

5.0 CODES

5.1 INTRODUCTION TO CODES

This section contains codes, which apply to development that is self assessable and code assessable, and that are also relevant to development which is impact assessable. The codes outline the standards of development applicable, by detailing performance criteria and (in most instances) providing acceptable solutions to satisfy the performance criteria specified.

There are three basic types of codes included in this Chapter:

5.1.1 General Codes

These may apply to any material changes of use, building works, reconfiguring a lot or operational works in all parts of the City.

CODES – GENERAL	PAGE
Airport Code	5-31
Biodiversity / Nature Conservation Code	5-41
Bushfire Risk Minimisation Code	5-46
Crime Prevention Through Environmental Design Code	5-88
Demolition Code	5-94
Environmental Nuisance by Noise and Light Code	5-99
External Works and Servicing Code	5-100
Filling or Excavation Code	5-104
Flood Prone Land Code	5-108
Heritage Place Code	5-122
Landscape Code	5-161
Parking and Access Code	5-214
Railway Noise Code	5-225
Reconfiguring a Lot Code	5-227
Signage Code	5-279
Steep or Unstable Land Code	5-312
Swimming Pool Code	5-320
Water Quality and Water Quantity Code	5-325



5.1.2 Land Use Codes

These codes apply to any material changes of use, building works or operational works for a specific use in any part of the City.

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CODES – LAND USE	PAGE
Aged Care Accommodation Code	5-27
Bed and Breakfast Code	5-37
Caravan / Cabin Park Code	5-53
Caretakers Residence Code	5-60
Child Care Code	5-64
Community Use Code	5-84
Home Occupation / Home Based Business Code	5-125
House Code	5-134
Industrial Use Code	5-140
Industry Self Assessment Code	5-150
Intensive Animal Husbandry Code	5-157
Market Code	5-182
Multi Unit Dwelling, Accommodation Building and Duplex Code	5-184
Residential – Small Lot Code	5-260
Residential Design – Character Code	5-265
Restricted Premises Code	5-269
Rural Use Code	5-271
Service Station Code	5-274
Sports and Recreation Code	5-298
Stables Code	5-303
Telecommunications Code	5-320

5.1.3 Location Codes

These apply to all development in specific planning areas in the City.

CODES – LOCATION	PAGE
Activity Centres Code	5-8
City Centre Code	5-68
Commercial Centres Self Assessable Code	5-82
Norbank Estate Special Use Area Code	5-198
Norman Road Residential Area Code	5-207

5.2 CODE STRUCTURE

Each code within the planning scheme contains the following components:

1. Purpose of the code;
2. Application of the Codes;
3. Definitions;
4. Explanation; and
5. Performance Criteria and Acceptable Solutions.



These sections are described in detail below:

1. Purpose

This component of the code explains what the code seeks to achieve.

2. Application of the Codes

This component of the code details any additional codes that are relevant to the assessment of an application.

3. Definitions

Particular definitions, useful in relation to the Code's interpretation, are included in this section. Definitions included in this section may be additional to those expressed in Chapter 3, or they may be definitions that it is considered desirable to repeat within the codes, for ease of reference.

4. Explanation

This section outlines any explanatory notes, background references or other relevant material useful for the Code's interpretation.

This section may include references to other legislation and Council local laws that may need to be complied with. These references are for guidance only. Therefore, it should not be assumed that these references are inclusive of all other legislative or local law requirements.

5. Performance Criteria and Acceptable Solutions

The Performance Criteria and Acceptable Solutions are outlined in table format. The Performance Criteria must be fulfilled in order for development to meet the purpose of the particular code. The Acceptable Solution/s listed in the table are one way of achieving the Performance Criteria, and the only way in terms of Self Assessable development.

5.3 CODE APPLICABILITY

The Level of Assessment Tables in Chapter 4 specifies the primary code applicable to a specific use. The 'primary' code is simply the Code (or Codes) that is the first point of reference for the assessment of an application. The way to determine applicable codes is as follows:

5.3.1. Self Assessment

For self assessment, the acceptable solutions specified in the primary code constitutes the code.



