



Planning,
Industry &
Environment

Report on the audit of council use of clause 4.6 of the
Standard Instrument - Principal Local Environmental Plan

2018 Audit Report

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Introduction

In 2008 the Independent Commission Against Corruption (ICAC) investigated corruption allegations related to Wollongong City Council. A recommendation of ICAC's investigation was that the Department of Planning and Environment commence monitoring of the use of the Planning Secretary's assumed concurrence provided under State Environmental Planning Policy No 1 - Development Standards (SEPP 1), and clause 4.6. of the Standard Instrument - Principal Local Environmental Plan. Both SEPP 1 and clause 4.6 allow councils to consider and approve a proposal that does not comply with numerical development standards, in certain circumstances, without the need to seek the concurrence of the Secretary of the Department.

In 2008, *Planning Circular PS08-014 Reporting variations to development standards* was published. It outlined the reporting and administrative requirements councils must implement with respect to their use of the assumed concurrence power. The requirements related to reporting of delegated decisions to council, providing readily accessible online information on council approvals under clause 4.6 and the quarterly reporting of variation approvals to the Department. These measures increased transparency and accountability in decisions involving the use of SEPP 1 or clause 4.6.

The Department of Planning and Environment has undertaken periodic audits of council records from across the State since 2008 to identify whether councils are complying with the reporting and administrative requirements established in the planning circular. The Secretary may withdraw the ability for a council to utilise the assumed concurrence power to determine applications where that council is not meeting the reporting and administrative requirements set out in the planning circular.

Clause 4.6 of the Standard Instrument – Principal Local Environmental Plan allows flexibility in the application of development standards by allowing the consideration of development proposals that meet the objective of a development standard but not its stated value. The Secretary has delegated to councils assumed concurrence to use clause 4.6 when determining an application in respect of most types of development.

Clause 4.6 also allows an applicant to object to a development standard on the grounds that the standard may be unreasonable, unnecessary or would result in poor planning outcomes. When the consent authority is satisfied the objection under clause 4.6 has merit it may, with the concurrence of the Secretary, grant consent to that development application despite the proposal not meeting the requirements of the subject development standard.

Background to 2018 Audit

In February 2018 the Department published *Planning Circular PS 18-003 Varying Development Standards* to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Local Planning Panel are to determine applications when development standards are varied), and clarify requirements around reporting and record keeping where that concurrence has been assumed.

Councils are required to fulfil the following procedural and reporting requirements when development standards are being varied:

- proposed variations to development standards cannot be considered without a written application objecting to the development standard. The application must specifically address whether strict compliance with the standard(s) would be unreasonable and unnecessary and include environmental planning grounds to justify varying the development standard(s);
- a publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. 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 (including under delegation) must be submitted to developmentstandards@planning.nsw.gov.au within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department; and

- a report of all variations approved under delegation from a council must be provided to a meeting of the council at least once each quarter.

Councils were advised in the planning circular *PS18-003 Variations to development standards* that the Department would continue to undertake random audits on councils' use of the Secretary's assumed concurrence.

In August 2018 the following eighteen councils were randomly selected to be audited:

- Ballina
- Blacktown City Council
- Camden Council
- Cumberland Council
- Dubbo Regional Council
- Forbes Shire Council
- Hilltops Council
- Inner West Council
- Kiama Council
- Ku-ring-gai Council
- Lane Cove Council
- Mosman Council
- Newcastle Council
- Northern Beaches Council
- Port Stephens Council
- Shoalhaven Council
- Snowy Valleys Council
- Tweed Shire Council

These councils were notified of their selection by letter on 28 August 2018. The audits were carried out between September and November 2018 by officers of the Department.

Objectives

The objectives of the audit are as follows:

1. monitor use of the Secretary's assumed concurrence by councils against the requirements of:
 - the Secretary's assumed concurrence conditions;
 - any special exemptions issued to a council whereby staff may make decisions for certain variations over 10%;
 - clause 4.6 of the Standard Instrument LEP; and
 - *Planning Circular PS18-003 Variations to development standards*.
2. advise audited councils of the results, recommendations and timeframes for addressing any issues identified in the audit.

Undertaking a regular audit to monitor councils' use of clause 4.6 enables the Department to:

- ensure the ongoing transparency and integrity of the planning system regarding the variation of development standards;
- increase the level of awareness and importance within audited councils of the need to properly utilise the Secretary's assumed concurrence;
- detect anomalies (e.g. exceeding of delegations) if they are occurring;
- assess whether any particular development standards are being regularly varied by a council and may require review; and
- identify any areas where the Department could provide further guidance and advice (e.g. by updating the circular) in relation to the application of clause 4.6.

Methodology

Councils were randomly selected for audit to provide for:

- a mix of metro Sydney and regional councils, including coastal, major regional centres and rural councils;
- councils with low, medium and high volumes of variation decisions; and
- councils with a history of outstanding quarterly reports over the previous 12 to 18 months, that have not been previously audited.

The number of decisions to audit for each selected council was determined on the sliding scale shown at Table 1 below.

Table 1. Sliding scale to determine number of decisions to audit

No. of variation decisions for 2018 FY	No. of decisions to be audited
0 - 12	5
13 - 30	10
31 - 100	15
100 +	30

Using the sliding scale, the number of decisions that were audited is shown at Table 2 below.

Table 2. Number of variation decisions reviewed for each council audited

Council Audited	No. of variation decisions	No. of decisions reviewed
Ballina	8	5
Blacktown	30	10
Camden	5	5
Cumberland	11	7
Dubbo Regional	8	5
Forbes	1	1
Hilltops	5	5
Inner West	101	30
Kiama	27	10
Ku-ring-gai	30	10
Lane Cove	10	5
Mosman	132	30
Newcastle	62	15
Northern Beaches	141	30
Port Stephens	9	5
Shoalhaven	12	5
Snowy Valleys	0	0
Tweed	5	5
TOTAL		183

Note: an exception was made to the sliding scale for the audit of Cumberland Council as a completed clause 4.6 register for the entire audit period was not available until late in the audit period and therefore the number of decisions audited was based on an estimate of variation decisions for the 2018 financial year.

