of any kerb, crossover or driveway, and

vii) if it is the alteration or erection of improvements on land in a mine subsidence district within the meaning of the Mine Subsidence Compensation Act 1961, have the prior approval of the Mine Subsidence Board, and

viii) if it involves the removal or pruning of a tree or other vegetation that requires a permit or development consent - before the complying development certificate is issued, have a permit or development consent for that removal or pruning (may not apply to certain trees or vegetation near complying development. See Housing Code for exemptions).

ix) comply with AS 2021—2000, *Acoustics—Aircraft noise intrusion—Building siting and construction* if it is the erection of a new dwelling house or an addition to a dwelling house on land in the 20-25 ANEF contours.

## **Land on which complying development under the Code may not be carried out**

The development must not be carried out on:

i) land within a heritage conservation area or a draft heritage conservation area, unless the development is a detached outbuilding, detached development (other than a detached studio) **or swimming pool**, or

ii) land that is reserved for a public purpose by an environmental planning instrument, or

iii) land identified on an Acid Sulfate Soils Map as being Class 1 or Class 2, or

iv) land that is subject to a biobanking agreement under Part 7A of the Threatened Species Conservation Act or a property vegetation plan approved under the Native Vegetation Act, or

v) land identified by an environmental planning instrument as being within a buffer area, a river front area, an ecologically sensitive area, on environmentally sensitive land or within a protected area,

vi) land that is identified by an environmental planning instrument, a development control plan or a policy adopted by the council as being or affected by a coastline hazard, a coastal hazard or a coastal erosion hazard,

vii) land in a foreshore area, or

viii) land that is in the 25 ANEF contour or a higher ANEF contour, unless the development is only for the erection of ancillary development, attached development or detached development, or the alteration of, or an addition to, ancillary development, attached development or detached development, or

ix) land that is declared to be a special area *under the Water NSW Act 2014*, or

x) unsewered land:

xi) land to which State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 applies, if that development will result in an increase to the number of bedrooms on the site or a site disturbance area of more than 250m<sup>2</sup>, or in any other drinking water catchment identified in any other environmental planning instrument.

Complies  Yes  No

## Covenants

The SEPP suspends agreements, covenant or other similar instrument that restricts the carrying out of that development that would otherwise prevent a complying development certificate to be issued except covenants, agreements and the like imposed or required by a council that are consistent with or not dealt with in the development standards of the SEPP, required to be imposed by another planning instrument, imposed by an owner, or previous owner, of the land or imposed through specified Acts.

You should ensure that all covenants are identified prior to submission of a complying development certificate application.

## Assessment

### Part 1

The following pages include a summary of the Housing Code that can be used to determine if your application can qualify as complying development under the Code.

The tables on the following pages include check boxes that you can use to identify which of the standards are applicable to your proposed development and whether the proposal complies with the standards.

If the proposal does not comply with all the relevant standards and you wish to submit a complying development application – you will need to amend the proposal so that it complies with the Code.

If an application does not comply with all the relevant standards – it cannot be approved as complying development. In this case you will need to lodge a development application and an application for a construction certificate not a complying development certificate application.

When you submit your complying development certificate application you should submit this completed assessment sheet to demonstrate that you have fully considered all the standards in respect to your proposal. You will also need to supply a copy of a current Section 10.7 Planning Certificate issued through your local council.

Additionally, a copy of your land title and any covenants that are included on the title should also be submitted with the application.

## 1. Development that is complying development under this code

The following development is complying development under this code:

- (a) the erection of a new 1 or 2 storey dwelling house and any attached development,
- (b) the alteration of, or an addition to, a 1 or 2 storey dwelling house (including any addition that results in a 2 storey dwelling house) and any attached development,
- (c) the erection of detached development and the alteration of, or an addition to, any detached development.

## 2. Lot requirements

(1) Complying development specified for this code may only be carried out on a lot that meets the following requirements:

- (a) the lot must be in Zone R1, R2, R3, R4 or RU5,
- (b) the area of the lot must not be less than 200m<sup>2</sup>,
- (c) the width of the lot must be at least 6m measured at the building line,
- (d) there must only be 1 dwelling house on the lot at the completion of the development other than for a secondary dwelling that is the subject of a consent or a complying development certificate,
- (e) the lot must have lawful access to a public road at the completion of the development,
- (f) if the development is on a battle-axe lot—the lot must be at least 12m by 12m (not including the access laneway) and must have an access laneway that is at least 3m wide,
- (g) if the development is on a corner lot—the width of the primary road boundary of the lot must be at least 6m.

