

Is Replacing External Waterproofing Exempt Development?

Replacing an external above ground waterproofing membrane isn't exempt develop, why so?

Individual buildings will need to obtain specialist advice to determine if these works are exempt development, but some of the reasons why it may not 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 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. But even if the scheme can meet that requirement, the proposed works need to comply with the deemed to satisfy conditions currently in place and many buildings will not have waterproofing measures that would comply with **"Waterproofing membranes for external above ground works use must comply with AS 4654.1 and AS 4654.2 which requires amongst other things:**
 - a) Inadequate or non-existence balcony drainage to terminate the membrane into.
 - b) Inadequate step down height to terminate the waterproofing under the door sills.
 - c) No adequate fall to the substrate.
 - d) No existing drainage flanges to the drainage points.
 - e) Existing drainage to planter boxes is non-compliant.
 - f) Some roofs are required to be non-combustible and if the waterproofing to the roof is exposed than a fire engineered solution is required.

So the upshot is, the scheme will be looking to see what type of approval is required, if any. It's also likely that these works are not excluded from compliance with the Design and Building Practitioners Act 2020. 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:



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

Page 1 of 2

- 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.

Prepared by Bannermans Lawyers
16 November 2022