Once the number of decisions to be reviewed for each Council was determined, decisions were then selected for audit on the basis of:

- for amalgamated councils, an equal number of decisions from each of the former councils;
- an equal number of decisions, where possible, from each quarter of the financial year;
- in some cases, every third development application listed on the relevant quarterly report was picked until the required number of decisions was selected. Auditors were able to select individual development applications starting from either the top or the bottom of the quarterly report; and
- where only five or less decisions were made for the year, all decisions were audited.

Auditors

The audit was conducted by Department staff appointed by the Secretary under section 9.14 of the *Environmental Planning and Assessment Act 1979*. The audit reviewed 183 development applications from between two to four councils across each of the six planning regions, excluding the Central Coast. The audits were conducted by 16 specially trained Department staff.

Summary of Findings

The audit found that:

- there is a high degree of compliance across all 18 councils on assessment matters required by clause 4.6 of the Standard Instrument LEP (refer Table 3)

Table 3. Summary of compliance results - assessment

Requirement	Percentage compliance for 183 development applications across 18 councils audited
Development application included a written application to vary a standard	93%
Application addressed whether strict compliance is unreasonable/unnecessary	95%
Application included environmental planning grounds to justify the variation	95%
Assessment report considered whether strict compliance unreasonable/unnecessary	98%
Assessment report considered environmental planning grounds to justify variation	98%
Assessment report considered variation to be in the public interest due to consistency with objectives of standard and zone	94%

- there are a number of issues with procedural, monitoring and reporting requirements (refer Table 4), with the three most notable issues being:
 - eight of the eighteen councils audited (61%) have not consistently ensured that variations over 10% are approved by the Local Planning Panel, a Sydney or Regional Planning Panel, or full council as applicable.
 - half of the councils audited did not submit quarterly reports to the Department within the required four week period

- seven councils audited have made decisions on variations where either there has been no clause 4.6 application, or the application did not adequately address the requirements of clause 4.6.
- height of building controls, followed by floor space ratio controls were the predominant standards varied (refer Table 5);
- the planning outcomes being delivered by councils' use of clause 4.6 are generally appropriate.
- compared with the 2016 audit findings (Table 6), there has been a significant improvement in the percentage of councils with a clause 4.6 register available online and reporting to council of delegated variation decisions. Regular quarterly reporting to the Department has fallen by 16% (council amalgamations have likely impacted this result) and there has been no improvement in variations over 10% being determined by the appropriate authority (although these figures improved after the release of an updated circular on 21 February 2018).

Note: due to the change in audit methodology, and expansion of data collection and analysis between the 2018 and 2016 audits, only limited comparison of findings is possible.

Table 4. Summary of compliance results – procedures, monitoring and reporting

Requirement	Number of compliant councils	% of compliant councils
Submission of quarterly reports to the Department for entire audit period	16	89%
Internal clause 4.6 delegations in place	14	78%
Online clause 4.6 register	14	78%
Quarterly reporting to council of variation decisions made under staff delegation	13	72%
Council has complied with its internal clause 4.6 delegation procedures	11	61%
Quarterly reports submitted to the Department within four weeks	9	50%
Variations of more than 10% or non-numerical standard consistently determined by appropriate authority	7	39%

Table 5. Summary of standards varied

Development standard	Number of variation applications
Height of Buildings	101
Floor Space Ratio	54
Minimum Lot Size	31
Minimum Landscaped Area	8
Non-numerical Standard	4
Other	8

Table 6. Comparison of 2018 and 2016 audit results

Requirements – procedural, monitoring and reporting	2018 councils that met requirements	2016 councils that met requirements	change
Online clause 4.6 register	77%	33%	+44%
Quarterly reporting to Council of variation decisions made under staff delegation	72%	25%	+47%
Quarterly reports submitted to DPE within four weeks	50%	66%	-16%
Variations of more than 10% or non-numerical standard consistently determined by appropriate authority	44%	50%	-6%

A summary of the outcomes for each council included in the 2018 audit is provided in Table 7 below.

The table identifies whether individual councils should be subject to a follow-up audit process three months after notification (i.e. following the September 2019 quarterly reporting period) to confirm whether council has taken the necessary steps to implement the recommendations of this report to comply with the procedural and reporting requirements set out in the Planning Circular.

The details of the development applications audited, the audit findings and recommendations for each council are in Attachment A.

Recommendation

It is recommended that the Department:

1. Write to councils involved in the 2018 audit to advise of the specific findings in their area along with the recommendations of the audit and actions to be undertaken by that council to address any issues identified.
2. Write to all councils in NSW to advise of the following three key issues identified in the Department's regular audits and to remind councils of their responsibilities regarding procedural and reporting requirements when development standards are being varied:
 - applications involving variations of more than 10% or non-numerical development standards are to be determined by the Local Planning Panel (for councils in the Greater Sydney Region and Wollongong), the Sydney or Regional Planning Panel, or full council (for councils outside the Greater Sydney Region and Wollongong), unless special concurrence conditions apply;
 - quarterly reports of all approved variations are to be submitted to the Department within four weeks, including a nil return where no variation decisions have been made; and
 - a written application must accompany every request for a clause 4.6 variation and is to include:
 - whether strict compliance with the development standard(s) would be unreasonable and unnecessary,
 - environmental planning grounds to justify varying the standard(s); and
 - whether the variation will be in the public interest due to consistency with the objectives of the standard(s) varied and the zone.

