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# Complying Development for Business and Industry: A Pocket Guide

For businesses wanting to use complying development

May 2023





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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# What is this guide about?

There are many business and industrial developments that can be completed without needing to submit a development application to council. Instead, they can be fast-tracked through a complying development approval process. Complying development can be approved in as little as 10 to 20 days by either a private certifier or a Council.

In order to receive a fast-tracked approval, both your property and development must be eligible and comply with the development standards outlined in the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

If you're considering a business or industrial development, this guide will provide you with valuable insight into the complying development approval pathway, including whether your property is eligible, which development types are available, and the key development standards to be met. There's also some insight into the types of developments that can be undertaken without any planning approval, which is known as exempt development.

Please note this guide is not meant to be comprehensive and does not include all the information necessary to determine whether a specific development proposal qualifies for complying development. For a more precise understanding, you will need to refer to the relevant planning controls or seek professional advice.



# Change the use of your building or premises

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## When is approval required?

If you plan on changing the use of a building or premises, you may not require planning approval if it is classed as exempt development. Exempt development usually applies if the new use is similar to the current approved use, such as a shop becoming a business premises or a warehouse becoming a light industry.

However, if the change of use is not classed as exempt development, you will need to obtain planning approval either with a complying development certificate or a development application to council. In most cases, change of use applications can be fast-tracked under complying development. This section will help you determine if your application is eligible for such approval.

If you also plan on making building alterations, a fitout, or an addition, you can combine these works with the change of use in a single complying development application. Keep in mind that building works will have different eligibility criteria and development standards that must be met, so be sure to refer to the other sections of this guide for a better understanding.



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## Eligibility for complying development

To be **eligible** for a change of use through complying development, certain conditions must be met:

- the building or premises must be in an employment, mixed-use or special purpose zone.
- the new use must be permitted on the site in the local environmental plan.
- the new use must be on the list of specified purposes that are eligible for a change of use. Most uses are on the list including commercial premises, industries, and warehouses. The full list is provided in [Appendix A](#).
- the land must not contain certain affections, such as heritage items or high-risk bushfire-areas.

A change of use is **not eligible** if it requires concurrence, is designated development or needs an environmental protection licence.

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## Development standards for complying development

There are a range of development standards that a change of use application will need to comply with, here are a few important ones to keep in mind:

### Building Code of Australia

It must comply with relevant requirements of the Building Code of Australia.

### Food and drink premises

If the new use is a food and drink premises, the patron capacity must not be more than 100.

### Gross floor area

Some uses have limitations on the gross floor area they are allowed to take up. They are:

- Amusement centres, creative industries, entertainment facilities, function centres, recreational facilities (indoor) – 1,000 square metres
- Retail areas included in an artisan food or drink industry
- Industrial retail outlets
- Office premises that are ancillary to another use
- Good repair and reuse premise

### Car parking

There is no requirement to provide additional car parking if the building or premises meets these conditions:

- It is located in one of these zones: E1, E2, MU1, SP1, SP3, SP5 or W4,
- It was built before 1 February 2022, and
- It has a floor area of less than 500 square metres.



If the building or premises does not meet these conditions, then car parking must be provided in accordance with the rates specified for the new use in the local environmental plan (LEP) or development control plan (DCP).

If there are no relevant car parking requirements in the LEP or DCP, then parking must be provided in accordance with the rates set out in the [Guide to Traffic Generating Development](#).

New car parking spaces will need to comply with the relevant Australian standards.



# Make alterations to your building or premises

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## When is approval required?

If you plan on making alterations to a building or premises, you may not require planning approval if it is classed as exempt development. There are a range of alterations that can be exempt development such as minor internal and external renovations and installing various types of plant. To be exempt development the works must strictly comply with the exempt development standards. However, if your alterations are not classed as exempt development, you will need to obtain planning approval either with a complying development certificate or a development application to council. This section will help you determine if your alterations are eligible for such approval.

Some examples of alterations that can be done as complying development include:

- Internal alterations such as fit-outs
- External alterations
- Installing ventilation systems
- Shop front upgrades
- Earthworks and retaining walls
- Driveways and parking areas
- Click and collect bays, drive-throughs, and good collection lockers





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## Eligibility for complying development

Most alterations to a business or industrial building can be done through complying development. However, there are certain conditions that may render an alteration ineligible. These include the need for concurrence or an Environmental Protection Licence, classification as "designated development," use of the building for residential accommodation, sex services premises, or restricted premises, as well as if the land contains a heritage item, high risk bushfire areas, or critical habitat and wilderness area.

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## Development standards for complying development

There are a range of development standards a building alteration application will need to comply with, here are a few important ones to keep in mind:

### **Building Code of Australia**

It must comply with relevant requirements of the Building Code of Australia.

### **Food and drink premises**

Food and drink premises must follow Australia Standard AS 4674-2004 for designing, constructing, and outfitting food premises and they must not involve barbecue or charcoal cooking.

