



PLANNING SYSTEM

Local planning

Circular	PS 05–010
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Related	PS05–008

Requirements for development control plans with the latest planning reforms

This circular restates important advice previously provided on the new arrangements for development control plans.

Introduction

This circular relates to the introduction of the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*, which amends the *Environmental Planning and Assessment Act 1979* (EP&A Act). The amendments were introduced to the NSW Parliament on 27 May 2005 and commenced on 30 September 2005.

Objectives of the Act

One intention of the reforms to the EP&A Act is to reduce the number of development control plans (DCPs), making it easier for planning authorities, business and the community to determine the controls that apply to a site. The purpose is also to reduce the complexity of development controls by ensuring that DCPs do not conflict with each other or with the relevant local environmental plan.

One DCP per site

The Department has received a number of queries regarding the implementation of the changes to the EP&A Act for DCPs, particularly the requirement in section 74C(2) that only one DCP per planning authority can apply to the same land.

The requirement that only one DCP applies to particular land takes effect when a DCP is made on or after 30 September 2005.¹

If this provision is not complied with then all DCPs that apply to the same land will be rendered invalid. That is, all existing DCPs and the DCP that was made on or after 30 September will have no effect. Any subsequent DCPs that are made that do not comply with the provision will also have no effect.

For example, if a new Town Centre DCP was made on 11 October 2005 and commenced on 15 October 2005 but did not comply with the requirement for one DCP to apply to the same land (that is, it simply added to existing DCPs applying to the land in the Town Centre) then the Town Centre DCP and other DCPs that also apply to the land in the Town Centre (eg an exempt and complying development DCP) will all be rendered invalid.

If all DCPs for a parcel of land are rendered invalid as a result of non-compliance with section 74C(2) then new DCPs (or a single DCP) that do comply with this provision would need to be made.

It is critical that councils consider the exhibition requirements for DCPs to ensure appropriate planning controls are in place for assessing and approving development. Further information on the exhibition requirements is set out below.

¹ Section 74C(2)(b) of the EP&A Act provides that a plan prepared for the purpose of amending an existing DCP is not a further DCP applying to the same land. This means that a second DCP can be made for the same land but only to the extent that it amends an existing DCP applying to that land. Once the amendment is made those DCPs will become a single plan. However, if other DCPs already apply to the same land, council must then take steps to consolidate or otherwise amend all DCPs that apply to that land. This is because clause 94(2) of the savings and transitional provisions in the Act

states that existing DCPs must comply with section 74C(2) if and when a new DCP is made that applies to the same land. For the purposes of applying the savings and transitional provisions, the making of a new DCP includes the amendment of an existing DCP (see clause 22(1) of the EP&A Regulation).

Savings and transitional

All existing DCPs are saved and continue to apply to the land to which they applied before the commencement of the changes to the EP&A Act, but only until council makes (or amends) a DCP for that land. More particularly, the savings and transitional provisions in the Act and the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) provide that DCPs:

- in force prior to 30 September 2005², or
- approved prior to 30 September 2005 but that have not yet taken effect³

continue to be in force under the new Act provisions.

As this could allow more than one DCP to continue to apply to the same land — a breach of section 74C(2) — the savings and transitional provisions provide that these DCPs are not invalidated until a further DCP applying to the same land is made.⁴

The requirement that only one DCP applies to the land will not activate until such time as council makes a **new** DCP for land covered by an existing DCP.

If a council has adopted and commenced a DCP on or after 30 September 2005, and that DCP does not comply with the requirement that there be only one DCP applying to the same land, then all DCPs applying to that land have no effect. New DCPs will need to be made.

If a council has adopted a DCP on or after 30 September 2005 but has not yet commenced that DCP, it should not be commenced unless council is satisfied that, once this DCP is commenced, it will be the only DCP that applies to the same land. See below for examples of how this can be achieved if council already has other DCPs that apply to the same land as the DCP that has not yet been commenced.

If the DCP takes effect before it complies with the requirement for one DCP for the same land then it, and all other DCPs applying to the same land, will have no effect.

Councils intending to make a new DCP or amend, substitute or revoke a DCP, should not proceed until council is satisfied that the DCP will, when it takes effect, comply with the Act.

Examples of how to comply with the requirements for DCPs made on or after 30 September

For a site-specific DCP

If council wants to make or amend a DCP that applies to particular land (a site-specific DCP) it will need to ensure that, once made, only one DCP applies to that land.

Council can make or amend a site-specific DCP by simply adopting the relevant provisions of other DCPs, eg the provisions of a drainage DCP that applies to the whole local government area (LGA-wide DCP). Incorporating relevant provisions of other DCPs in this way would not be a breach of section 74C(2).

In making (or amending) the site-specific DCP, council will need to also amend any other DCPs which would otherwise apply to the same land (such as an LGA-wide drainage DCP) to exclude the site from the operation of those DCPs.

For an LGA-wide DCP

An example of how a council might comply with the requirements of the Act in respect of an LGA-wide DCP is as follows.

If a council wishes to make or amend a DCP that applies to the whole LGA, it must ensure that all other DCPs in the LGA are incorporated into the new or amending DCP, or otherwise amended, to comply with the requirement that only one DCP can apply to the same land. This is because an LGA-wide DCP necessarily applies to the same land as all other DCPs in the LGA.

Council could elect to amalgamate all of its DCPs that apply to the whole LGA. That amalgamated LGA-wide DCP might simply contain separate chapters on development controls previously contained in a number of LGA-wide DCPs (covering issues such as drainage, car parking and child care).

At the same time, if the council has site-specific DCPs, these will also need to be considered to determine if amendment is necessary to comply with the Act. This is because an LGA-wide DCP necessarily applies to the same land as all other DCPs in the LGA, including site-specific DCPs. If council does not wish to incorporate its site-specific DCPs into its LGA-wide DCP, council could amend all its site-specific DCPs so they adopt the relevant provisions of the LGA-wide DCP and, at the same time, exclude the land to which those site-specific DCPs apply from the operation of the LGA-wide DCP.

Note: Because of the exclusion of site-specific DCPs, the LGA-wide DCP will no longer strictly apply to the whole LGA although its relevant provisions would be included in the site-specific DCPs.

² Clause 289(4) of the EP&A Regulation.

³ Clause 289(5A) of the EP&A Regulation.

⁴ Clause 94(2) of Schedule 6 to the Planning Reform Act. Making a new DCP, or amending a DCP, on or after 30 September 2005 constitutes making a DCP under section 74C of the EP&A Act for the purposes of clause 94(2) of Schedule 6 to the Act.

Exhibition requirements

If DCPs are made or amended to comply with the new requirements, as discussed above, those DCPs will need to be publicly exhibited in accordance with the requirements in clause 18 of the EP&A Regulation. Council must be mindful of the need to validly exhibit DCPs (including amendments to DCPs).

Additional savings and transitional arrangements

The Department is also investigating the impacts on councils who may have unintentionally invalidated their DCPs and whether such DCPs can be protected through an amendment to the savings and transitional provisions in the EP&A Regulation.

Further information

Further detail on these matters can be found in Circular PS 05-008 'Changes to Part 3 and 4 of the EP&A Act'. Information was also provided at the information sessions that were conducted throughout August and September 2005. The briefing notes that were provided at the sessions are available on the Department's website at www.planning.nsw.gov.au/planning_reforms.

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Important note

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

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