Table 7. Audit results summary table

Council Audited	Audit Findings									Further Audit Required
	Variations >10% determined by staff	Inadequate internal delegation procedures	Staff variation decisions not reported to council	Late quarterly reports	Inaccurate quarterly reports	Inadequate assessment report	No online clause 4.6 register	Online register details inadequate	No/inadequate clause 4.6 application	
Ballina	X	X		X	X					X
Blacktown	X					X		X		X
Camden			X	X						X
Cumberland			X	X		X			X	X
Dubbo Regional	X	X					X		X	X
Forbes		X	X	X		X	X			X
Hilltops							X			X
Inner West	X		X	X		X			X	X
Kiama		X								X
Ku-ring-gai	X								X	X
Lane Cove	X		X	X						X
Mosman				X					X	X
Newcastle										
Northern Beaches	X					X		X	X	X
Port Stephens	X									X
Shoalhaven										
Snowy Valleys		X		X			X			X
Tweed				X		X		X	X	X
TOTAL	8	5	5	9	1	6	4	3	7	16

Attachment A: Results by council

Ballina Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
2016/691	Variation to clause 4.3 of Ballina LEP 2012 to increase the building height from 8.5m to 9.25m
2017/386	Variation to clause 4.3 of Ballina LEP 2012 to increase the building height from 10m to 33m
2017/544	Variation to clause 4.3 of Ballina LEP 2012 to increase the building height from 8.5m to 9.29m
2017/675	Variation to clause 4.1B of Ballina LEP 2012 to decrease the minimum lot size from 600m ² to 353m ² and 362m ²
2017/685	Variation to clause 4.3 of Ballina LEP 2012 to increase the building height from 8.5m to 9.15m

Audit outcomes

The following issues have been identified:

- variations of greater than 10% for two applications (out of five decisions audited) were determined by staff under delegation (where no special concurrence conditions apply) and not included in the monthly reporting to Council. This occurred due to Council's existing procedure of reporting and seeking in principle approval of Council to the development standard variation. Council staff believe that by reporting and obtaining approval for the variation from the elected Council, that they could then determine the application under delegated authority and it was also unnecessary to include in the monthly report to Council on variations under delegated authority
- Council's internal delegation procedures for two applications were not followed
- quarterly reports of variation decisions have not consistently been submitted to the Department within four weeks of the end of each quarter
- one application involving a clause 4.6 variation was not included in the quarterly report to the Department

Recommendations for council action

Ballina Shire Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18/003 including that:

- development applications involving variations of greater than 10% in a development standard are to be determined only by the Regional Planning Panel or full Council and Council's relevant instrument of delegation should reflect this so that delegations are correctly implemented
- Council's internal delegation procedures are to be followed
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter

Blacktown City Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA16/03668	Variation to clause 4.3 Height of Buildings to Blacktown LEP 2015 to vary the maximum building height from 20m to 20.95m.
DA16/03871	Variation to clause 4.3 Height of Buildings to Blacktown LEP 2015 to vary the maximum building height from 20m to 21.7m.
DA16/04024	Variation to clause 4.3 Height of Buildings of Blacktown LEP 2015 to vary the maximum building height from 20m to 20.38m
DA16/05493	Variation to clause 4.3 Height of Buildings to Blacktown LEP 2015 to vary the maximum building height from 20m to 21.09m.
DA17/00023	Variation to clause 4.1B Minimum Lot Size of Blacktown LEP 2015 to vary the minimum lot size for multi-dwelling housing from 1800m ² to 1527m ² .
DA17/00663	Variation to clause 4.1B Minimum Lot Size of Blacktown LEP 2015 to vary the minimum lot size for multi-dwelling housing from 1800m ² to 1533m ² .
DA17/01636	Variation to clause 4.3 Height of Buildings of Blacktown LEP 2015 to vary the maximum building height from 7.5m to 8.29m.
DA17/01674	Variation to clause 4.3 Height of Buildings of Blacktown LEP 2015 to vary the maximum building height from 20m to 22.6m.
DA17/01883	Variation to clause 4.3 Height of Buildings of Blacktown LEP 2015 to vary the maximum building height from 7.5m to 10.48m.
DA17/01226	Variation to Appendix 7, clause 4.1B Residential Density of the SEPP (Sydney Region Growth Centres) 2006 to vary the minimum density requirement from 30 dwellings per hectare to 27.36 dwellings per hectare.

Audit outcomes

The following issues have been identified:

- assessment reports prior to the release of PS18/003 haven't considered whether the variation will be in the public interest due to consistency with the objectives of the standards and the zone
- there was one instance where a variation greater than 10% was determined by staff under delegation, however, in this instance, the development application was amended from a 10% to a 13% variation post lodgement and occurred prior to the release of PS18- 003
- Council has a publicly available online register of approved variations to development standards made under clause 4.6 but this does not include details of the standard to be varied or the extent of the variation as required by Planning Circular PS 18-003

Recommendations for council action

Blacktown City Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18/003 including that:

- assessment reports for development applications that include a variation under clause 4.6 must address whether the variation will be in the public interest due to consistency with the objectives of the standard(s) varied and the zone
- Council's internal development application procedures should identify that any changes to a development application prior to determination should consider any implications for clause 4.6 variations to ensure correct use of delegations and compliance with the requirements of PS18-003
- Within three months Council should to expand its on-line register of approved variations to include the standard to be varied and the extent of the variation as required under PS 18-003

Camden Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA/2017/707/1	Variation to clause 4.1E (Appendix 1) - Shops – Turner Road Precinct (maximum area for shops) – of SEPP: Sydney Region Growth Centres 2006: to vary (1) total area of shops of 2,500sqm by a total variation of 3,630.51sqm (45.22%), and (2) for a particular shop - vary the floor area standard of 500sqm by permitting an additional 1,495sqm (299%).
DA/2016/169/1	Variation to clause 4.3 - height of buildings – of Camden LEP 2010: to vary the maximum height of 7m to 12.815m (83.07%)
DA/2017/610/1	Variation to clause 4.3 - height of buildings – of Camden LEP 2010: to vary the maximum height of 11 m to 20.85m. (89.54%)
DA/2017/826/1	Variation to State Environmental Planning Policy (Sydney Region Centres) 2006 – clause 4.1AD of Appendix 9 – minimum lot size - from 250sqm to 247sqm (1.2%).
DA/2017/1249/1	Variation to clause 4.3 - height of buildings - of Camden LEP 2010: to vary the maximum height of 11m to 13.2277m. (20.25%)

Audit outcomes

The following issues have been identified:

- variations approved by staff under delegation are not reported quarterly to council
- not all quarterly reports of variation decisions have been submitted to the Department within four weeks of the end of each quarter

Recommendations for council action

Camden Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- variations made by staff under delegation are to be reported to Council on a quarterly basis
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter

