



**Planning &
Environment**

**Report on the audit of council use of *State Environmental Planning Policy No.1 –
Development Standards and clause 4.6 of the Standard Instrument Local
Environmental Plan***

November 2017

Introduction

Councils were advised in planning circular *PS11-018 Monitoring and reporting variations to development standards* that the Department would continue to undertake random audits on councils' use of the Secretary's assumed concurrence under State Environmental Planning Policy No. 1 (SEPP 1) and clause 4.6 of the Standard Instrument Local Environmental Plan (Standard Instrument).

A selection of twelve councils to be audited was made by the Department in August 2016. The councils selected were Bathurst Regional, Blue Mountains City, Central Coast, Dungog Shire, Eurobodalla Shire, Georges River, Mid Coast, Murray River, Port Macquarie-Hastings, Shellharbour City, Sutherland Shire and Tamworth Regional. These councils were notified of their selection by letter of the 30 August 2016. The audits were carried out in September and October 2016 by officers of the Department of Planning & Environment.

Function of SEPP 1 and clause 4.6

SEPP 1 and clause 4.6 allow 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.

SEPP 1 and clause 4.6 permit an applicant to object to development standards on the grounds that they are unreasonable, unnecessary or would result in poor planning outcomes.

When the consent authority is satisfied the objection under SEPP 1 or clause 4.6 is well founded it may, with the concurrence of the Secretary of the Department of Planning & Environment, grant consent to that DA notwithstanding the subject development standard.

The Secretary of the Department of Planning & Environment has delegated to councils assumed concurrence to use SEPP 1 or clause 4.6 in respect of most types of development.

Monitoring of council use of SEPP 1 and clause 4.6

The Independent Commission Against Corruption (ICAC) investigated corruption allegations affecting Wollongong City Council in 2008 and recommended that the Department commence monitoring the council's use of SEPP 1 and clause 4.6. In planning circular *PS08-014 Reporting variations to development standards* councils were required to adopt a number of additional reporting measures in respect of their SEPP 1 usage. These measures increased transparency and accountability in making decisions involving the use of SEPP 1 or clause 4.6.

Councils are required to monitor their use of the Secretary's assumed concurrence under SEPP 1 and clause 4.6 and report to the Department of Planning & Environment on that usage on a quarterly basis. The Department has been systematically monitoring council quarterly SEPP 1 and clause 4.6 returns since June 2008.

Monitoring and auditing council's use of SEPP 1 and clause 4.6 enables the Department to check whether councils are keeping accurate records of the use of SEPP 1 and clause 4.6, to assess whether any particular development standards are being regularly varied by a council and may require review, and to detect anomalies (e.g. exceeding of delegations) if they are occurring.

Summary of findings

The audit found that:

- the planning outcomes being delivered by council's use of clause 4.6 and SEPP 1 are generally appropriate;
- a number of significant issues in council's reporting and/or administrative procedures associated with the use of clause 4.6 and SEPP 1 are occurring;
- the number of variations or type of variations in any particular council area is not sufficient to raise any concerns about the validity of the relevant development standard;
- some uncertainty exists within some councils to:
 - which clauses are development standards and which are prohibitions;

- the application of SEPP 1 or clause 4.6 to non-numerical development standards and whether these variations need to be considered by full council or can be determined by council staff under delegation;
- whether SEPP 1 or clause 4.6 can be applied to section 96 modification requests; and
- whether the consent authority needs to consider the matters identified under clause 8 of SEPP 1 or clause 4.6(5) when utilising the Secretary's assumed concurrence.

Further Outcomes

Audited councils that have findings applicable to them will be audited again within 6 months to ensure the identified matters have been addressed.

The frequency of reporting delegated decisions to Council meetings was also raised as an issue during the audit. To address this issue it is proposed to change the frequency of reporting on clause 4.6 variations from monthly to quarterly to align with Departmental reporting requirements and reduce the administrative burden on councils.

DETAILS OF FINDINGS

Bathurst Regional Council

Procedure

In the 12 month audit period Bathurst Regional Council determined nine applications with variations to development standards. Five of these decisions were randomly audited.

