

## Rules for exempt and complying development



### Change of use of premises to a retail shop as exempt or complying development

This document answers frequently asked questions about opening a retail shop and explains the relevant planning provisions set out in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (State Policy).

#### CHANGE OF USE OF PREMISES TO A RETAIL SHOP AS EXEMPT DEVELOPMENT

##### Do I need development consent to use an existing shop to sell merchandise?

The State Policy allows you to use an existing shop as a retail premises without having to obtain development consent as long as you meet all the relevant development standards. A [‘retail premises’](#) is a building or place for selling items by retail or hiring or displaying items to sell or hire out, whether the items are goods or materials (or whether they are also sold wholesale).

#### Things to consider



Water supply or sewerage services — approval from water utility, relevant council, or both



COUNCIL APPROVAL OR PERMIT FOR THE FOLLOWING:

- [pruning or removing a tree](#)
- stormwater drainage connection under [Section 68 of the Local Government Act 1993](#)
- signage projecting over a footway or public road under [Section 138 of the Roads Act 1993](#)

#### Restrictions



Refer to the State Policy for any land-based exclusions or local variations that may apply to the land

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[Clause 2.20B](#) of the State Policy sets out the list of development standards that you must fully satisfy before you begin operating your retail shop. Development standards are criteria that manage the impacts of your shop. Those criteria include:

- No building alterations are allowed except those that are exempt development.
- There must be no increase in gross floor area.
- You must comply with any existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management and landscaping.
- If no existing conditions apply to hours of operation, the premises must operate only between 7am to 7pm on any day.

Yes. The use must be permissible with consent under an environmental planning instrument that applies to the land. A council's local environmental plan is one such environmental planning instrument.

The applicable land-use table in the local environmental plan must state that council permits shops or commercial premises (that include retail premises) with consent.

Figure 1 provides an example of a land use table. In the figure, the underlined land uses indicate that council permits shops with consent. If you are unsure, contact your local council for help determining whether it permits your shop.

You can find the relevant environmental planning instrument or local environmental plan under 'environmental planning instruments' on the [NSW legislation website](#) or on the local council website.

Figure 1. Example land use table

**Zone B1 Neighbourhood Centre**

## 1 Objectives of zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To enable residential development that is well-integrated with, and promotes, community activity.

2 Permitted without consent

Nil

3 Permitted with consent

Boarding houses; Business premises; Car parks; Centre-based child care facilities; Community facilities; Environmental protection works; Group homes; Home businesses; Home industries; Home occupations; Hostels; Medical centres; Neighbourhood shops; Neighbourhood supermarkets; Oyster aquaculture; Places of public worship; Recreation areas; Respite day care centres; Restaurants or cafes; Roads; Seniors housing; Service stations; Shop top housing; Shops; Signage; Take away food and drink premises; Tank-based aquaculture; Veterinary hospitals

#### 4 Prohibited

Pond-based aquaculture; Any other development not specified in item 2 or 3

# Setting up a retail shop

## Rules for exempt and complying development

### Does the previous use of the premises need to be lawful?

Yes, the previous use needs to be lawful. A consent authority must have previously issued a development consent or complying development certificate. You can get a copy of the previous approval from your local council.

Councils can release certain information relating to a development file, such as development consents, construction certificates, occupation certificates, plans and reports, subject to copyright restrictions. The public can review these documents for free and you can get copies for a reasonable photocopying fee.

The previous use must not be an existing use as defined in [Section 4.65](#) of the Environmental Planning and Assessment Act 1979. An 'existing use' is one that a previous environmental planning instrument allowed and approved but that the government would no longer consider permissible since the start of a new environmental planning instrument.

### Can changes to my shop result in a change to Building Code of Australia classification?

The new use for the premises must not result in a [change of building classification](#) under the Building Code of Australia, unless the change of use is from a Class 5 building to a Class 6 building, and the building must meet all the relevant provisions of the building code for the new use.