Cumberland Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA 2017/509	Variation to clause 4.3 of Holroyd LEP 2013 to vary the HOB by 30.3%
DA 80/2017	Variation to clause 4.3 of Auburn LEP 2010 to vary the HOB by 1%
DA 2017/380	Variation to clause 4.3 of Holroyd LEP 2013 to vary the HOB by 15.46%
DA 2016/381	Variation to clause 4.3 of Holroyd LEP 2013 to vary the HOB by 20%
DA 500/2017	Variation to clause 4.3 of Parramatta LEP 2011 to vary the HOB by 18.2%
DA 16/2018	Variation to clause 4.4 of Parramatta LEP 2011 to vary the Minimum Lot Size by 1.2%
DA 2017/191	Variation to clause 4.3 of Holroyd LEP 2013 to vary the HOB by 2.66%

Audit outcomes

The following issues have been identified:

- a written application objecting to the development standard(s) did not accompany one (1) audited development application
- not all assessment reports have considered:
 - whether strict compliance with the development standard(s) would be unreasonable and unnecessary
 - environmental planning grounds to justify varying the standard(s)
 - whether the variation will be in the public interest due to consistency with the objectives of the standards and the zone
- variations approved by staff under delegation are not reported quarterly to council
- quarterly reports of variation decisions have not been submitted to the Department within four weeks of the end of each quarter

Recommendations for council action

Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- a written request must be submitted by the proponent to support a variation under clause 4.6
- assessment reports must consider:
 - whether strict compliance with the development standard(s) would be unreasonable and unnecessary
 - environmental planning grounds to justify varying the standard(s)
 - whether the variation will be in the public interest due to consistency with the objectives of the standards and the zone
- variations made by staff under delegation are to be reported to Council on a quarterly basis; and
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter.

Dubbo Regional Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
D16-2021	Variation to clause 4.1 Schedule 3 Senior Housing SEPP to enable variation to disable access
D17-469	Variation to clause 4.2B Strata Subdivision of the Dubbo Regional Council LEP to create lots below the minimum lot size.
D17-571	Variation to clause 4.1 minimum sub division lot size of the Wellington Council LEP to create community title subdivision
D17-620	Variation to clause 4.2B Strata Subdivision of the Dubbo Regional Council LEP to create lots below the minimum lot size.
D18-99	Variation to clause 4.1 minimum lot size of the Dubbo Regional Council LEP to create lots below the minimum lot size.

Audit outcomes

The following issues have been identified:

- variations of greater than 10% are being determined by staff under delegation (where no special concurrence conditions apply)
- Council's internal delegation procedures relating to the use of clause 4.6 apply to the CEO, but do not currently include senior staff responsible for approving development applications with variation decisions;
- Council's internal delegation procedures are not being followed
- Council does not have a publicly available online register of approved variations to development standards made under clause 4.6
- one written application from an applicant did not include environmental planning grounds to justify varying the standard(s)

Recommendations for council action

Dubbo Regional Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18/003 including that:

- applications involving variations of greater than 10% are to be determined only by the Regional Planning Panel or full Council
- Council's internal delegations regarding clause 4.6 are to cover all senior staff responsible for approving development applications that include a clause 4.6 variation
- a register of clause 4.6 variations is to be established and made available on Council's website as required under PS18-003 within three months
- all written requests submitted by the applicant to support a variation under clause 4.6 must specifically address the environmental planning grounds to justify varying the development standard(s)

Forbes Shire Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
D2016-106	Variation to clause 4.1 minimum subdivision lot size of the Forbes Council LEP to enable residential subdivision

Audit outcomes

The following issues have been identified:

- Council does not have a publicly available online register of approved variations to development standards made under clause 4.6
- Council does not have internal delegation procedures relating to the use of clause 4.6
- quarterly reports of variation decisions have not been submitted to the Department within four weeks of the end of each quarter. Nil returns are required when no variation decisions have been made
- reporting to Council of variations being approved under delegation by staff is not being done on a quarterly basis
- the assessment report for the audited application did not consider:
 - whether strict compliance with the development standard(s) would be unreasonable and unnecessary
 - environmental planning grounds to justify varying the standard(s)
 - whether the variation will be in the public interest due to consistency with the objectives of the standards and the zone

Recommendations for council action

Forbes Shire Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18/003 including that:

- a register of clause 4.6 variations is to be established and made available on Council's website;
- Council requires internal delegations that reference clause 4.6
- quarterly reports of variation decisions (including nil returns) must be submitted to the Department within four weeks of the end of each quarter
- reporting to Council of variations being approved under delegation by staff must be reported quarterly to council
- assessment reports for development applications that include a variation under clause 4.6 are required to address the following matters:
 - whether strict compliance with the development standard(s) would be unreasonable and unnecessary
 - environmental planning grounds to justify varying the standard(s)
 - whether the variation will be in the public interest due to consistency with the objectives of the standard(s) varied and the zone

Hilltops Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
T17-038	Clause 4.2A(3)(a) of the Harden LEP 2011 relating to the erection of a dwelling on land in certain rural zones. Variation to the minimum lot size of 40 hectares.
T17-045	Clause 4.2A(3)(a) of the Harden LEP 2011 relating to the erection of a dwelling on land in certain rural zones. Variation to the minimum lot size of 40 hectares.
T17-30	Clause 4.2A(3)(a) of the Harden LEP 2011 relating to the erection of a dwelling on land in certain rural zones. Variation to the minimum lot size of 40 hectares.
DA2017-163	Clause 4.2A(3)(a) of the Harden LEP 2011 relating to the erection of a dwelling on land in certain rural zones. Variation to the minimum lot size of 40 hectares.
T18-004	Clause 4.2A(3)(a) of the Harden LEP 2011 relating to the erection of a dwelling on land in certain rural zones. Variation to the minimum lot size of 40 hectares.

