



Planning circular

HOUSING

Group home; disclosure of sensitive information

Circular	PS 23-002
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Issued	22 November 2023
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Related	Nil
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Disclosure of information about domestic and family violence refuges

This circular provides information to consent authorities, practitioners and applicants about disclosure obligations when assessing and notifying planning applications for domestic and family violence refuges.

Introduction

The publication of certain information about current or proposed domestic and family violence refuges may compromise the safety and security of the vulnerable people accessing these refuges. It is critically important that perpetrators of family and domestic violence cannot access sensitive information regarding the locations of these refuges.

While the planning application process encourages details about future developments to be made public, consent authorities, practitioners and applicants can and should ensure sensitive information is not disclosed.

The purpose of this circular is to provide councils with information about their disclosure obligations, and to provide recommendations on how information about domestic and family violence refuges should be handled during various planning processes. This circular provides advice for planning applications generally and should be considered where relevant for all planning applications, such as DAs, modification applications, complying development certificates and planning proposals.

Obligations under the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021*

Under clause 20 of Schedule 1 to the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**), consent authorities have obligations to publish certain information in relation to planning approvals

and other decisions, including DAs. Under clauses 24 and 36 of the *Environmental Planning and Assessment Regulation 2021* (the **Regulation**), councils are required to be provided with certain information by a proponent at the lodgement stage, and during the development assessment process, of DAs. Under clause 240 of the Regulation, councils must keep a register of DAs and consents, containing certain information about each approval.

Some information that councils must keep and/or publish in respect of planning approvals and other decisions include:

- the name and address of the applicant,
- the address, and formal particulars of title, of the land on which the development is to be carried out,
- a description of the development to be carried out, and
- the reasons for a determination of a development application.

Obligations under the *Government Information (Public Access) Act 2009*

The *Government Information (Public Access) Act 2009* (GIPA Act) has been designed to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective. It applies to all NSW Government agencies, including councils.

The GIPA Act encourages the proactive release of information by NSW Government agencies and ensures that Government information is not disclosed

only when there is an overriding public interest against releasing that information. The next sections of this planning circular provide specific advice in relation to this obligation where a council is advising on, assessing and determining a DA for a domestic and family violence refuge.

The guiding principle of the GIPA Act is public interest. It is generally presumed that all NSW Government agencies will disclose or release information, unless there is an overriding public interest against its disclosure.

Schedule 1, clause 3 of the *Government Information (Public Access) Regulation 2018* lists information about DAs that is required to be made publicly available by the relevant council under the GIPA Act unless there is such an overriding public interest against disclosure.

The GIPA Act also lists a number of considerations that may be taken into account when determining whether there is an overriding public interest *against* disclosure of Government information. These considerations include whether disclosure of the information could reasonably be expected to:

- endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person,
- expose a person to a risk of harm or of serious harassment or serious intimidation.

Implications for domestic and family violence refuges

There have been examples in the past where the information published by a consent authority suggests, or explicitly states, that a proposed development will be a domestic or family violence shelter; that specifies the location of a refuge; or that includes plans of the internal layout of a refuge.

In a statement issued on 13 November 2023, the Information Commissioner emphasised that the GIPA Act is clear that the obligation to disclose open access information does not apply where there is an overriding public interest against disclosure.

In that statement, the Information Commissioner stressed that some of the considerations that the GIPA Act establishes to determine whether there is such an overriding public interest against disclosure are highly relevant to the location of domestic and family violence refuges. These include the considerations set out in the section above and include danger to life, health and safety, or exposure to risk of harm or serious harassment or intimidation.

Recommended action

Councils must carefully consider their obligations under the EP&A Act and the GIPA Act when deciding what information to publish in relation to planning applications and development consents involving domestic and family violence refuges. These developments may (but are not always) delivered under the land use terms "group home", or "transitional group home". Descriptions of these developments may include terms like "domestic violence refuge", "DV refuge", "family violence refuge", "core and cluster development", or "women's shelter", however these descriptions should not be used in documentation that will be made publicly available.

In the interest of not disclosing sensitive information, consent authorities and applicants are encouraged to refer to a proposed development as a "group home" (where this is the applicable land use term) and should not use terms that refer to the use as a domestic and family violence refuge. This should be considered when entering information into the NSW planning portal at the lodgement and determination stages, and also in application documentation (such as a statement of environmental effects) and an assessment report.

Where there is an overriding public interest against disclosure, councils should carefully consider withholding or redacting the sensitive information. This information may include (but is not limited to):

- the applicant or landholder name, particularly where the name is of an organisation known to provide domestic or family violence refuges.
- the description of the development.

Councils should also carefully consider whether or not to publish:

- the address or formal particulars of title of the land which would reveal the location of a refuge.
- internal plans which show the location of bedrooms and other potentially sensitive elements of the development's layout.

Councils must take precautions wherever such sensitive information appears, and should be mindful that this may be in a range of documents and locations, including:

- notes from pre-lodgement meetings,
- council meetings, or minutes of council meetings,
- the landowner's consent, where the applicant is not the landowner,
- on plans and in photomontages,

- in the statement of environmental effects,
- in DA checklists,
- in file names of files that are published on council websites or the NSW Planning Portal.

These same considerations apply to council staff who are responding to public inquiries by email, telephone call or in person.

For questions about how the GIPA Act applies to individual DAs, council staff should contact their council's right to information officer.

Further information

The Government Information (Public Access) Act 2009 can be found at www.legislation.nsw.gov.au.

The Information Commissioner's statement relating to the publication of development applications containing the location of refuges by local councils can be found here:

<https://www.ipc.nsw.gov.au/statements/information-commissioner-statement-relating-publication-development-applications-containing-location-refuges-local-councils>.

For general questions about the Government Information (Public Access) Act 2009, contact the Information and Privacy Commission NSW:
<https://www.ipc.nsw.gov.au/about-us/contact-us>.

For further information please contact Service NSW on 13 77 88.

Department of Planning and Environment circulars are available at:

<https://www.planning.nsw.gov.au/policy-and-legislation/planning-system-circulars>

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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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