Decisions audited

The five determinations audited included variations to development standards follows:

- DA2015/0293 – Variation to cl. 4.3 Height of buildings of the *Bathurst Regional LEP 2014* to enable a building height of 12m where development standard is 9m (33% variation). This application was determined by full Council.
- DA2015/0338 – Variation to clause 4.1 Minimum subdivision lot size of the *Bathurst Regional LEP 2014* to enable an allotment of 91.5ha where the development standard is 100ha (8.5% variation). This application was determined by Council staff under delegation.
- DA2016/0139 – Variation to clause 4.1B Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings of the *Bathurst Regional LEP 2014* to enable a dual occupancy on an allotment of 518m² where the development standard is 600m² (13.6% variation). This application was determined by full Council.
- DA2016/0173 – Variation to cl 4.2B Erection of dwelling houses on land in certain rural zones of the *Bathurst Regional LEP 2014* to enable a dwelling on a holding of 93ha where the development standard is 100ha (7% variation). This application was determined by full Council.
- DA2016/0177 – Variation to cl 4.1B Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings of the *Bathurst Regional LEP 2014* to enable multi dwelling housing on an allotment of 1241m² where the development standard is 1300m² (4.7% variation). This application was determined by full Council.

Findings

In each of the audited applications the development the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

Bathurst Regional Council has complied with all requirements of the relevant circulars and the assumed concurrence.

Recommendations for council action

Nil.

Blue Mountains City Council

Procedure

In the 12 month audit period Blue Mountains City Council determined 207 applications with variations to development standards. Ten of these decisions were randomly audited.

Following representations by Council in July 2009, the Department permitted Blue Mountains City Council staff under delegation to determine variations to building setbacks by up to 50%, and any other standard for new residences or residential alterations and additions up to 25%.

Decisions Audited

The ten determinations audited included variations to development standards as follows:

- DA1096/2015 – Variation to Schedule 2, Part 2, Division 1, Clause (2)(1) of *Blue Mountains LEP 2005* – Front building setback in the Living - Conservation Zone (75% variation). The application was determined by full Council.
- DA19/2015 – Variation to Schedule 2, Part 3, Division 1, Clause (2) of *Blue Mountains LEP 2005* – Building setback in the Living – Bushland Conservation Zone (90% variation). The application was determined by full Council.
- DA451/2015 – Variation to Schedule 2, Part 3, Division 1, Clause (2) of *Blue Mountains LEP 2005* – Building setback in the Living – Bushland Conservation Zone (43% variation). The application was determined by full Council.
- DA960/2014 – Variation to Schedule 2, Part 3, Division 1, Clause (2) of *Blue Mountains LEP 2005* – Building setback in the Living – Bushland Conservation Zone (100% variation). The application was determined by full Council.
- DA1172/2015 – Variation to Schedule 4, Part 2, Division 1, Clause (1) of *Blue Mountains LEP 2005* – Building height in the Recreation – Private zone (437.5% variation). The application was determined by full Council.
- DA25/2016 – Variation to Schedule 2, Part 2, Division 1, Clause (1) of *Blue Mountains LEP 2005* – Building height in the Living - Conservation Zone (16.6% variation). The application was determined by Council staff under delegation.
- DA521/2015 – Variation to Schedule 2, Part 2, Division 1, Clause (1) of *Blue Mountains LEP 2005* – Building height in the Living - Conservation Zone (12.3% variation). The application was determined by Council staff under delegation.
- DA508/2015 – Variation to Schedule 2, Part 2, Division 1, Clause (1) of *Blue Mountains LEP 2005* – Building height in the Living - Conservation Zone (7.6% variation). The application was determined by Council staff under delegation.
- DA319/2015 – Variation to Schedule 2, Part 1, Division 1, Clause (1) of *Blue Mountains LEP 2005* – Building height in the Living - General Zone (22% variation). The application was determined by Council staff under delegation.
- DA389/2016 – Variation to clause 4.4B Principal development area of *Blue Mountains LEP 2015* (non-numerical development standard). The application was determined by Council staff under delegation.

Findings

In each of the audited applications the development the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

Blue Mountains City Council has complied with all requirements of the relevant circulars (and in accordance with Department agreement in 2009) and the assumed concurrence.

It is noted that DA389/2016 varied a non-numerical development standard. Council has obtained its own legal advice that this clause contains a development standard that can be varied. The Department's planning circulars PS08/014 do not currently address the issue of whether decisions on non-numerical standards can be determined under delegation or must be reported to Council for decision.

Recommendations for council action

Nil.