Audit outcomes

The following issues have been identified:

- Council does not have a publicly available online register of approved variations to development standards made under clause 4.6
- Hilltops Council variations audited involved large variations of up to 98% to enable erection of a dwelling on an undersized rural lot with the concurrence of the Department

Recommendations for council action

Hilltops Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- a register of clause 4.6 variations is to be established and made available on Council's website within a period of three months
- Council is encouraged to continue its strategic planning in relation to appropriate lot sizes for rural areas given the frequent use of clause 4.6 to enable significant variations to facilitate the erection of a dwelling on an undersized rural lot

Inner West Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA 2017 00360	Clause 4.3 of Marrickville LEP 2011 to vary the maximum building height by 5.2%
DA 2017 00310	Clause 4.4 of Marrickville LEP 2011 to vary the maximum FSR by 17.4%
DA 2016 00674	Clause 4.4 of Marrickville LEP 2011 to vary the maximum FSR by 38%
DA 2016 00538	Clause 4.3 and 4.4 of Marrickville LEP 2011 to vary the maximum building height by 22.3% and FSR by 69%
DA 2016 00515	Clause 4.4 of Marrickville LEP 2011 to vary the maximum FSR by 20%
D/2018/29	Clause 4.3A and 4.4 of Leichhardt LEP 2013 to vary the minimum landscaped area by 63.65%, maximum site coverage by 30.43% and maximum FSR by 67.44%
D/2017/650	Clause 4.3A of Leichhardt LEP 2013 to vary the maximum site coverage by 16.17%
D/2017/298	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 8.53%
D/2017/208	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 50%
D/2017/139	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 8%
DA 10.2018.1.1	Clause 4.3 of Ashfield LEP 2013 to vary the maximum building height by 17%
DA 2017 00003	Clause 4.3 of Marrickville LEP 2011 to vary the maximum building height by 27.8%
DA 2017 00486	Clause 4.4 of Marrickville LEP 2011 to vary the maximum FSR by 7.3%
DA 2017 00488	Clause 4.3 of Marrickville LEP 2011 to vary the maximum building height by 15.2%
D/2017/650	Clause 4.3A of Leichhardt LEP 2013 to vary the maximum site coverage by 44%
D/2017/637	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 44%
D/2017/128	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 43.84%
DA 2017 00503	Clause 4.3 of Marrickville LEP 2011 to vary the maximum building height by 12.6%
D/2017/150	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 9.22%
D/2017/325	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 51.26%
D/2017/466	Clause 4.3A and 4.4 of Leichhardt LEP 2013 to vary the minimum landscape area by 100%, maximum site coverage by 30.58% and maximum FSR by 17%
D/2017/528	Clause 4.3A of Leichhardt LEP 2013 to vary the minimum landscape area by 30% and maximum site coverage by 24%
D/2018/25	Clause 4.4 of Leichhardt LEP 2013 to vary the maximum FSR by 14.6%
D/2018/29	Clause 4.3A and 4.4 of Leichhardt LEP 2013 to vary the minimum landscape area by 67%, maximum site coverage by 64% and maximum FSR by 30%
D/2017/312	Clause 4.3A of Leichhardt LEP 2013 to vary the minimum landscape area by 69%
DA 2016 00388	Clause 4.4 of Marrickville LEP 2011 to vary the maximum FSR by 10%
DA 2016 00564	Clause 4.3 and 4.4 of Marrickville LEP 2011 to vary the maximum building height by 13.1% and FSR by 17.1%
D/2017/312	Clause 4.3A and 4.4 of Leichhardt LEP 2013 to vary the minimum landscape area by 69% and maximum FSR by 8%
DA 2017 00180	Clause 4.3 of Marrickville LEP 2011 to vary the maximum building height by 7.2%
DA 2017 00579	Clause 4.3 of Marrickville LEP 2011 to vary the maximum building height by 18%

Audit outcomes

The following issues have been identified:

- variations of greater than 10% have been determined by staff under delegation (where no special concurrence conditions apply or have expired)

- written applications objecting to the development standard(s) do not accompany all development applications seeking a variation
- one assessment report didn't consider whether the variation will be in the public interest due to consistency with the objectives of the standards and the zone
- variations approved under delegation by staff are not reported quarterly to Council
- quarterly reports of variation decisions have not been submitted to the Department within four weeks of the end of each quarter

Recommendations for council action

Inner West Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- variations of greater than 10% are to be determined only by the Local or Sydney Planning Panel, unless current special concurrence conditions apply. Council may reapply for approval of special concurrence conditions that have expired, should they still be required
- a written request must be submitted by the proponent to support a variation under clause 4.6
- assessment reports are to consider whether the variation will be in the public interest due to consistency with the objectives of the standards and the zone
- variations made by staff under delegation are to be reported to Council on a quarterly basis
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter

Kiama Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
10.2017.87.1	Variation to clause 4.4 Floor Space Ratio of the Kiama Local Environmental Plan 2011 to increase the FSR from 1:1 to 1.2:1
10.2017.138.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 310m ² and 238m ² .
10.2017.234.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 275.35m ² for two lots.
10.2017.194.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 446.94m ² and 247.06m ² .
10.2017.270.1	Variation to clause 4.3 Height of Buildings of the Kiama Local Environmental Plan 2011 to increase the height from 8.5m to 8.975m
10.2017.35.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 267m ² and 262.05m ² .
10.2017.331.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 278.7m ² and 276.7m ² .
10.2017.322.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 310m ² and 238m ² .
10.2017.363.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 295.98m ² and 298.8m ² . Variation to clause 4.3 Height of Buildings of the Kiama Local Environmental Plan 2011 to increase the height from 8.5m to 8.67m. Variation to clause 4.4 Floor Space Ratio of the Kiama Local Environmental Plan 2011 to increase the FSR from 0.45:1 to 0.458:1.
10.2018.11.1	Variation to clause 4.1 Minimum Subdivision Lot Size of the Kiama Local Environmental Plan 2011 to reduce the minimum lot size from 450m ² to 290.5m ² and 293.7m ² .

Audit outcomes

The following issue has been identified:

- Council has internal delegation procedures in place, but the delegation does not stipulate that variations greater than 10% must be reported to council. However, in practice since the release of PS18-003, audited variations greater than 10% are being reported to council.

