

Remedial Works in Residential Strata Buildings – Impact of Legislative Changes

The State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial Development and Other Matters) 2013 (“Amending SEPP”) commenced on 22 February 2014, amending the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (“SEPP”) and repealing or amending a number of other existing SEPPs. Despite its title, the amending SEPP has significant impact for works in residential strata schemes, including the approvals required to carry out defect rectification works.

The changes most relevant to remedial works in residential strata buildings involve greater scope for allowing, as complying development:

- Works involving internal alterations to foyers and other common areas.
- Strata subdivision, where there are several dwellings at ground level.

This can be very helpful where the development would otherwise require approval, i.e. it does not constitute repairs and maintenance or exempt development. Previously, the complying development certificate (“CDC”) process provided little or no help with approval of remedial works to common property areas, as distinct from remedial works within lots, largely due to the reference to internal or external alterations to a “dwelling”. However, this will depend on the nature of the work, e.g. the CDC process cannot be used to permit “alternative solutions”, as only rectification works complying with “deemed to satisfy” provisions can be approved by CDC. In that case, the best approach may be to attempt to persuade the Council’s compliance officer to issue an order requiring rectification works in accordance with the proposed alternative solution.

More generally, the Amending SEPP and associated legislative changes involve:

- A new Commercial and Industrial Alterations Code, expanding the CDC process to cover, in relation to most existing commercial and industrial properties, a wide range of internal alterations and new uses of similar or lower intensity.
- A new Commercial and Industrial (New Buildings and Additions) Code, expanding the CDC process to cover a wide range of new construction and alterations to existing buildings on industrially zoned land.
- A new Fire Safety Code, permitting some fire safety systems to be approved as complying development.
- A new Advertising and Signage Exempt Development Code.

- A new Temporary Uses and Structures Exempt Development Code.
- The SEPP (Temporary Structures) 2007 being renamed the SEPP (Miscellaneous Consent Provisions) 2007 and substantially amended.
- Substantial amendments to the General Housing Code, Rural Housing Code and Housing Alterations Code.
- Changes to the General Exempt Development Code, adding more development types and amending standards for some existing development types.
- Amendments to the Environmental Planning and Assessment Regulation 2000 to streamline the CDC process, including in relation to neighbour notification, approval times, section 149 certificates and information requirements.

Key takeaways

- The Amending SEPP has expanded the scope of complying development for remedial works in residential strata buildings.
- Internal alterations to common areas may now qualify as complying development under the new regulations.
- The CDC process has been streamlined to facilitate approvals for remedial works.
- New codes have been introduced that affect various aspects of development and alterations in NSW.
- The document highlights the importance of understanding compliance requirements for effective remedial works.

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**Prepared by Bannermans Lawyers
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