Central Coast Council

Procedure

Central Coast Council is an amalgamation of Gosford City and Wyong Shire Councils and was proclaimed on 12 May 2016. In the 12 month audit period Central Coast Council (including the former entities of Gosford City Council and Wyong Shire Council) determined 44 applications with variations to development standards. Five of these decisions were randomly audited.

Decisions Audited

The five determinations audited included variations to development standards as follows:

- DA98/2015 – Variation to clause 4.3 Height of Buildings under the *Wyong LEP 2013* to enable a dwelling height of 13.1m where the development standard is 12m (9% variation). The application was determined by Council staff under delegation.
- DA1310/2015 – Variation to clause 4.3 Height of Buildings under the *Wyong LEP 2013* to enable a dwelling height of 13.2m where the development standard is 12m (10% variation). The application was determined by Council staff under delegation.
- DA48127/2015 – Variation to clause 4.4 Floor Space Ratio under the *Gosford LEP 2014* to enable a 0.66:1 ratio where the development standard is 0.5:1 (32% variation). This decision was made by full Council.
- DA48290/2015 – Variations to clause 4.3 Height of Buildings and 4.4 Floor Space Ratio under the *Gosford LEP 2014* to enable a building height of 13.2m where the development standard is 11m (20% variation), and a floor space ratio of 1.1:1 where the development standard is 0.85:1 ratio (29%). The application was determined by Council staff under delegation.
- DA47399/2015 – Variation to clause 4.3 Height of Buildings under the *Gosford LEP 2014* to enable a building height of 12.35m where the development standard is 8.5m (45% variation). The application was determined by full Council.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified (except for DA48127/2015 where the report incorrectly referred to clause 4.4(2A)(c) instead of 4.4(2A)(a). This is considered likely to be a typographical error as the correct FSR ratio was applied).

The following issues have been identified:

- variations of greater than 10% are being determined by staff under delegation;
- reporting to Council of variations being approved under delegation by staff is not being done on a monthly basis; and
- no evidence is available to demonstrate that consideration of the matters specified in clause 4.6(5) when assuming the Secretary's concurrence.

Recommendations for council action

That Central Coast Council be advised of the need to comply with the requirements of PS08/014 and PS11-018 including that:

- variations of greater than 10% are to be determined only by full Council; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Central Coast Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Dungog Shire Council

Procedure

In the 12 month audit period Dungog Shire Council did not undertake any variations to its adopted development standards.

Findings

The following issues have been identified:

- Council's register of clause 4.6 variations is not available on the Council's website.

Recommendations for council action

That Dungog Shire Council be advised of the need to comply with the intent of the requirements of PS08/014 including that Council's register of clause 4.6 variations must be made available on Council's website.

Eurobodalla Shire Council

Procedure

In the 12 month audit period Eurobodalla Shire Council determined four applications with variations to development standards. All four of these decisions were audited.

Decisions audited

The four determinations audited included variations to development standards as follows:

- DA641/16 - Variation to clause 4.1 Minimum subdivision lot size of the *Eurobodalla LEP 2012* to enable two allotments of 506m² where the development standard is 550m² (8% variation). This application was determined under delegation by Council staff.
- DA577/15 – Variation to clause 4.3 Height of buildings of the *Eurobodalla LEP 2012* to enable a building height of 14.4m where the development standard is 12m (20% variation). This application was determined by full Council.
- DA143/16 – Variation to clause 4.3 Height of buildings of the *Eurobodalla LEP 2012* to enable a building height of 9.33m where the development standard is 8.5m (9.76% variation). This application was determined under delegation by Council staff.
- DA319/16 – Variation to clause 4.3 Height of buildings of the *Eurobodalla LEP 2012* to enable a building height of 8.8m where the development standard is 8.5m (3.5% variation). This application was determined under delegation by Council staff.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

The following issues have been identified:

- Council's register of clause 4.6 variations is not available on the Council's website; and
- reporting to Council of variations being approved by staff under delegation is not being undertaken on a monthly basis.

Recommendations for council action

That Eurobodalla Shire Council be advised of the need to comply with the intent of the requirements of PS08/014 and PS11-018 including that:

- Council's register of clause 4.6 variations is to be made available on the Council's website.

That Eurobodalla Shire Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Georges River Council

Procedure

Georges River Council is an amalgamation of Hurstville City and Kogarah City Councils and was proclaimed on 12 May 2016. In the 12 month audit period Georges River Council (including the former entities of Hurstville City Council and Kogarah City Council) determined four applications with variations to development standards. All four of these decisions were audited.