Recommendations for council action

Kiama Municipal Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- Applications involving variations in development standards of greater than 10% are to be determined only by the Regional Planning Panel or full Council
- Within three months Council's internal delegations are to be updated to reference clause 4.6, rather than SEPP1

Ku-ring-gai Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA0181017	Variation to clause 4.4(2A) Floor Space Ratio of the Ku-ring-gai LEP 2012 to increase the FSR from 0.3:1 to 0.337:1.
DA0384/17	Variation to clause 4.4 Floor Space Ratio of the Ku-ring-gai LEP 2012 to increase the FSR from 0.75:1 to 0.9:1.
DA0103/17	Variation to clause 4.1 Minimum subdivision lot size of the Ku-ring-gai LEP 2012 to reduce the minimum lot size of one lot from 930m ² to 880m ² .
DA0111/17	Variation to clause 4.3 Maximum height of a building of the Ku-ring-gai LEP 2012 to increase the height from 9.5m to 12.02m.
DA0249/16	Variation to clause 40(4)(a) Height of Building of the SEPP Housing for Seniors or People with a Disability 2004 to increase the height from 8m to 9.45m. Variation to Clause 40(4)(b) Maximum Number of Storeys of the SEPP Housing for Seniors or People with a Disability 2004 to increase the maximum number of storeys from 2 storeys to 3 storeys.
DA0265/17	Variation to clause 4.3 Maximum height of a building of the Ku-ring-gai LEP 2012 to increase the height from 9.5m to 10.5m.
DA0318/17	Variation to clause 4.4 Floor Space Ratio of the Ku-ring-gai LEP 2012 to increase the FSR from 3:1 to 3.08:1.
DA0357/17	Variation to clause 4.1 Minimum Subdivision Lot size of the Ku-ring-gai LEP 2012 to enable strata subdivision of an approved residential flat building where 14 of the apartments are located within an area of the site with a 1200m ² minimum allotment size. The strata lots range in size from 75m ² to 182m ² .
DA0486/17	Variation to clause 4.4 Floor Space Ratio of the Ku-ring-gai LEP 2012 to increase the FSR from 0.39:1 to 0.467:1.
DA0528/17	Variation to clause 4.3 Maximum Height of a Building of the Ku-ring-gai LEP 2012 to increase the building height from 9.5m to 12.5m. Variation to Clause 4.4 Floor Space Ratio of the Ku-ring-gai LEP 2012 to increase the FSR from 0.4:1 to 0.41:1.

Audit outcomes

The following issues have been identified:

- variations of greater than 10% have been determined by staff under delegation (where no special concurrence conditions apply). However, since the release of PS18-003, audited variations greater than 10% have been determined by the Local or Sydney Planning Panel
- Council's internal delegation procedures were not followed prior to the release of PS18-003. However, this has been rectified since the release of the Planning Circular
- Council's delegations register still refers to SEPP 1 objections and has not been updated to refer to clause 4.6 variations
- one audited application made to Council requesting a variation did not include environmental planning grounds to justify the variation, nor did it address whether strict compliance with the development standard would be unreasonable or unnecessary

Recommendations for council action

Ku-ring-gai Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18/003 including that:

- development applications involving variations of development standards greater than 10% are to be determined only by the Local or Sydney Planning Panel
- Council's internal delegations are to be updated to reference clause 4.6, rather than SEPP1
- applications requesting a variation under clause 4.6 must include environmental planning grounds to justify the variation and indicate whether strict compliance with the development standard would be unreasonable or unnecessary

Lane Cove Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA16/232	Variation to clause 4.3 of Lane Cove LEP 2009 to enable HOB variation of 5%
DA17/126-01	Variation to clause 4.3 and 4.4 of the Lane Cove LEP 2009 to enable HOB and FSR variations of 11.38% and 1% respectively.
DA17/78	Variation to clause 4.3 of Lane Cove LEP 2009 to enable HOB variation of 7.39%
DA204/2017	Variation to clause 4.3 of Lane Cove LEP 2009 to enable HOB variation of 89.5%
DA12/2018	Variation to clause 4.3 of Lane Cove LEP 2009 to enable a HOB variation of 3.7%

Audit outcomes

The following issues have been identified:

- one audited variation of greater than 10% was determined by staff under delegation (where no special concurrence conditions apply)
- variations approved under delegation by staff are not reported quarterly to council
- quarterly reports of variation decisions have not been submitted to the Department within four weeks of the end of each quarter

Recommendations for council action

Lane Cove Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18/003 including that:

- development applications involving variations of greater than 10% are to be determined only by the Local or Sydney Planning Panel
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter
- variations made by staff under delegation are to be reported to Council on a quarterly basis