### **External alterations**

External alterations are permitted in employment, mixed-use, and special purpose zones and must be for a specified purpose. Different development standards apply to external alterations depending on which zone they are in, refer to the new building and additions section for a better understanding.

### **Gross floor area**

Alterations must not increase the gross floor area of the building such as converting a loading area into proper usable floor space.

If you wish to increase the gross floor area, this is permitted in employment, mixed-use, and special purpose zones, but the eligibility criteria and development standards will be the same as for a building addition, so be sure to refer to the new building and additions section for a better understanding.

### **Mechanical ventilation systems**

Mechanical ventilation systems must not be higher than 1 metre above a pitched roof or 3 metres above a flat roof and must be setback more than 3.5 metres behind the building line to any boundary.

They are not permitted in heritage conservation areas and must not be for barbecue or charcoal cooking.

### **Shop front upgrades**

Upgrades to shop fronts must not reduce the area of windows or glass or increase the use of obscure glazing. They are not permitted in heritage conservation areas.

## Earthworks and retaining walls

The maximum depth of excavation is 3 metres or 1 metre on class 3 or 4 acid sulfate soils land.

The maximum amount of fill is 2 metres.

Earthworks and retaining walls are not permitted on flood control lots or lots that are identified as acid sulfate soil class 1 or 2.

## Driveways and parking areas

Driveways and parking areas must not involve more than 2 metres of cut and fill and must comply with the drainage requirements from Council's development control plan.

Construction must be in accordance with the Australian Standards for car parking areas.

## Click and collect bays

Click and collect bays can be provided as long as they don't reduce the number of car spaces by more than the lesser of:

- 20 car spaces, or
- 15% of the current spaces on the site.

Any car parking areas affected must comply with the Australian Standards.

## Drive-throughs

Drive-through facilities must meet the following criteria:

- be located behind the building line to any road frontage,
- not be near neighbouring residential properties, and
- not remove any car parking spaces.

Any car parking areas affected must comply with the Australian Standards.

## Goods collection lockers

Goods collection lockers can be provided as long as they are not more than 15 square metres in size, 3 metres in height, and are setback at least 3.5 metres from neighbouring properties.



# Construct a new building or an addition

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## When is approval required?

If you plan on constructing a new business or industrial building or constructing an addition to an existing building, you will need to obtain planning approval either with a complying development certificate or a development application to council. This section will help you determine if your application is eligible for a fast-tracked complying development approval.

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## Eligibility for complying development

**To be eligible** to build a new business or industrial building or addition through complying development, certain conditions must be met:

- new buildings are only permitted in the E3, E4 and E5 employment zones
- additions are permitted in employment, mixed-use and some special purpose zones
- the use must be permitted on the site in the local environmental plan
- the use must be on the list of specified purposes that are eligible. Most uses are on the list including commercial premises, industries, and warehouses. The full list is provided in [Appendix A](#).

New buildings or additions are **not eligible** if they require concurrence, are designated development or need an environmental protection licence.

Also, land that contains the following affectations are **not eligible**:

- heritage item or draft heritage item
- heritage conservation area or draft heritage conservation area
- acid sulfate soils class 1 or class 2
- unsewered land within a drinking water catchment
- bushfire prone land with a bushfire attack level-40 or flame zone
- significant contamination
- critical habitat or wilderness area
- biobanking agreement or conservation agreement
- other environmental or coastal constraints



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## Development standards for complying development

The zoning of a site determines the development standards that apply to a new building or addition. To better understand the standards that will apply to your project, refer to the zoning category of your site below.

### E4 General Industrial and E5 Heavy Industrial zones

#### Gross Floor Area

The maximum gross floor area for new buildings or additions is 50,000 square metres.

However, a lower gross floor area limit applies to the following specific uses:

- Amusement centres, creative industries, entertainment facilities, function centres, recreational facilities (indoor) – 1,000 square metres
- Retail areas included in an artisan food or drink industry
- Industrial retail outlets
- Office premises that are ancillary to another use
- Good repair and reuse premise

#### Floor Space Ratio

The maximum floor space ratio is specified in the local environmental plan.

If there is no control for floor space ratio, then the maximum is 1:1.

#### Height

The maximum height is the greater of:

- the height specified in the local environmental plan; or
- 18 metres.

#### Setbacks

The front setback requirement is specified in the development control plan.

If there are no front setbacks specified, then the minimum front setbacks are:

- Classified roads (i.e. main roads) – 10 metres or local environmental plan (whichever is greater)
- Non-classified roads – 10 metres or the average setback of neighbouring buildings (whichever is lesser)
- Secondary road (for corner sites) – 3 metres

There are also side and rear setback requirements if the property adjoins a residential zone. The minimum setback from the residential zone boundary varies from 3 metres to 50 metres depending on the size and height of the new building or addition.

Setbacks are also required to adjoining public reserves, environmentally sensitive areas, and railway corridors.