Decisions Audited

The four determinations audited included variations to development standards as follows:

- DA250/2015 – Variation to clause 4.1(3A)(a)(i) of the *Kogarah LEP 2012* to create a lot with a width of 12m where the development standard is 15m (20% variation). This application was determined under delegation by Council staff.
- DA21/2015 – Variation to clause 4.1(3) and 4.1(3A)(a)(i) of the *Kogarah LEP 2012* to create 2 lots with an area of 429m², and widths of 13.7 and 13.8m respectively, where the development standard are 500m² and 15m (14.2%, 8.7% and 8% variations respectively). This application was determined under delegation by Council staff.
- DA91/2015 – Variation to clause 4.1A of the *Kogarah LEP 2012* to enable a dual occupancy on a lot of 809m² where the development standard is 850m² (4.9% variation). This application was determined under delegation by Council staff.
- DA109/2015 – Variation to clause 4.1A of the *Kogarah LEP 2012* to enable dual occupancy on a lot of 622m² where the development standard is 850m² (27% variation). This application was determined under delegation by Council staff.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

The following issues have been identified:

- quarterly reporting to the Department is not being submitted in a timely manner;
- variations of greater than 10% are being determined by staff under delegation;
- reporting to Council of variations being approved by staff under delegation is not being undertaken on a monthly basis;
- Council's register of clause 4.6 variations is not available on the Council's website; and
- no evidence is available to demonstrate that consideration of the matters specified in clause 4.6(5) when assuming the Secretary's concurrence.

Recommendations

That Georges River Council be advised of the need to comply with the requirements of PS08/003, PS08/014 and PS11-018 including that:

- quarterly reporting to the Department must be submitted in a timely manner;
- variations of greater than 10% are to be determined only by full Council;
- Council's register of clause 4.6 variations is to be made available on the Council's website; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Georges River Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Mid Coast Council

Procedure

Mid Coast Council is an amalgamation of Great Lakes, Greater Taree and Gloucester Shire Councils and was proclaimed on 12 May 2016. In the 12 month audit period Mid Coast Council (including the former entities of Great Lakes, Greater Taree and Gloucester Shire Councils) determined five applications with variations to development standards. All five of these decisions were audited.

Decisions Audited

The five determinations audited included variations to development standards as follows:

- DA112/2016 – Variation to clause 4.3 Height of Buildings under the *Great Lakes LEP 2014* to enable a dwelling height of 9.015m where the development standard is 8.5m (6% variation). This application was determined under delegation by Council staff.
- DA188/2016 – Variation to clause 4.4 Floor Space Ratio under the *Great Lakes LEP 2014* to enable a floor space ratio of 1.33:1 where the development standard is 1.1:1m (20% variation). This application was determined under delegation by Council staff.
- DA429/2015 – Variation to clause 4.3 Height of Buildings under the *Great Lakes LEP 2014* to enable a dwelling height of 8.75m where the development standard is 8.5m (3% variation). This application was determined under delegation by Council staff.
- DA253/2016 – Variations to clause 4.3 Height of Buildings under the *Greater Taree LEP 2010* to enable a building height of 11.5m where the development standard is 8.5m (35% variation). This application was determined under delegation by Council staff.
- DA59/2016 – Variation to clause 4.3 Height of Buildings under the *Greater Taree LEP 2010* to enable a building height of 12m where the development standard is 8.5m (41% variation). This application was determined under delegation by Council staff.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

The following issues have been identified:

- no clause 4.6 variation register (hardcopy or online) is established;
- variations of greater than 10% are being determined by staff under delegation;
- reporting to Council of variations being approved by staff under delegation is not being undertaken on a monthly basis;
- there was an inconsistency within Council's quarterly reporting records regarding the number of variations approved;
- no evidence is available to demonstrate that consideration of the matters specified in clause 4.6(5) when assuming the Secretary's concurrence; and
- one application had no written request for a variation.