Mosman Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA 2017.0062	Variation to clause 6.3 of Mosman LEP 2012 to allow building within Foreshore Building Line – non-numerical standard
DA 2017.0090	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation of 8.94%
DA 2018.0018	Variation to clause 4.3A of Mosman LEP 2012 to allow HOB variation of 13.3%
DA 2018.0017	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation
DA 2018.0002	Variation to clause 4.3, 4.3A, 4.4 of Mosman LEP 2012 to allow HOB variation of 41.8%, Wall Height variation of 13% and FSR variation of 1%
DA 2017.249	Variation to clause 4.3 of Mosman LEP 2012 to allow HOB variation of 5.9%
DA 8.2017.0244	Variation to clause 4.3 of Mosman LEP 2012 to allow HOB variation of 2%
DA 2017.0216	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation of 8% and wall height variation of 28%
DA 2017.0215	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation of 9.5% and 29.3%
DA 2017.0092	Variation to clause 4.4 of Mosman LEP 2012 to allow FSR variation of 80.1%
DA 2017.0165	Variation to clause 4.3, 4.3A and 4.4 of Mosman LEP 2012 to allow HOB variation of 37.6% and 47.2% and FSR variation of 29.5%
DA 8.2017.0160	Variation to clause 4.3A of Mosman LEP 2012 to allow HOB variation of 6.1%
DA 8.2017.33.1	Variation to clause 4.4 of Mosman LEP 2012 to allow FSR variation of 14%
DA 8.2017.81	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation of 11.29% and Wall height of 25%
DA 8.2017.137.1	Variation to clause 4.3 of Mosman LEP 2012 to allow HOB variation of 4.7%
DA 2017.0062	Variation to clause 6.3 of Mosman LEP 2012 to allow building within Foreshore Building Line – non-numerical standard
DA 8.2016.10	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation of 14.7% and wall height of 22%
DA 8.2017.83	Variation to clause 4.3A of Mosman LEP 2012 to allow wall height variation of 16.11%
DA 8.2017.56	Variation to clause 4.4 of Mosman LEP 2012 to allow FSR variation of 52.6%
DA 8.2017.222	Variation to clause 4.3 and 4.4 of Mosman LEP 2012 to allow HOB variation of 2.3% and FSR variation of 11%
DA 2017.0263	Variation to clause 4.4 of Mosman LEP 2012 to allow FSR variation of 8.7%
DA 2017.0044	Variation to clause 4.3 of Mosman LEP 2012 to allow HOB variation of 16.11%
DA 2017.0124	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow Building and Wall height variation of 24%
DA 2017.0206	Variation to clause 4.4 of Mosman LEP 2012 to allow FSR variation of 8.9%
DA 2017.0097	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation of 28.8% and 18.1%
DA 2017/203	Variation to clause 4.3 and 4.3A of Mosman LEP 2012 to allow HOB variation of 0.06% and Wall Height variation of 16.4%
DA 147/2017	Variation to clause 4.4 and 6.6 of Mosman LEP 2012 to allow FSR variation of 14.7% and Landscaped Area variation of 64% and 80%
DA 199/2017	Variation to clause 4.3, 4.3A and 6.6 of Mosman LEP 2012 to allow HOB variation of 15%, Wall Height variation of 23% and Landscaped Area variation of 37%
DA 28/2018	Variation to clause 4.3 and 6.3 of Mosman LEP 2012 to allow HOB variation of 15.3% and building within the Foreshore Building Line – non-numerical standard
DA 2018.51.1	Variation to clause 4.3A of Mosman LEP 2012 to allow Wall Height variation of 9%

Audit outcomes

The following issues have been identified:

- written applications objecting to the development standard(s) do not accompany all variation decisions
- quarterly reports of variation decisions have not always been submitted to the Department within four weeks of the end of each quarter

Recommendations for council action

Mosman Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- a written request must be submitted by the proponent to support a variation under clause 4.6
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter
Where no variation decisions are made for the quarter, a nil return is to be submitted

Newcastle Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA2017/00587	Clause 4.1 of Newcastle LEP 2012 to vary MLS by 35.25%
DA2017/00799	Clause 4.4 of Newcastle LEP 2012 to vary FSR by 8.6%
DA2017/01314	Clause 4.4 of Newcastle LEP 2012 to vary FSR by 2.5%
DA2017/01137	Clause 4.4 of Newcastle LEP 2012 to vary FSR by 20.06%
DA2017/00812	Clause 4.4 of Newcastle LEP 2012 to vary FSR by 5%
DA2017/00846	Clause 4.4 of Newcastle LEP 2012 to vary FSR by 5%
DA2017/00005	Clause 4.4 of Newcastle LEP 2012 to vary FSR by 17%
DA2017/00958	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 9.8%
DA2017/01242	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 7.4%
DA2017/01209	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 5.6%
DA2017/00716	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 7%
DA2017/00640	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 4.3%
DA2017/00758	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 13%
DA2017/01601	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 2.3%
DA2017/01314	Clause 4.3 of Newcastle LEP 2012 to vary HOB by 38.8%

Audit outcomes

Newcastle Council has complied with all requirements of clause 4.6, the Planning Circular PS 18-003 and the assumed concurrence.

Recommendations for council action

Newcastle Council be advised that no issues were identified in the Department's audit of fifteen development applications involving variation of a development standard.

Northern Beaches Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
340/2016	Variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 3.3%
163/2017	Variation to clause 4.3 of the Manly LEP 2013 to enable HOB variation of 11.7 %
159/2017	Variation to clause 4.3 of the Manly LEP 2013 to enable HOB variation of 12.9 % and variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 9.25%
121/2017	Variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 1.6%
91/2017	Variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 1.1%
84/2017	Variation to clause 4.3 of the Manly LEP 2013 to enable HOB variation of 30.23% and variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 30%
77/2017	Variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 0.6%
N0215/17	Variation to clause 4.3 of the Pittwater LEP 2014 to enable HOB variation of 19 %
N0313/17	Variation to clause 4.4 of the Pittwater LEP 2014 to enable FSR variation of 7.1%
DA183/2017	Variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 1%
DA203/2017	Variation to clause 4.3 of the Manly LEP 2013 to enable HOB variation of 3.06% and variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 17.38%
DA2017/0446	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 25.88%
DA2017/0610	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 23.5%
DA2017/0713	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 7%
DA2017/1045	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 3.5%
N0377/17	Variation to clause 4.3 of the Pittwater LEP 2014 to enable HOB variation of 15.3 %
N0492/17	Variation to clause 4.3 of the Pittwater LEP 2014 to enable HOB variation of 6.72%
DA0256/2017	Variation to clause 4.3 of the Manly LEP 2013 to enable HOB variation of 10%
DA0190/2017	Variation to clause 4.4 of the Manly LEP 2013 to enable FSR variation of 100%
DA0224/2017	Variation to clause 4.3 of the Manly LEP 2013 to enable HOB variation of 12.94%
DA041/2016	Variation to clause 4.3 of the Manly LEP 2013 to enable HOB variation of 8%
DA2017/1136	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 34.2%
DA2018/0092	Variation to clause 4.4 of the Pittwater LEP 2014 to enable FSR variation of 13.70%
DA2018/0130	Variation to clause 4.1 of the Warringah LEP 2011 to enable MLS variation of 3.8%
DA2017/1137	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 8.7%
DA2018/0200	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 9.4%
DA2018/0350	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 2.6%
DA2017/1294	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 21.8%
DA2017/1237	Variation to clause 4.3 of the Warringah LEP 2011 to enable HOB variation of 3.5%

Audit outcomes

The following issues have been identified:

