

PLANNING SYSTEM

Varying Development Standards

Circular	PS 17-006
Issued	15 December 2017
Related	Revokes PS-08-003 (May 2008), PS08-014 (November 2008), PS11-018 (August 2011), Circular B1 (March 1989)

Variations to development standards

This circular is to advise councils of arrangements for when councils may assume the Secretary's concurrence to vary development standards, and clarify requirements around reporting and record keeping where that concurrence has been assumed. This circular is primarily resulting from an audit of councils' use of *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1) and Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (SILEP).

Overview of the amendments

This circular replaces Planning Circulars B1, PS08-003, PS08-014 and PS11-018 (the previous circulars) and issues revised assumed concurrence, governance and reporting requirements.

An audit of various councils revealed that some inconsistencies have arisen in the use of the existing assumed concurrence provisions. The concurrence provisions make it clear that council must take into account the Secretary's considerations when assuming concurrence.

Councils are notified that only a full council can assume the Secretary's concurrence where the variation to a numerical standard is greater than 10%, or the variation is to a non-numerical standard. The determination of such applications cannot be made by individual council officers unless the Secretary has agreed to vary this requirement for a specific council. In all other circumstances, individual council officers may assume the Secretary's concurrence.

Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, council is notified, in accordance with the attached written notification, that it may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP and clause 6 of SEPP 1.

Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures, established in the previous circulars, continue to apply and must be

adhered to by councils when considering applications utilising clause 4.6 of the SILEP or SEPP 1:

- Applications for variations to development standards cannot be considered without a written application objecting to the applicable development standard and addressing the matters required to be addressed in the relevant instrument.
- A publicly available online register is to be established, and its currency maintained, of all variations to development standards approved by council or its delegates. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved, either by council or its delegates, must be submitted to developmentstandards@planning.nsw.gov.au within 4 weeks of the end of each quarter (ie March, June, September and December). Such report must be on the form provided by the Department.
- A report of all variations approved under delegation by staff must be provided to a full council meeting at least once each quarter.

The Department will continue to carry out random audits to ensure the above monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy. Should ongoing non-compliance be identified with one or more councils, the Department will consider revoking the ability to assume the Secretary's concurrence, either broadly or for a specific non-compliant council.

Audit outcomes

An audit of various councils was undertaken. The audit report can be viewed at www.planning.nsw.gov.au

Further Information

A Guide on Varying Development Standards 2011 is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at: www.planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Written notification of assumed concurrence

I, the Secretary of the Department of Planning and Environment, under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, hereby give written notification of my assumed concurrence to councils for exceptions to development standards in respect of all applications made under:

- (a) Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (SILEP); or
- (b) Clause 6 of the *State Environmental Planning Policy No 1 - Development Standards* (SEPP 1)

This assumed concurrence is subject to the following matters:

- (1) Council may assume my concurrence in respect of an application to vary a development standard relating to the minimum lot size for the erection of a dwelling on land zoned RU1, RU2, RU3, RU4, RU6, R5, E2, E3 or E4 (or equivalent zone) only if that allotment has an area equal to or greater than 90% of the minimum area specified in the development standard.
- (2) Prior to assuming my concurrence Council must have consideration of the matters set out in subclause 4.6(5) of the SILEP or clause 8 of SEPP 1.
- (3) When assuming my concurrence in the following circumstances, only a full council (rather than individual council officers) can determine applications:
 - a. Where the variation of a development standard is greater than 10%, or
 - b. Where the development standard being varied is non-numerical.
- (4) Any existing variations which have been granted in writing by me will continue to have effect in accordance with their terms.

Dated:

27.11.17



Carolyn McNally
Secretary, Department of Planning and Environment