Recommendations

That Mid Coast Council be advised of the need to comply with the requirements of PS08/003, PS08/014 and PS11-018 including that:

- a register of clause 4.6 variations is to be established and made available on Council's website;
- variations of greater than 10% are to be determined only by full Council;
- a written request must be submitted by the proponent to support a variation under clause 4.6 / SEPP 1; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Mid Coast Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Murray River Council

Procedure

Murray River Council is an amalgamation of Murray Shire and Wakool Shire Councils and was proclaimed on 12 May 2016. In the 12 month audit Murray River Council (including the former entities of Murray Shire Council and Wakool Shire Council) determined seven applications with variations to development standards. Five of these decisions were randomly audited.

Following representations by Council in 2013, the Department has permitted Murray Shire Council to assume concurrence under SEPP 1 against any clauses in the Murray Regional Environmental Plan (REP) No 2 that Council deemed to be development standards.

Decisions audited

The five determinations audited included variations to development standards as follows:

- DA017/16 – Variation to clause 7.6(4)(a) of the *Murray LEP 2011* to enable erosion protection works on the outside bank of the Murray River. This decision was made by the Council administrator.
- DA023/16 – Variation to clause 10 of the *Murray Regional Environmental Plan (REP) No 2* to enable long term private occupation of the main channel of the Murray River. This decision was made by the Council administrator.
- DA135/16 – Variation to clause 7.6(4)(c) of the *Murray LEP 2011* to permit multiple mooring structures where the development standard is one mooring per lot, and variation to clause 10 of the *Murray REP No. 2* to enable long term private occupation. This decision was made by the Council administrator.
- DA136/16 – Variation to clause 7.6(4)(a) of the *Murray LEP 2011* to enable removal of pump and installation of suction lines on the outside bank of the Murray River. This decision was made by the Council administrator.
- DA158/14(Amendment 1) – Variation to clause 7.6(4)(a) of the *Murray LEP 2011* to enable development on the outside bank of the Murray River and variation to clause 10 of the *Murray REP No 2* to enable long term private occupation. This decision was made by the Council administrator.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

The following issues have been identified:

- quarterly reporting to the Department is not being submitted in a timely manner;
- reporting to Council of variations being approved by staff under delegation is not being undertaken on a monthly basis;
- Council's register of clause 4.6 variations is not available on the Council's website;
- no evidence is available to demonstrate that consideration of the matters specified in clause 4.6(5) when assuming the Secretary's concurrence.

There has been ongoing dialogue between the Department and Murray River Council regarding which clauses are development standards and which are prohibitions. It is also noted one of the audited applications relates to a modification.

Recommendations

That Murray River Council be advised of the need to comply with the intent of the requirements of PS08/003, PS08/014 and PS11-018 including that:

- quarterly reporting to the Department must be submitted in a timely manner;
- Council's register of clause 4.6 variations is to be made available on the Council's website; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Murray River Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Port Macquarie-Hastings Council

Procedure

In the 12 month audit period Port Macquarie-Hastings Council determined 20 applications with variations to development standards. Five of these decisions were randomly audited.

Decisions Audited

The five determinations audited included variations to development standards as follows:

- DA2015/30 – Variation to clause 4.3 Height of Buildings under the *Port Macquarie-Hastings LEP 2011* to enable a dwelling height of 13.262m where the development standard is 8.5m (56% variation). This decision was made by full Council.
- DA2015/782 – Variation to clause 4.4 Floor Space Ratio under the *Port Macquarie-Hastings LEP 2011* to enable a floor space ratio of 0.70:1 where the development standard is 0.65:1m (8% variation). This decision was made under delegation by Council staff.
- DA2015/867 – Variation to clause 4.3 Height of Buildings under the *Port Macquarie-Hastings LEP 2011* to enable a dwelling height of 19.3m where the development standard is 19m (1.5% variation). This decision was made under delegation by Council staff.
- DA2016/160 – Variation to clause 4.3 Height of Buildings under the *Port Macquarie-Hastings LEP 2011* to enable a building height of 8.805m where the development standard is 8.5m (3.6% variation). This decision was made under delegation by Council staff.
- DA2016/171 – Variation to clause 4.4 Floor Space Ratio under the *Port Macquarie-Hastings LEP 2011* to enable a floor space ratio of 0.71:1 where the development standard is 0.65:1m (9.6% variation). This decision was made under delegation by Council staff.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

The following issues have been identified:

- reporting to Council of variations being approved by staff under delegation is not being undertaken on a monthly basis;
- Council's internal delegation to staff refers only to SEPP 1 and not clause 4.6; and
- no evidence is available to demonstrate that consideration of the matters specified in clause 4.6(5) when assuming the Secretary's concurrence.