(2) Complying development for a swimming pool may be carried out on a lot:

- (a) if a dwelling house exists on the lot—at any time, or
- (b) if there is a current development consent or complying development certificate for the construction of a dwelling house on the lot—before the construction of the dwelling house.

Complies  Yes  No

### 3. Landscape development standards

(1) The minimum landscaped area that must be provided on a lot is shown in the following table:

<b>Lot area</b>	<b>Minimum landscaped area</b>
200m <sup>2</sup> –300m <sup>2</sup>	10% of lot area
>300m <sup>2</sup> –450m <sup>2</sup>	15% of lot area
>450m <sup>2</sup> –600m <sup>2</sup>	20% of lot area
>600m <sup>2</sup> –900m <sup>2</sup>	30% of lot area
>900m <sup>2</sup> –1,500m <sup>2</sup>	40% of lot area
>1,500m <sup>2</sup>	45% of lot area

(2) Each landscaped area must have a minimum width and length of 1.5m.

(3) The minimum landscaped area calculated in accordance with subclause (1) must be provided as follows:

- (a) if the lot width measured at the building line is 18m or less—25% of the area forward of the building line must be landscaped,
- (b) if the lot width measured at the building line is more than 18m—50% of the area forward of the building line must be landscaped,
- (c) 50% of the minimum landscaped area must be located behind the building line.

(4) The minimum area of principal private open space that must be provided on a lot is shown in the following table:

<b>Lot width (measured at the building line)</b>	<b>Minimum principal private open space</b>
6m–10m	16m <sup>2</sup>
>10m	24m <sup>2</sup>

(5) This clause does not apply to complying development that is the alteration of, or an addition to, a dwelling house or attached development if the development does not:

- (a) increase the footprint of the dwelling house or attached development, or
- (b) decrease the landscaped area on the lot.

Proposal \_\_\_\_\_

Complies  Yes  No  NA



#### 4. Detached decks, patios, pergolas, terraces and verandahs

- (1) The maximum finished floor level for any detached deck, patio, pergola, terrace or verandah is 600mm above ground level (existing).
- (2) A detached deck, patio, pergola, terrace or verandah must have a minimum setback from the rear boundary as shown in the following table:

Lot area	Minimum setback from rear boundary
>200m <sup>2</sup> –900m <sup>2</sup>	900mm
>900m <sup>2</sup> –1,500m <sup>2</sup>	1.5m
>1,500m <sup>2</sup>	2.5m

#### 5. Specific requirements for swimming pools

- (1) A swimming pool must be for private use and associated with a dwelling house.
- (2) Water from a swimming pool must be discharged in accordance with an approval under the [Local Government Act 1993](#) if the lot is not connected to a sewer main.
- (3) The pump must be housed in an enclosure that is soundproofed.
- (4) Coping and decking around a swimming pool must not be more than:
  - (a) 1.4m above ground level (existing), and
  - (b) 300mm wide if the coping is more than 600mm above ground level (existing).
- (5) Decking around a swimming pool must not be more than 600mm above ground level (existing).
- (6) A swimming pool must be located behind the building line of the dwelling house.
- (7) The swimming pool water line must have a setback of at least 1m from a side or rear boundary.
- (8) if the swimming pool is being constructed in a heritage conservation area or a draft heritage conservation area the swimming pool must be located:
  - (a) behind the building line of the dwelling house that is adjacent to the rear boundary of the lot, and
  - (b) no closer to each side boundary than the dwelling house.

#### 6. Specific requirements for fences

- (1) A fence may be erected on a lot under this code if it is not constructed or installed:
  - (a) on a lot, or along a common boundary of a lot that contains a heritage item or a draft heritage item, or

(b) along the boundary of, or within the setback area of, a primary or secondary road within a heritage conservation area or draft heritage conservation area.

(2) A fence erected behind the building line on a lot must:

(a) not be higher than 1.8m above ground level (existing), and

(b) not incorporate barbed wire in its construction or be electrified, and

(c) if it includes an entrance gate—not have a gate that opens outward, and

(d) if it is constructed of metal components—be of low reflective, factory pre-coloured materials, and

(e) if it is on a sloping site and stepped to accommodate the fall in the land—be no higher than 2.2m above ground level (existing) at each step, and

(f) be designed so as not to restrict the flow of any floodwater.

(3) A fence erected on bush fire prone land must be constructed of non-combustible material.

## **7. Earthworks, retaining walls and structural support**

Excavation for the purposes of development under this code must not exceed a maximum depth, measured from ground level (existing), of:

(a) if located not more than 1m from any boundary—1m, and

(b) if located more than 1m but not more than 1.5m from any boundary—2m, and

(c) if located more than 1.5m from any boundary—3m.

Despite the above, the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).