5.3.2. Code Assessment

For code assessable development, the code(s) for assessment consists of:

- The primary code(s); and
- The secondary code(s) listed in Section 2 of the code (*Application of the Code*) or referred to in an Acceptable Solution.

5.3.3. Impact Assessment

The proposal may be assessed against any of the codes considered relevant, including but not limited to both self assessable and code assessable codes.

Compliance with the requirements of a code is to be maintained for the duration of the use or works.

5.4 CODE INTERPRETATION

All codes are expressed in a consistent format, regardless of whether the code applies to self, code or impact assessable development. In some instances, the **Acceptable Solutions** (located in the right hand column of the Code table) requires compliance with:

- An Australian Standard;
- Another Code;
- A Planning Scheme Policy;
- Other policy, regulation, or local law;
- A State Planning Policy and the associated Guidelines; or
- Other legislation.

Reference to any of the above will usually be made in **“bold”** or *“italic”* type, as an aid in assisting the reader. Only reference to a manual will be left as normal type. Various notes are also provided throughout the Codes in the Acceptable Solutions column. These notes are presented in *“italic”* for ease of reference. The notes make the reader aware of a variety of information that assists with the interpretation of the Acceptable Solution/s or provides clarification. Notes also make the reader aware of extrinsic material as defined in the *“Acts Interpretation Act 1954”*. Therefore, some notes perform a statutory function or obligation, while others do not.

In other instances, (except in Self Assessable Codes), there may be no Acceptable Solution specified. Where this is the case, the development will be Code or Impact Assessable development and the Assessment Manager makes the determination of whether the Performance Criteria has been met. In some instances, it is also noted that non-compliance with the specified Acceptable Solution will require assessment against a different Code, i.e the Industrial Use Code as compared to the Industry Self Assessment Code.

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The **Performance Criteria** (located in the left hand column of the Code table) provides a statement of the outcome that the Acceptable Solution must achieve. A proposal not complying with an Acceptable Solution must provide sufficient information to demonstrate how the corresponding Performance Criteria has been met.

It should be noted that the order in which the Performance Criteria and the Acceptable Solutions appear does not confer any priority of one over another. Also, both may have a number of parts that are required to be satisfied. Unless indicated otherwise, all parts will need to be satisfied. This is differentiated by the terms "AND" / "OR", as outlined below.

The use of AND/OR

Where a number of **Acceptable Solutions** are provided as a possible response to a **Performance Criteria**, the default position is that all of them must be complied with, and this is reinforced with the use of "**AND**" linking the different statements. However, in some instances the statements are alternatives and to identify these, the term "OR" is used. The term "**OR**" is used where one Acceptable Solution has alternatives or a Performance Criteria has more than one Acceptable Solution available. The numbering and use of dot points also gives an indication of whether "**AND**" / "**OR**" is applicable.



To further explain the use of the terms “**AND**” / “**OR**”, the following examples are provided.

Example 1

A1 The land is provided with:

- (i) Reticulated water, sewerage, drainage, electricity and telephone services; and
- (ii) Gas service where reasonable.

This means that both (i) and (ii) must be met for self assessable development or is the preferred solution for other assessment levels.

Example 2

A2.7 One (1) day yard is provided in conjunction with and on the same allotment as a stable for every four (4) stalls or part thereof provided within the stable.

AND

A2.8 Stables are designed so that all doors and windows are orientated away from any house on an adjoining allotment to reduce the potential of creating a noise or odour nuisance.

AND

A2.9 Stalls and day yards each have a minimum area of 9m².

This means all three numbered paragraphs must be met for self assessable development or is the preferred solution for other assessment levels.

Example 3

A3.5.1 Outdoor recreation areas are screened by a 1.8m high timber screen fence;

OR

A3.5.2 Outdoor recreation areas are screened by a minimum 2m wide landscaped buffer along the common boundary with an adjoining property.

This means either numbered paragraph must be met for self assessable development or is the preferred solution for other assessment levels.



Example 4

A4.1 Retain significant contents of a heritage place in the redevelopment of the site.

OR

A4.2.1 Remove significant contents of a heritage place if this is the only way they can survive.

