



Planning circular

HOUSING

Group home; disclosure of sensitive information

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Related	Updates PS 23-002 issued on 22 November 2023

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 utilise options available to ensure sensitive information is not disclosed.

The purpose of this circular is to:

1. Provide information to applicants to assist with the preparation of a development application (DA) so that only information that is required to be disclosed by law, is submitted and made publicly available; and
2. 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 and information request 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*

There are various provisions under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) which require consent authorities to be provided with and publish certain information in relation to planning applications and approvals.

This includes:

- Section 24 of the EP&A Regulation – requires a DA to be in the ‘approved form’ and contain the information specified in that form
- Section 240 of the EP&A Regulation – requires a council to keep and publish a register of DAs and development consents
- Clauses 7 and 20 of Schedule 1 to the EP&A Act – require the public exhibition of DAs and the notification of the reasons for the determination of planning applications

Some information that councils must keep and 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 DA.

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

Distinct from the EP&A Act and EP&A Regulation, councils also have certain publication obligations under the *Government Information (Public Access) Act 2009* (GIPA Act).

The 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 for councils in complying with their obligations under the GIPA Act to release certain information in connection with a DA for a domestic and family violence refuge.

The guiding principle of the GIPA Act is public interest. Section 13 of the GIPA Act requires the public interest test to be applied before releasing information. This is equally applicable to open access information, as outlined in the NSW Information Commissioner's factsheet: [Open Access Information for Agencies](#). There is an overriding public interest against disclosure of Government information if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure. In this case, public authorities can withhold that information from publication.

Clause 3 of Schedule 1 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.

However, section 6(1) of the GIPA Act overrides these requirements where there is an overriding public interest against disclosure. In addition, section 6(4) of the GIPA Act allows for the redaction of information for which there is an overriding public interest against disclosure so that the remainder of the document can still be disclosed.

The table in section 14 of the GIPA Act lists the matters that may be taken into account when determining whether there is an overriding public interest *against* disclosure of Government information. These matters 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 (clause 2(d) of the table in section 14),
- expose a person to a risk of harm or of serious harassment or serious intimidation (clause 3(f) of the table in section 14).

Information Commissioner Statement

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 actions

Councils must carefully consider their obligations under the EP&A Act and the GIPA Act when determining what information to publish in relation to planning applications and development consents involving domestic and family violence refuges. Where there is no statutory obligation to make certain information publicly available, all appropriate steps should be taken to avoid publication.

In the interest of not disclosing information that is not required to be published under the EP&A Act, or that is sensitive information pursuant to the GIPA Act, applicants and councils 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.

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.

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.

Preparing a planning application – recommended actions for the applicant

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.

Applicants should consider preparing a separate documentation package that complies with their obligations to provide certain information under the EP&A Act, but which does not include information that is not required to be made publicly available.

It is preferred that this action is taken over submitting a set of redacted documents. For example, plans should not include annotations indicating user groups or the community housing provider.

Assessing and determining planning applications – recommended actions for the consent authority

When an applicant does not submit a documentation package appropriate for publication, it is recommended that councils request a publication package from the applicant.

Councils must take precautions wherever sensitive information appears, that is not required to be published, 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, Housing and Infrastructure 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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