Fill must not exceed a maximum height, measured from ground level (existing), of:

(a) if the fill is for the purposes of the erection or alteration of, or an addition to, a dwelling house under this code—1m, or

(b) if the fill is for any other purpose under this code—600mm.

If the height of fill is contained wholly within the footprint of a dwelling house or any attached development or detached development is not limited.

Fill that is higher than 150mm above existing ground level and is not contained wholly within the footprint of a dwelling house or any attached development or detached development is limited to 50% of the landscaped area of the lot.

The finished ground level of the fill must not be used to measure the height of any dwelling house or any attached development or detached development under this code.

Support for earthworks more than 600mm above or below ground level (existing) must take the form of a retaining wall or other structural support that:

- (a) a professional engineer has certified as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load, and
- (b) has been designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and
- (c) has adequate drainage lines connected to the stormwater drainage system for the site, and
- (d) does not have a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and
- (e) is separated from any other retaining wall or structural support on the site by at least 2m, measured horizontally, and
- (f) has been installed in accordance with any manufacturer's specifications, and
- (g) if it is an embankment or batter—has a toe or top that is more than 1m from any side or rear boundary.

**Complies**  **Yes**  **No**  **NA**

## 8. Drainage

All stormwater collecting as a result of the carrying out of development under this code must be directed by a gravity fed or charged system to:

- (a) a public drainage system, or
- (b) an inter-allotment drainage system, or
- (c) an on-site disposal system.

**Complies**  **Yes**  **No**  **NA**

## 9. Setbacks of swimming pools from protected trees

A complying development certificate is taken to satisfy any requirement under this Policy for a permit or development consent to remove or prune a tree or other vegetation on the lot if:

- (a) the tree is not listed on a register of significant trees kept by the council, and

(b) the tree or vegetation will be within 3m of any building that has an area of more than 25m<sup>2</sup>, and

(c) the tree or vegetation has a height that is less than:

(i) for development that is the erection of a dwelling house—8m and is not required to be retained as a condition of consent, or

(ii) in any other case—6m.

Development under this code must be at least 3m from each protected tree on the lot (measured from the base of the trunk of the tree).

However, the following development can be located within 3m of a protected tree if works do not involve excavation or fill of more than 150mm below or above ground level (existing):

(a) an access ramp,

(b) a driveway, pathway or paving,

(c) an awning, blind or canopy,

(d) a fence, screen, or child-resistant barrier associated with a swimming pool or spa pool.

A separate permit or development consent may be required if the branches or roots of a protected tree on the lot or on an adjoining lot are required to be pruned or removed.

**Complies**  **Yes**  **No**  **NA**

### Part 3

The Policy provides specific standards for properties that are flood liable (see definitions at the front of the check sheet).

### Flood Control Lots

Development under this code must not be carried out on any part of a flood control lot, other than a part of the lot that the council or a professional engineer who specialises in hydraulic engineering has certified, for the purposes of the issue of the relevant complying development certificate, as not being any of the following:

(a) a flood storage area,

(b) a floodway area,

(c) a flow path,

(d) a high hazard area,

- (e) a high-risk area.

The following standards apply to development on a flood control lot:

- (a) if there is a minimum floor level adopted in a development control plan by the relevant council for the lot, the development must not cause any habitable room in the dwelling house to have a floor level lower than that floor level,
- (b) any part of the dwelling house or any attached development or detached development that is erected at or below the flood planning level is constructed of flood compatible material,
- (c) any part of the dwelling house and any attached development or detached development that is erected is able to withstand the forces exerted during a flood by water, debris and buoyancy up to the flood planning level (or if an on-site refuge is provided on the lot, the probable maximum flood level),
- (d) the development must not result in increased flooding elsewhere in the floodplain,
- (e) the lot must have pedestrian and vehicular access to a readily accessible refuge at a level equal to or higher than the lowest habitable floor level of the dwelling house,
- (f) vehicular access to the dwelling house will not be inundated by water to a level of more than 0.3m during a 1:100 ARI (average recurrent interval) flood event,
- (g) the lot must not have any open car parking spaces or carports lower than the level of a 1:20 ARI (average recurrent interval) flood event.

The above requirements under (c) and (d) are satisfied if a joint report by a professional engineer specialising in hydraulic engineering and a professional engineer specialising in civil engineering states that the requirements are satisfied.

In this clause:

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

***flood planning level*** means:

- (a) the flood planning level adopted by a local environmental plan applying to the lot, or
- (b) if a flood planning level is not adopted by a local environmental plan applying to the lot, the flood planning level adopted in a development control plan by the relevant council for the lot.

***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*.

Complies  Yes  No  NA