- some administrative issues in relation to accuracy of information in the variations register
- written applications objecting to the development standard(s) do not accompany all variation decisions
- one audited assessment report did not address the following matters:
 - whether strict compliance with the development standard(s) would be unreasonable and unnecessary
 - environmental planning grounds to justify varying the standard(s)
 - whether the variation will be in the public interest due to consistency with the objectives of the standard(s) varied and the zone

- variations of greater than 10% have been determined by staff under delegation (where no special concurrence conditions applied)

Recommendations for council action

Northern Beaches Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- although the online clause 4.6 register appears to be predominantly accurate, care should be taken to ensure that details included on the register accurately reflect details of all applications for variations
- written applications objecting to the development standard(s) must accompany all variation decisions
- assessment reports for development applications that include a variation under clause 4.6 are required to address the following matters:
 - whether strict compliance with the development standard(s) would be unreasonable and unnecessary
 - environmental planning grounds to justify varying the standard(s)
 - whether the variation will be in the public interest due to consistency with the objectives of the standard(s) varied and the zone
- variations of greater than 10% are to be determined only by the Local or Sydney Planning Panel, except as specified in the special delegation to Council. Staff may only approve variations over 10% that are consistent with the special concurrence conditions issued by the Department.

Port Stephens Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
016-2016-00000856-001	Clause 4.3 Port Stephens LEP 2013 to enable height variation of 38%
016-2017-00000260-002	Clause 4.3 Port Stephens LEP 2013 to enable height variation of 1.3%
016-2017-00000324-001	Clause 4.3 Port Stephens LEP 2013 to enable height variation of 22%
016-2017-00000861-001	Clause 4.3 Port Stephens LEP 2013 to enable height variation of 19%
016-2017-00000704-001	Clause 4.1C Port Stephens LEP 2013 to enable minimum lot size variation of 2.3%

Audit outcomes

The following issue has been identified:

- development applications involving variations in development standards of greater than 10% are being determined by staff under delegation.

Recommendations for council action

Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003, including that variations of greater than 10% are to be determined only by a Regional Planning Panel or full Council.

Shoalhaven City Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA18/1010	Variation to clause 4.3 Height of Buildings of the Shoalhaven LEP 2014 to enable the temporary relocation of a concrete batching silo which exceeds the 11m building height standard by 4.63m (42%).
DA17-1958	Variation to clause 4.3 Height of Buildings of the Shoalhaven LEP 2014 to enable alterations and additions to a building that exceeds the 7.5m building height control by 4.5m (60%).
DA18/1211	Variation to clause 4.3 Height of Buildings of the Shoalhaven LEP 2014 to enable the development of an equine education centre and show jumping arena that exceeds the 11m building height control by 1.1m (10%).
DA16/2412	Variation to clause 4.3 Height of Buildings of the Shoalhaven LEP 2014 to enable the construction of a 3-storey office building that exceeds the 7.5m building height control by 3.5m (46%).
SF10534	Variation to clause 4.1 Minimum subdivision lot size of the Shoalhaven LEP 2014 to enable Torrens title subdivision of a lot into 2 lots of size 436.1sq.m. and 437sq.m that do not meet the 500sq.m minimum lot size standard.

Audit outcomes

Shoalhaven City Council has complied with all requirements of clause 4.6, the relevant circular and the assumed concurrence.

Recommendations for council action

Shoalhaven City Council be advised that no issues were identified in the Department's audit of the above development applications involving variation of a development standard.

Snowy Valley Council

There were no variation decisions made during the audit period and, therefore, no development applications were audited.

Audit outcomes

The following issues have been identified:

- Council does not have internal delegation procedures relating to the use of clause 4.6, although there were no variation decisions made during the 12 month audit period
- Council does not have a publicly available online register of approved variations to development standards made under clause 4.6
- quarterly reports of variation decisions have not been submitted to the Department (including nil returns) within four weeks of the end of each quarter

Recommendations for council action

Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18-003 including that:

- Within three months Council's internal delegations are to be updated to reference clause 4.6
- a register of clause 4.6 variations is to be established and made available on Council's website should a clause 4.6 variation be approved in future
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter. Where no variation decisions are made for the quarter, a nil return is to be submitted.

Tweed Shire Council

The development applications audited, and the development standards varied for those applications, are as follows:

DA Number	Development Standard(s) Varied
DA18/0199	Variation to clause 4.1(3) Minimum Subdivision Lot Size of the Tweed LEP 2014 to enable the strata subdivision of an existing shed
DA17/0854	Variation to clause 4.1(3) Minimum Subdivision Lot Size of the Tweed LEP 2014 to enable the strata subdivision of a dual occupancy
DA17/0799	Variation to clause 4.4 Height of Buildings of the Tweed LEP 2012 to enable residential flat building
DA17/0034	Variation to clause 4.3 Floor Space Ratio of the Tweed LEP 2014 to enable an addition to an existing factory
DA17/0669	Variation to clause 4.3 Height of Buildings of the Tweed LEP 2014 to enable an air conditioning unit chimney

Audit outcomes

The following issues have been identified:

- one written application from an applicant did not address whether strict compliance with the development standard(s) would be unreasonable and unnecessary and include environmental planning grounds to justify varying the standard(s)
- Council's publicly available online register of approved variations to development standards made under clause 4.6 does not include the standard being varied or the extent of the variation
- quarterly reports of variation decisions have not been submitted to the Department within four weeks of the end of each quarter
- one written assessment consistently quoted the extent of the variation incorrectly, both in terms of measurement and percentage

Recommendations for council action

Tweed Shire Council be advised of the need to comply with the requirements of clause 4.6 and Planning Circular PS18/003 including that:

- all written requests submitted by the applicant to support a variation under clause 4.6 must specifically address whether strict compliance with the standard(s) would be unreasonable and unnecessary and include environmental planning grounds to justify varying the development standard(s)
- Within three months Council's publicly available online register of all variations to development standards approved is to be updated to include the standard being varied and the extent of the variation for each application
- quarterly reporting to the Department must be submitted within four weeks of the end of each quarter
- Council's assessment reports must accurately identify the variation and the extent of the variation