### What options do I have if I cannot fully satisfy the exempt development standards?

If you cannot meet the exempt development standards in full, you may want to pursue the complying development pathway. This fact sheet provides information below about what you need to consider when seeking complying development approval.

### Should I seek professional help with my application?

Generally, it is unnecessary to engage a building or planning professional. However, in certain instances, a consulting town planner may need to help with your proposal. In most cases, your local council staff can help you with any questions you may have. Alternatively, you can call the NSW Department of Planning, Industry and Environment Codes Hotline on 13 77 88, or send us an email at [codes@planning.nsw.gov.au](mailto:codes@planning.nsw.gov.au).

### Do I need to engage a certifier?

Exempt development works do not require a certifier.

### Do I need to notify council that I have changed the use to a retail shop?

You do not need to notify your local council that you are opening a new retail shop.

#### Did you know?



Signage for your business may not require approval. Please refer to the [Advertising and Signage](#) page on the NSW Planning Portal for more information on installing signs as exempt development.

# Setting up a retail shop

## Rules for exempt and complying development

### USE OF A RETAIL SHOP AS COMPLYING DEVELOPMENT

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#### Can I change only from an existing shop to a new shop under complying development?

Complying development allows you to change from any of the following uses to a shop:

- Business premises
- Office premises
- Shop
- Food and drink premises
- Kiosk
- Medical centre

#### Do shops need to be allowed under councils existing planning controls?

Yes. The use must be permissible with consent under an environmental planning instrument that applies to the land. A council's local environmental plan is one such environmental planning instrument.

The applicable land use table in the local environmental plan must state that council permits shops or commercial premises (that include retail premises) with consent.

Figure 1 above provides an example of a land use table. In the figure, the underlined land uses indicate that council permits shops with consent. If you are unsure, contact your local council for help determining whether it permits your shop.

#### Does the previous use need to be lawful?

Yes, the previous use needs to be lawful. A consent authority must have previously issued a development consent or complying development certificate. You can get a copy of the previous approval from your local council.

#### I will be the first occupier of the shop. Can I still apply for complying development approval?

[Part 5](#) of the State Policy allows you to apply for the first use of the premises as a retail shop as long as you meet all of the development standards.

#### Can I make alterations and additions?

The State Policy considers installing a new or replacement awning, windows or skylights; a rubbish bin enclosure; or a business identification sign (projecting from the wall or freestanding) as complying development. You can carry out these types of development as complying development as long as you comply with the development standards in [Part 5](#) of the State Policy.

You may also build an addition to the rear of a commercial premises or externally alter a commercial premises as complying development under [Part 5A](#) of the State Policy.



# Setting up a retail shop

## Rules for exempt and complying development

### Should I seek professional help with my application?

We encourage you to engage a professional town planner and building designer who can help you make sure your proposal meets the required development standards. When your plans fully comply with these standards, you can lodge your application with your local council or private certifier.

### What happens once I lodge my application?

Once you have lodged your application, either your local council or an accredited certifier will assess it. If your development meets the specific development standards, council or the certifier can approve your complying development certificate in as few as 20 days. The certifier will register the complying development certificate on the NSW Planning Portal, and your local council will be notified accordingly.

#### Important facts



You need to check whether the building is suitable for occupation and use according to the Building Code of Australia classification. If you are proposing an increase to the area of the premises, you also need to confirm the building fire resistance performance and the structural integrity of awnings.



The number of car parking spaces you need to provide may increase when you change from one use to another. An existing development consent that applies to the land may stipulate these requirements, or they may vary between local government area policies. If you are unsure, check with council to see whether the local environmental plan or development control plan covers parking rates.

#### More information



Contact the Codes Hotline.

**Tel: 13 77 88**

**Email: [codes@planning.nsw.gov.au](mailto:codes@planning.nsw.gov.au)**

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*You should read this fact sheet in conjunction with our Exempt and complying development — FAQs*