



PLANNING SYSTEM

Act and Regulation changes

Circular	PS 06–012
Issued	5 May 2006
Related	Supersedes PS 05–010 and PS 05–011

New transitional arrangements for development control plans

This circular is to advise of an amendment to the transitional provisions applying to development control plan requirements, and to confirm previous advice on the implementation of these requirements.

Introduction

On 30 September 2005, Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) was amended to, amongst other things, introduce new requirements in respect to development control plans (DCPs).

The Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) includes transitional provisions in relation to the commencement of these DCP requirements, in particular the requirements in section 74C of the EP&A Act.

This circular is to advise of an amendment to those transitional provisions (gazetted 28 April 2006) which has the effect of extending the period in which councils have to comply with section 74C. It restates previous advice on the implementation of the requirements for DCPs and supersedes Department of Planning Circulars PS 05–010 and PS05–011.

What has changed?

Clause 289A of the EP&A Regulation includes a transitional provision which has the effect of deferring the commencement of sections 74C (2) and (5) of the EP&A Act.

Previously:

- section 74C(2) stated that only one DCP per planning authority may apply in respect of the same land (non-compliance with this provision renders all DCPs invalid)
- section 74C(5) stated a provision of a DCP is rendered invalid if it is the same as, or is inconsistent with, the provisions of an environmental planning instrument applying to the same land.

Clause 289A provided that section 74C did not render invalid a DCP until whichever of the following occurred first:

- the principal local environmental plan (LEP) that applies to the same land as the DCP adopts the provisions of the Standard LEP, or
- 30 April 2006.

Clause 289A has now been amended to extend the period in which councils have to comply with section 74C, being whichever of the following occurs first:

- the principal LEP that applies to the same land as the DCP adopts the provisions of the Standard Instrument (Local Environmental Plans) Order 2006, or
- 31 March 2011 (being five years after the gazettal of the Standard Instrument on 31 March 2006).

The regulatory amendment therefore means that, for the time being, more than one DCP per planning authority may apply to the same land, and provisions of DCPs will not be rendered invalid if they are inconsistent with or prevent compliance with a LEP.

Compliance with section 74C(2) and (5) will only be required once a council has prepared its new principal LEP that adopts the provisions of the Standard Instrument or by 31 March 2011, whichever is sooner. Numerous councils have to prepare their new principal LEP within two or three years and, as such, will need to ensure that they comply with section 74C by the time their new LEP is gazetted.

Why have the DCP transitional provisions been amended?

The amendment to the transitional provisions applying to the new DCP provisions has been made to respond to difficulties some councils have experienced in implementing section 74C. In particular, some councils have indicated that they would need to defer work on other DCPs in order to comply with the one DCP per site requirement under section 74C(2). Other councils have expressed a desire to defer any amendment of their existing DCPs until it can be informed by the strategic planning work being done as part of the preparation of their new principal LEPs.

It is recognised that many councils have already taken steps to comply with section 74C(2). The Department supports this work and encourages other councils to work towards compliance with both sections 74C (2) and (5) as soon as practicable. If DCPs comply with section 74C it will be easier to determine the controls that apply to a site and there will be no conflicts between the provisions of DCPs and LEPs.

How can council comply with the one DCP per site rule?

A DCP can apply to a site, a precinct or the whole local government area (LGA). It is up to council how it chooses to comply with the one-DCP-per-site requirement.

For example, if council wishes to make a single DCP for its entire LGA, it could simply amalgamate all of its existing DCPs into a single plan. Each of the existing DCPs could make up a chapter of the amalgamated DCP.

Alternatively, council may wish to have a number of site-specific DCPs as well as a single DCP that contains generic, issues-based controls, e.g. for drainage, car parking and child care. The issues-based DCP would apply to any land in the LGA that is not subject to a site-specific DCP. The site-specific DCP could adopt relevant provisions of the issues-based DCP. It would also need to include a provision to exclude the issues-based DCP from the land to which the site-specific DCP applies (despite adopting its provisions).

Another option would be to prepare a DCP for each precinct of a LGA. Each of these DCPs could contain common development controls. Council may choose to locate these common controls in one of the precinct DCPs. The other precinct DCPs could then adopt those common controls by reference (while also providing that no other DCP applies in that precinct).

It should be noted that section 74C(3) enables a DCP to adopt the provisions of another DCP by reference. This means that the DCP does not need to replicate the provisions of another DCP (however, there is nothing to prevent this if council prefers such an approach). If a DCP is delivered electronically, it could include a hyperlink to any provisions that have been adopted by reference. This will ensure that the relevant provisions are easily accessible without creating a lengthy document that repeats controls from other plans.

Finally, it should be noted that section 74C(2)(b) enables an amending DCP to be made without complying with the one DCP per site rule. That is, the amending DCP may apply to the same land as the DCP it will amend, but only until the amendment is made. After that time, the amending DCP and the DCP that has been amended are considered to be a single plan. Section 74C(2)(b) does not permit any other DCP to apply to the same land as the amending and amended DCP.

Further information

Copies of the legislation, including the Environmental Planning and Assessment Amendment (Development Control Plans) Regulation 2006 (as made), Environmental Planning and Assessment Regulation 2000 (consolidated) and *Environmental Planning and Assessment Act 1979* (consolidated) are available on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'As made' and 'Browse A to Z in force').

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

Authorised by:

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