Recommendations

That Port Macquarie-Hastings Council be advised of the need to comply with the requirements of PS08/014 and PS11-018 including that:

- Council's internal delegations are to be updated to reference clause 4.6; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Port Macquarie-Hastings Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Shellharbour Council

Procedure

In the 12 month audit period Shellharbour City Council determined three applications with variations to development standards. All three of these determinations were audited.

Decisions Audited

The three determinations audited included variations to development standards as follows:

- DA0732/2015 – Variation of clause 4.4 Floor Space Ratio under the Shellharbour LEP 2013 to enable a floor space ratio of 0.76:1 where the development standard is 0.5:1 (52% variation). This decision was made by full Council.
- DA0189/2016 – Variation of clause 4.4 Floor Space Ratio under the *Shellharbour LEP 2013* to enable a floor space ratio of 0.53:1 where the development standard is 0.5:1 (6% variation). This decision was made under delegation by Council staff.
- DA241/2015 – Variation of clause 4.4 Floor Space Ratio under the *Shellharbour LEP 2013* to enable a floor space ratio of 0.546:1 where the development standard is 0.5:1 (9% variation). This decision was made under delegation by Council staff.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

The following issues have been identified:

- quarterly reporting to the Department is not being submitted in a timely manner;
- reporting to Council of variations being approved by staff under delegation is not being undertaken on a monthly basis;
- Council's register of clause 4.6 variations is not available on the Council's website; and
- while general consideration of the matters in 4.6(5) were evident within the assessments these considerations were not set out under clear heads of consideration,

Recommendations

That Shellharbour Council be advised of the need to comply with the requirements of PS08/003, PS08/014 and PS11-018 including that:

- quarterly reporting to the Department must be submitted in a timely manner;
- Council's register of clause 4.6 variations is to be made available on the Council's website; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Shellharbour Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Sutherland Shire Council

Procedure

In the 12 month audit period Sutherland Shire Council determined 263 applications with variations to development standards. Thirteen of these decisions were randomly audited.

Decisions Audited

The 13 determinations audited included variations to development standards as follows:

- DA15/1130 – Variation to clause 6.14 Landscaped area in certain zones under the *Sutherland Shire LEP 2015* to enable a landscaped area of 30.45% where the development standard is 40% (24% variation). This decision was made under delegation by Council staff.
- DA15/1312 – Variation to clause 6.14 Landscaped area in certain zones under the *Sutherland Shire LEP 2015* to enable a landscaped area of 30% where the development standard is 40% (25% variation). This decision was made under delegated authority by Council staff.
- DA15/0139 – Variation to clause 33 Building height of the *Sutherland Shire LEP 2006* to enable a ceiling height of 5.36m where the development standard is 3.6m (49% variation), and to enable a roof height of 5.69m where the development standard is 5.4m (5% variation). This decision was made under delegation by Council staff.
- DA15/0262 – Variation to clause 33 Building height of the *Sutherland Shire LEP 2006* to enable a three storey building where the development standard is two storeys (50% variation), a ceiling height of 10m where the development standard is 7.2m (38% variation), and to enable a roof height of 11.7m where the development standard is 9m (30% variation). This decision was made under delegation by Council staff.
- DA14/1213 – Variation to clause 33 Building height of the *Sutherland Shire LEP 2006* to enable a three storey building where the development standard is two storeys (50% variation), a ceiling height of 8.1m where the development standard is 7.2m (12.5% variation), and to enable a roof height of 9.3m where the development standard is 9m (3% variation). This decision was made under delegation by Council staff.
- DA15/0200 – Variation to clause 35 Building density of the *Sutherland Shire LEP 2006* to enable a floor space ratio of 0.562:1 where the development standard is 0.385:1 (46% variation), and a variation to clause 36 Landscaped area to enable a landscaped area of 185m² where the development standard is 486m² standard (62% variation). This decision was made under delegation by Council staff.
- DA15/0303 – Variation to clause 33 Building height of the *Sutherland Shire LEP 2006* to enable a ceiling height of 7.41m where the development standard is 7.2m (2.9% variation), and to enable a roof height of 9.44m where the development standard is 9m (4.9% variation). This decision was made under delegation by Council staff.
- DA15/0340 – Variation to clause 35 Building density of the *Sutherland Shire LEP 2006* to enable a floor space ratio of 3.04:1 where the development standard is 3:1 development standard (1.4% variation). This decision was made under delegation by Council staff.
- DA15/0538 – Variation to clause 36 Landscaped area of the *Sutherland Shire LEP 2006* to enable a landscaped area of 36.3% where the development standard is 45% (19.1% variation). This decision was made under delegation by Council staff.
- DA15/0527 – Variation to clause 33 Building height of the *Sutherland Shire LEP 2006* to enable a ceiling height of 8.2m where the development standard is 7.2m (13.8% variation). This decision was made under delegation by Council staff.
- DA15/0575 – Variation to clause 33 Building height of the *Sutherland Shire LEP 2006* to enable a three storey building where the development standard is two storeys (50% variation), a ceiling height of 8.3m where the development standard is 7.2m (15.2% variation), a variation to clause 35 Building density to enable a gross floor area of 376m² where the development standard is 343m² (9.6% variation), and a variation to clause 36 Landscaped area to enable a landscaped area of 358m² where the development standard is 366m² (2.4% variation). This decision was made under delegation by Council staff.
- DA15/0457 – Variation to clause 33 Building height of the *Sutherland Shire LEP 2006* to enable a three storey building where the development standard is two storeys (50% variation) and a ceiling height of 8.5m where the development standard is 7.2m (18% variation), and a variation to clause 36

