

# Is Installing an Air-Conditioning Unit Exempt Development?

## Installing an air-conditioner condenser unit and associated work more than 1.8 metres above the natural ground might not be exempt development, why so?

Individual buildings will need to obtain specialist advice to determine if these works are exempt development, but some reasons why it may be exempt include (not exhaustively):

1. If there is no current Annual Fire Safety Statement or Fire Safety Certificate lodged with either the Council and/or the Fire Brigade the State Environmental Planning Policy (*Exempt and Complying Development Codes*) 2008 (SEPP) does not apply. This is due to 1.16(2) of Part 2 Division 1 of SEPP 8, which requires:
  - a) *the building has a current fire safety certificate or fire safety statement, or*
  - b) *no fire safety measures are currently implemented, required or proposed for the building.*
2. Part 59 of Ordinance 70 issued under the Local Government Act 1919 (NSW) does not require buildings with council approval prior to 1 July 1988 (pre-1988 building) to submit annual fire safety statements. This applies to schemes SP1 to approximately 33,200.
3. Local environmental plans for the relevant Council which predate September 2005 may specify that the proposed works are complying development which would override the SEPP.
4. The SEPP provides that for the works to be exempt it must meet the deemed to satisfy provisions in the National Construction Code. For more details check out our article [The NCC – It's Now Free](#)
5. Assuming all of the above is met, the SEPP provides that for the installation of air-conditioning to be exempt development the development standards below must be met.

Subdivision 3 - Air-conditioning units	
<p>2.5 Specified development</p> <p>The construction or installation of an air-conditioning unit is development specified for this code.</p> <p>Note—</p> <p>For evaporative cooling units see clause 2.30A.</p>	<p>2.6 Development standards</p> <p>(1) The standards specified for that development, if for residential uses only, are that the development must—</p> <ul style="list-style-type: none"> <li>a) not be located on the wall or roof of a building that faces the primary road, or forward of the building line to the primary road, and</li> <li>b) be located at least 450mm from each lot boundary, and <ul style="list-style-type: none"> <li>(b1) be located at least 1m from bedrooms of adjoining residences, and</li> </ul> </li> <li>c) subject to paragraph (g), be attached to the external wall of a building or ground mounted, and</li> <li>d) be not higher than 1.8m at its highest point above ground level (existing), and</li> <li>e) not involve work that reduces the structural integrity of the building, and</li> <li>f) not reduce the existing fire resistance level of a wall, and <ul style="list-style-type: none"> <li>(f1) be designed so as not to operate — <ul style="list-style-type: none"> <li>(i) during peak time— at a noise level that exceeds 5 dB(A) above the ambient background noise level measured at any property boundary, or</li> <li>(ii) during off peak time— at a noise level that is audible in habitable rooms of adjoining residences, and</li> </ul> </li> </ul> </li> <li>g) if it is constructed or installed on or in a heritage item or a draft heritage item—be ground mounted, and</li> <li>h) if it is constructed or installed on or in a heritage item or a draft heritage item or in a heritage conservation area or a draft heritage conservation area—be installed at or behind the rear building line.</li> </ul> <p>(1A) The standards specified for that development, if for purposes other than residential uses only, are that the development must—</p> <ul style="list-style-type: none"> <li>a) not be located on the wall or roof of a building that faces the primary road, or forward of the building line to the primary road, and</li> <li>b) not be built into any external wall unless the development is more than 3m from each side and rear boundary and 6m from any other building on the lot, and</li> <li>c) not involve work that reduces the structural integrity of the building, and</li> <li>d) not reduce the existing fire resistance level of a wall or roof, and</li> </ul>

- (d1) be designed so as not to operate —
- (i) during peak time — at a noise level that is more than 5 dB(A) above the ambient background noise level measured at any property boundary, or
  - (ii) during off peak time — at a noise level that is audible in habitable rooms of adjoining residences, and
- e) if it is constructed or installed on or in a heritage item or draft heritage item — not be wall mounted, and
- f) if it is constructed or installed in a heritage conservation area or a draft heritage conservation area — be located behind the building line of any road frontage.

(2) Any opening created by the construction or installation of the development must be adequately waterproofed.

Note —

For further information about noise control see the Noise Guide for Local Government (ISBN 978 1 74232 942 0) published by the Department of Environment, Climate Change and Water NSW in October 2010.

If the works are not exempt development, those works may not be excluded from compliance with the Design and Building Practitioners Act. For more information, check out our article [Existing Construction Projects: Do they Need to comply with the Design and Building Practitioners Act 2020?](#)

We can assist with advice, applications and town planning certificates to support relevant applications.

Why is it important to get planning approval? There's many reasons, including to avoid:

- Substantial penalties and stop work, removal or remediation orders can be issued under the Environmental Planning & Assessment Act 1989;
- Stop work, removal or remediation orders under the Design and Building Practitioners Act 2020 can be imposed on the building practitioner;
- The likely contractual ability of a contractor to terminate the contract; and
- Exclusion from insurance in respect of the illegal works.

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