

Exempt and complying development within existing cemeteries

This document answers frequently asked questions about proposed changes to streamline the planning process for minor works that support the ongoing operation of NSW's cemeteries.

What is being proposed?

The department is proposing to introduce an exempt and complying development framework for maintenance and other minor ancillary works within existing cemeteries by amending the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).

Who can use the new pathways for maintaining cemeteries?

The minor ancillary works specified in the framework may be carried out as exempt or complying development by any person within an existing cemetery.

What is exempt and complying development?

Exempt development is minor, low-impact development that can be undertaken without the need for planning or building approval if certain requirements are met. The exempt development pathway is for minor ancillary works that do not need planning or construction approval from a council or private certifier, do not impact services or building elements regulated by the National Construction Code and do not pose a risk to public safety.

Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by a council or private certifier. The council or an accredited certifier can issue a complying development certificate without needing a full development application if certain requirements are met. The complying development pathway is proposed for minor ancillary works that require certification or oversight because of their scale or structural features.

What are minor ancillary works?

These are low-impact works for the maintenance or ongoing operation of existing cemeteries that are minor in scale and environmental impact but essential to the long-term upkeep of cemeteries.

These works include:

- accessible entrances
- ash gardens
- construction of small buildings and structures such as amenities blocks

- decks, terraces and pergolas
- demolition
- driveways, hardstand and carparks
- earthworks
- fencing
- landscaping and landscape structures
- minor building alterations and additions - includes painting, cladding, repair and replacement of building fabric, etc.
- rainwater tanks
- sheds, maintenance facilities and carports
- signage
- vaults, crypts, sculptures, artwork, columbariums.

The development standards proposed for each exempt and complying development type ensure the above works will have minimal environmental impacts including traffic generation, the stability of the ground conditions, site hydrology or other environmental aspects which require merit assessment.

Will the proposed framework reduce flexibility for cemetery operators?

No. The proposed framework supplements existing provisions available under the Transport and Infrastructure SEPP and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, which will remain available to cemetery operators.

The proposed framework provides a tailored set of exempt and complying development types that respond to the common site constraints and operational needs of cemeteries. The framework will be available to all cemetery operators and all existing cemeteries.

How will heritage be protected in the approval process?

Cemeteries that are heritage listed are often excluded from using exempt or complying development pathways, regardless of how minor the proposed works are. This amendment will specify certain low-impact works as exempt if heritage impact is minimal. The works must also be consistent with any relevant heritage management documents such as a conservation management plan.

For development with a higher likelihood of impact on heritage, specific development standards must be complied with and, in some instances, the input of a heritage expert may be required to confirm the standards have been met.

The framework does not remove the requirement to obtain heritage approval under the *Heritage Act 1977*. If the proposed works are subject to a site-specific or general heritage exemption issued under that Act, the corresponding requirements of the exemption must also be met.

How will the proposed framework affect councils?

The proposal will free up planning resources for councils that would otherwise be committed to assessing straightforward development applications for low-impact minor works within cemeteries. Instead, council resources will be able to focus on other crucial local development applications such as for housing and industry. As cemetery operators, councils will also be able to utilise the new development pathways to undertake certain works within their cemeteries.

How will the department ensure that environmentally sensitive areas are protected?

The proposed framework will contain overarching controls and site requirements that must be met for both exempt and complying development. These will ensure that the scale and extent of works, individually and cumulatively, result in neutral or minor environmental impact. The controls also ensure that development that requires merit assessment or particularly technical considerations, cannot use the exempt or complying development pathways.

All new development applications must still comply with the notification requirements under the *Environmental Planning and Assessment Act 1979* and the council's community engagement strategy.

Will this amendment allow for expanded cemeteries or additional burials?

The proposed framework applies to low-impact works and it is not proposed to include increases in the number of burial plots, operational hours or visitor numbers of existing cemeteries. The framework will reduce unnecessary costs and time delays for cemeteries by simplifying the planning process for minor works. The proposal gives cemetery operators the consistency and certainty they need to support day-to-day operations.

The proposed framework follows on from previous work undertaken by the department in 2022 which introduced a state significant development (SSD) pathway for large-scale cemeteries. The SSD pathway facilitates new burial space and provides a consistent approach to the assessment of larger cemetery proposals.

When will the proposed changes take effect?

The department is seeking feedback on the proposal to ensure the proposed framework is fit-for-purpose. This feedback will be used to finalise an amendment to the Transport & Infrastructure SEPP.

The framework will come into effect once the amendment is approved by the Minister for Planning and Public Spaces and published on the NSW legislation website.

Where can I find out more information?

For more information, please visit our dedicated page on the [NSW Planning Portal](#) where you can also make a submission. The exhibition closes on Sunday 19 November 2023.

You can also email the Systems and Productivity Policy Team at:
systemsproductivity.policy@planning.nsw.gov.au.