AND

A4.2.2 Store and record the removed contents properly and arrange for them to be reinstated later.

This means the Acceptable Solution is numbered paragraph A4.1 or, alternatively, A4.2.1 and A4.2.2 together. Either solution must be met for self assessable development or is the preferred solution for other assessment levels.

5.4.1 Self Assessable Development

Self assessable development need only comply with the Acceptable Solutions listed in the relevant code. For the purposes of the Integrated Planning Act, the "Code" for self assessable development is the Acceptable Solutions only, and the Acceptable Solutions represent the only way of complying with the Code. If the Acceptable Solutions cannot be complied with then the development proposal requires a Code Assessment application to be lodged with Council, unless the Level of Assessment Table for the relevant Area states that if there is non-compliance with the Acceptable Solutions, the development is to be Impact Assessable development.

5.4.2 Code Assessable Development

Code assessable development requires an application to be lodged with Council for a development approval. A code assessable development application needs to demonstrate compliance with the Performance Criteria in the relevant code. Should the applicant demonstrate that the proposal complies with all the Acceptable Solutions specified, the proposal will be approved.

However, the Acceptable Solutions are only one way to demonstrate compliance with the Performance Criteria, and alternative solutions may be accepted, provided that Council is satisfied the alternative solution/s meets the Performance Criteria, in keeping with the purpose of the code. In these instances, it is the responsibility of the applicant to demonstrate how alternative solutions comply with and satisfy the Code's Performance Criteria. A proposal that fails to comply with the Performance Criteria, except in insignificant details, will be refused where it cannot be conditioned to mitigate impacts.



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Where the proposal cannot meet the standards outlined in the Codes, the “**purpose of the code**” may be used in the assessment of an application to determine the proposal's suitability.



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The 'code' for assessing Code Assessable development is made up of one or a number of codes and is either of the following:

- (1) The development was originally Self Assessable development, but became Code Assessable development because the development was unable to comply with one or more Acceptable Solutions within the Self Assessable Code(s) and, therefore, the 'code' is for the purposes of development assessment the primary code(s) and any secondary code(s) that are referred to in an Acceptable Solution (including Notes attached to the Acceptable Solutions) within the primary Code that the development is unable to comply with. The 'code' for the purposes of development assessment also includes any additional secondary codes referred to in the Acceptable Solutions of a secondary code.

For example:

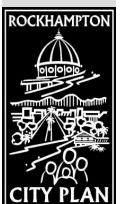
Scenario - *In an Area, a House is listed as Self Assessable development, with the only primary code listed being the House Code. The House is located within the Q100 floodable area of the Fitzroy River and the Level of Assessment Table for the Area states that when a House cannot comply with all of the Acceptable Solutions, the development becomes Code Assessable.*

Applicable Codes – *In this instance the 'code' for the application would constitute the House Code and the Flood Prone Land Code and any secondary codes listed in the Acceptable Solutions of the Flood Prone Land Code, such as the Filling or Excavation Code or Water Quality and Water Quantity Code.*

- (2) The development was listed in the relevant Level of Assessment Table as Code Assessable development and, therefore, the 'code' is for the purposes of the development assessment the primary code(s) and any secondary code(s) that are listed in Section 2 of the primary code. The 'code' for the purposes of development assessment also includes any additional secondary codes referred to by a secondary code.

5.4.3 Impact Assessable Development

Development that is subject to impact assessment will be assessed against all relevant codes. Like code assessable development the Acceptable Solutions are only one way to demonstrate compliance with the Performance Criteria and alternative solutions may be accepted, provided that Council is satisfied the alternative solution/s meets the Performance Criteria, in keeping with the purpose of the code. In these instances, it is the responsibility of the applicant to demonstrate how alternative solutions comply with and satisfy the Code's Performance Criteria. A proposal that fails to comply with the Performance Criteria, except in insignificant details, will be refused where it cannot be conditioned to mitigate impacts.



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It should be noted that compliance with the performance criteria, whether by the acceptable solutions or alternatives to them, will not guarantee the approval of a development proposal requiring impact assessment.