### **Landscaping**

Landscaped areas and trees are required to be provided within the front setback area and the setback areas that are next to residential zones, public reserves, and environmentally sensitive areas.

### **Car parking**

Car parking must be provided in accordance with the rates specified for the use in the local environmental plan (LEP) or development control plan (DCP).

If there are no relevant car parking requirements in the LEP or DCP, then parking must be provided in accordance with the rates set out in the [Guide to Traffic Generating Development](#).

New car parking spaces will need to comply with the relevant Australian standards.



## E3 Productivity Support zone

### Gross Floor Area

The maximum gross floor area for new buildings or additions is 10,000 square metres.

However, a lower gross floor area limit applies to the following specific uses:

- Amusement centres, creative industries, entertainment facilities, function centres, recreational facilities (indoor) – 1,000 square metres
- Retail areas included in an artisan food or drink industry
- Industrial retail outlets
- Office premises that are ancillary to another use
- Good repair and reuse premise

### Floor Space Ratio

The maximum floor space ratio is specified in the local environmental plan.

If there is no control for floor space ratio, then the maximum is 1:1.

### Height

The maximum height is the lesser of:

- the height specified in the local environmental plan; or
- 21 metres.

If there is a dwelling on the neighbouring property, the maximum height reduces to 8.5 metres.

### Open Space

The amount of open space required depends on the classification of the lot as either infill or free standing and the number of storeys of the new building or addition. Infill lots are required to have 30% to 50% open space and free standing lots vary from 60 to 70%. Some of the open space will need to be landscaped.

### Setbacks

If there is residential on the neighbouring property, the building must be setback from that property at least 1.5 metres at the first storey, increasing to 4.5 metres at the third storey and above. Further setback requirements are specified in the Business Zone Design Guide.

### Landscaping

Landscaping must comply with the requirements of the development control plan.

### Car parking

Car parking must be provided in accordance with the rates specified for the use in the local environmental plan (LEP) or development control plan (DCP).

If there are no relevant car parking requirements in the LEP or DCP, then parking must be provided in accordance with the rates set out in the [Guide to Traffic Generating Development](#).

New car parking spaces will need to comply with the relevant Australian standards.



## Business Zone Design Guide

New buildings or additions in the E3 Productivity Support zone must be designed by an architect and be consistent with the design criteria in the [Business Zone Design Guide](#). The design guide covers areas such as overshadowing, privacy, landscaping, car parking, loading and waste.



## E1, E2, MU1, SP1, SP3, SP5 and W4 zones

### New buildings are not permitted in these zones

Only additions are permitted in these zones under complying development.

### Siting

The addition must be located behind the front building line of the building.

### Gross Floor Area

The maximum gross floor area for an addition is the lesser of:

- 50% of gross floor area of the building, or
- If the building is used for retail, 1,000 square metres, or
- If the building is used not used for retail, 2,500 square metres

Also, a lower gross floor area limit applies to the following specific uses:

- Amusement centres, creative industries, entertainment facilities, function centres, recreational facilities (indoor) – 1,000 square metres
- Retail areas included in an artisan food or drink industry
- Industrial retail outlets
- Office premises that are ancillary to another use
- Good repair and reuse premise

### Floor Space Ratio

The maximum floor space ratio is specified in the local environmental plan.

If there is no control for floor space ratio, then the maximum is 1:1.

### Height

The maximum height is the lesser of:

- the height specified in the local environmental plan; or
- 21 metres.

If there is a dwelling on the neighbouring property, the maximum height reduces to 8.5 metres.

### Setbacks

If there is residential on the neighbouring property, the building must be setback from that property at least 1.5 metres at the first storey, increasing to 4.5 metres at the third storey and above.

### Car parking

Car parking must be provided in accordance with the rates specified for the use in the local environmental plan (LEP) or development control plan (DCP).

If there are no relevant car parking requirements in the LEP or DCP, then parking must be provided in accordance with the rates set out in the [Guide to Traffic Generating Development](#).

New car parking spaces will need to comply with the relevant Australian standards.

# Appendix A: Specified Purposes

The list of specified purposes that are eligible for complying development under Part 5A of the Codes SEPP are:

- amusement centres
- boat building and repair facilities
- commercial premises
- community facilities
- depots
- entertainment facilities
- function centres
- health consulting rooms
- industries
- information and education facilities
- local distribution premises
- medical centres
- recreational facilities (indoor)
- storage premises
- vehicle body repair workshops
- vehicle repair stations
- veterinary hospitals
- warehouses or distribution centres
- waste or resource transfer stations

The following uses are **NOT** specified purposes:

- data centres
- funeral homes
- markets
- potentially hazardous industries, and potentially offensive industries, within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021
- pubs
- registered clubs
- restricted premises
- retail premises that sell firearms within the meaning of the Firearms Act 1996,
- roadside stalls
- sex services premises
- small bars

Definitions for these land use terms can be found in the dictionary of the Standard Instrument — Principal Local Environmental Plan.