

Is Replacing Roof or Wall Cladding Exempt Development?

Replacing roof or wall cladding, including combustible cladding 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 of the reasons why it may be not 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. But even if the scheme can meet that requirement, the SEPP excludes cladding from being exempt development unless it meets the development standards below.

2.53 Specified development

A minor external non-structural building alteration, such as the following—

- a) painting, plastering, cement rendering, cladding, attaching fittings or decorative work,
- b) the replacement of an external window, glazing areas or a door (other than those on bush fire prone land),
- c) the repair to or replacement of a non-structural wall or roof cladding,
- d) the installation of a security screen or grill to a door or window or a security door,

2.54 Development standards

The standards specified for that development are that the development must—

- a) not comprise the making of, or an alteration to the size of, any opening in a wall or roof, such as a doorway, window or skylight, and
- b) not reduce the existing fire resistance level of a wall or roof, and
- c) if located on bush fire prone land—
 - (i) be adequately sealed or protected to prevent the entry of embers, and
 - (ii) use equivalent or improved quality materials, and

<ul style="list-style-type: none"> e) the repair to or replacement of a balustrade, f) restumping or repairing structure foundations without increasing the height of the structure, g) is development specified for this code if it is not 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. 	<ul style="list-style-type: none"> d) not affect any existing fire resisting components of the building, and (d1) if the development involves cladding or is attaching fittings or decorative work— <ul style="list-style-type: none"> (i) not be carried out on any building other than a 1 or 2 storey dwelling house, attached development or detached development, and (ii) not involve the use of external combustible cladding, and e) not affect the means of egress from the building in an emergency, and f) if it is the installation of a security screen or grill to a door or window or a security door— <ul style="list-style-type: none"> (i) be for the purposes of a dwelling, or (ii) be for any other purpose so long as— <ul style="list-style-type: none"> A. the screen or grill is installed for a door or window that is situated at least 5m from the boundary of any road, or B. the security door is installed at least 5m from the boundary of any road, and g) not be under an awning, unless the awning complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia. <p>Note— See separate entry for skylights.</p>
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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:

- 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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