

PLANNING SYSTEM

Varying development standards

Circular	PS 11-018
Issued	18 August 2011
Related	PS 08-003; PS 08-014

Monitoring and reporting variations to development standards

The purpose of this circular is to remind councils of their responsibilities to complete quarterly returns on variations to development standards under delegations using State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) or clause 4.6 under the Standard Instrument and to raise councils' awareness of relevant audit outcomes.

Background

Circulars PS 08-003 and 08-014 reminded councils of their responsibilities to monitor the use of the Director-General's assumed concurrence under State Environmental Planning Policy No. 1 (SEPP 1) or under Clause 4.6 of the Local Environment Plan (LEP) Standard Instrument (or similar provision) on a quarterly basis. This reporting requirement continues to apply.

Councils were also advised that they were required to adopt additional measures to report SEPP 1 usage and that random audits would be carried out on such matters.

Random audits

Monitoring of councils' SEPP 1 returns provides increased transparency and accountability in the making of SEPP 1 decisions and helps the Department to check whether:

- councils are keeping accurate records of the use of SEPP 1,
- any particular development standards are being regularly varied by a council and may require review, and
- anomalies (e.g. exceeding of delegations) are occurring.

Four councils were drawn at random to be audited by the Department: Blue Mountains City, Byron Shire, Tenterfield Shire, and Wingecarribee Shire Councils. A number of development applications based on variations to development standards were randomly selected from each council and audited.

The audit found that the four councils mostly followed due process in making the SEPP 1 decisions that were audited, although each had some inadequacies in their reporting and/or administrative procedures. A [Summary of findings](#) of the audit is available on the Department's website.

Procedural & reporting requirements

The audit recommended that given the reporting and administrative anomalies in council processes detected by the audit, all councils should be reminded of their responsibilities under SEPP 1 and LEP Clause 4.6, and in particular the procedural and reporting requirements specified in Planning Circular PS 08-014.

It was recommended that the following matters be drawn to councils' attention.

Requirement for written application

The audit revealed that in a few cases, a written application for a SEPP 1 variation in a standard was lodged late or not at all. In one case, a council assessed a variation to a development standard without requiring the applicant to submit a written application seeking the variation under SEPP 1.

Councils should insist on a written SEPP 1 application to vary a development standard where a development application proposes a variation to a standard.

Matters to be addressed in a SEPP 1 application

In some cases, the SEPP 1 applications lodged by applicants did not address the matters required in accordance with the provisions of SEPP 1. Councils should be aware of the minimum criteria that should be

included in an application and request that applicants address these matters when lodging applications to vary a development standard.

Consideration of Clause 8 in SEPP 1

Clause 8 requires councils to assess the following:

- whether non-compliance with the development standard raises any matter of significance for State and regional planning, and
- the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The random audit found that councils did not specifically consider the matters referred to in clause 8 of SEPP 1 in their assessment. However, in most cases the councils had addressed these matters in their assessment of the development applications.

Councils are reminded to ensure that they specifically consider and record considerations of the matters referred to in Clause 8 in their assessment of an application to vary a development standard.

Reporting on the use of variations to development standards

Councils are reminded to keep accurate records of the use of SEPP 1, or Clause 4.6 of the LEP Standard Instrument (or similar provision).

Reports are to be submitted to the Department on a quarterly basis (March, June, September and December). Reports are to be emailed to developmentstandards@planning.nsw.gov.au within four weeks of the end of each quarter.

Further Information

[Monitoring the use of SEPP 1 – Random audit of four councils - Summary of findings](#) issued by the Department provides further information on the random audits and can be found on the Department's website.

The Department will continue to undertake random audits on SEPP 1 decisions based on the data received from councils. Failure to submit returns on time will be taken into account when considering appropriate councils to be subject to audit.

The Department has also published [Varying development standards: A Guide](#) to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Note: This and other Department of Planning and Infrastructure circulars are published on the web at www.planning.nsw.gov.au/circulars

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: www.legislation.nsw.gov.au

For further information please contact the Department's Information Centre on 1300 305 695 or email information@planning.nsw.gov.au

Authorised by:

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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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