Landscaped area to enable a landscaped area of 36.8% where the development standard is 45% (18% variation). This decision was made under delegation by Council staff.

- DA15/0777 – Variation to clause 6.14 Landscaped area in certain zones under the *Sutherland Shire LEP 2015* to enable a landscaped area of 26.8% where the development standard is 40% (33% variation). This decision was made under delegation by Council staff.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified.

The following issues have been identified:

- variations of greater than 10% are being determined by staff under delegation;
- Council's register of clause 4.6 variations is not available on the Council's website; and
- no evidence is available to demonstrate that consideration of the matters specified in clause 4.6(5) when assuming the Secretary's concurrence.

Recommendations

That Sutherland Shire Council be advised of the need to comply with the requirements of PS08/014 and PS11-018 including that:

- quarterly reporting to the Department must be submitted in a timely manner;
- Council's register of clause 4.6 variations is to be made available on the Council's website; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Sutherland Shire Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.

Tamworth Regional Council

Procedure

In the 12 month audit period Tamworth Regional Council determined two applications with variations to development standards. Both of these decisions were audited.

Decisions audited

The five determinations audited included variations to development standards as follows:

- DA2016/0233 – Variation to clause 4.4 Floor Space Ratio under the *Tamworth Regional LEP 2010* to enable a floor space ratio of 0.62:1 where the development standard is 0.5:1m (24% variation). This decision was made under delegation by Council staff.
- DA2016/0282 – Variation of clause 4.1 Minimum Subdivision Lot Size of *Tamworth Regional LEP 2010* to enable a lot of 37ha where the development standard is 40ha (7.5% variation). This decision was made under delegation by Council staff.

Findings

In each of the audited applications the proposal was permissible under the relevant LEP and the development standard requiring variation was correctly identified. Quarterly reporting was submitted in a timely manner though it was noted that one of the determinations made under delegation was not included in the report.

The following issues have been identified:

- no clause 4.6 variation register (hardcopy or online) is established;
- variations of greater than 10% are being determined by staff under delegation;
- reporting to Council of variations being approved by staff under delegation is not being undertaken on a monthly basis;
- inaccurate quarterly reporting has been submitted to the Department;
- Council's internal delegation staff referred only to SEPP 1 and not clause 4.6; and
- no evidence is available to demonstrate that consideration of the matters specified in clause 4.6(5) when assuming the Secretary's concurrence.

Recommendations

That Tamworth Regional Council be advised of the need to comply with the requirements of PS08/003, PS08/014 and PS11-018 including that:

- a register of clause 4.6 variations is to be established and made available on Council's website;
- variations of greater than 10% are to be determined only by full Council;
- quarterly reporting is to be accurate when submitted to the Department;
- Council's internal delegations are to be updated to reference clause 4.6; and
- the matters specified in clause 4.6(5) must be considered when assuming the Secretary's concurrence.

That Tamworth Regional Council also be advised that in accordance with the upcoming Planning Circular that the reporting to Council of variations being approved by staff under delegation is to be done on a quarterly basis.