

**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**CCL 25/08/2020 - VARIATIONS TO DEVELOPMENT STANDARDS**

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# Ordinary Council Meeting

25 August 2020

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**ITEM-XX**      **Attachment A:**      Report on all development variations approved  
between January 2020 and 31 July 2020

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**DISTRIBUTED UNDER SEPARATE COVER**

**Attachment A: Development variations approved under delegation by staff between January 2020 and 31<sup>st</sup> July 2020**

Council DA reference number	Lot number	DP number	Apartment/ Unit number	Street number	Street name	Suburb	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Determination by	Date DA determined
DA2019/01156	11	1262128	0	2	Bar Beach Avenue	Bar Beach	2300	Residential Single Dwelling	LEP2012	R2	FSR	Achieves underlying objectives of the FSR control	3.7%	Staff delegations	29/06/2020
DA2019/01284	42	229217	0	16	Northwood Street	Adamstown Heights	2289	Residential Multi Dwelling	LEP2012	R2	FSR	Achieves underlying objectives of the FSR control	1.6%	Staff delegations	24/06/2020
DA2020/00107	491	1170992	0	47	Bryant Street	Tighes Hill	2297	Residential Single Dwelling	LEP2012	R2	FSR	Not have unreasonable impact on amenity of area	0.65%	Staff delegations	24/06/2020
DA2020/00251	1	1295	0	45	Downie Street	Maryville	2293	Residential Alterations and Additions	LEP2012	R2	FSR	Compatible with streetscape (bulk, scale and mass)	8.3%	Staff delegations	4/06/2020
DA2019/01102	1005	755247	0	7	Belford Road	Lambton	2299	Residential Multi Dwelling	LEP2012	R2	Lot Size	Not have unreasonable impact on amenity of area	6.5%	Staff delegations	25/05/2020
DA2019/01176	62	111244	0	16	Curry Street	Merewether	2291	Residential Alterations and Additions	LEP2012	R2	Building Height	Compatible with streetscape (bulk, scale and mass)	13%	Development Assessment Committee	22/05/2020

Council DA reference number	Lot number	DP number	Apartment/ Unit number	Street number	Street name	Suburb	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Determination by	Date DA determined
DA2019/00746	1	132396	0	48	Brunker Road	Broadmeadow	2292	Residential Multi Dwelling	LEP2012	R4	Building Height	Achieves underlying objectives of height control	8%	Staff delegations	15/05/2020
DA2019/00746	1	132396	0	48	Brunker Road	Broadmeadow	2292	Residential Multi Dwelling	LEP2012	R4	FSR	Achieves underlying objectives of the FSR control	1.3%	Staff delegations	15/05/2020
DA2018/00801	136	978198	0	12	Farquhar Street	The Junction	2291	Residential Multi Dwelling	LEP2012	R3	FSR	Achieves desired future character for the area	9%	Staff delegations	29/04/2020
DA2019/01150	1	610140	0	163	Hunter Street	Newcastle	2300	Tourist	LEP2012	B4	FSR	Achieves desired future character for the area	9%	Staff delegations	26/04/2020
DA2019/01108	22	598706	0	11	Christie Road	Tarro	2322	Residential Multi Dwelling	LEP2012	R2	Lot Size	Not have unreasonable impact on amenity of area	9.9%	Staff delegations	17/04/2020
DA2020/00166	1	1260497	0	87	Charlestown Road	Kotara	2289	Residential Second Occupancy	LEP2012	R2	FSR	Not have unreasonable impact on amenity of area	9.2%	Staff delegations	7/04/2020

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**CCL 25/08/2020 - VARIATIONS TO DEVELOPMENT STANDARDS**

**ITEM-XX**    **Attachment B:**    Planning Circular 20-002 Variations to  
development standards

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<b>Circular</b>	PS 20-002
<b>Issued</b>	5 May 2020
<b>Related</b>	Revokes PS 18-003 (February 2018), PS 19-005

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## Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied) and clarify requirements around reporting and record keeping where that concurrence has been assumed.

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### Overview of assumed concurrence

This circular replaces Planning Circular PS 18-003 and issues assumed concurrence, governance and reporting requirements for consent authorities. It also advises that council reports are to come through the Planning Portal, and of the repeal of SEPP 1.

All consent authorities may assume the Secretary's concurrence under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effector
- *State Environmental Planning Policy No 1 – Development Standards* for land included in an old Interim Development Order (IDO) or Planning Scheme Ordinance (PSO).

However, the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning, Industry and Environment to a previous notice will continue to have effect under the attached notice.

### Assumed concurrence conditions

#### Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone

RU4 Primary Production Small Lots, Zone RU6 Transition

- Zone R5 Large Lot Residential
- Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living
- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

### Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 231).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

## Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong were required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 231).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it applies to panels established after 1 March 2018.

## Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

## State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

## Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect).

The notice takes effect on the day that it is published on the Department of Planning, Industry and Environment's website (i.e. the date of issue of this circular) and applies to pending development applications.

## Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted through the NSW Planning Portal at <https://www.planningportal.nsw.gov.au/reporting/online-submission-planning-data> within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

## Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

## Repeal of *State Environmental Planning Policy No 1 – Development Standards (SEPP 1)*

The repeal of SEPP 1 came into effect from 1 February 2020 as part of the SEPP Review Program to update and simplify the NSW Planning system.

SEPP 1 is repealed in circumstances where a standard instrument LEP applies in a local council

area. The amendments included the insertion of two clauses into the *SEPP (Concurrences and Consents) 2018*. Clause 6 provides for the continued operation of SEPP 1 where an Interim Development Order (IDO) or a Planning Scheme Ordinance (PSO) is in effect. Clause 7 is a savings provision which continues to apply SEPP 1 for applications that were made prior to the repeal but are yet to be determined.

## Further information

*A Guide on Varying Development Standards 2011* is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to the Standard Instrument can be found on the NSW Legislation website at: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

For further information please contact the Department of Planning, Industry and Environment's information centre on 1300 305 695.

Department of Planning, Industry and Environment circulars are available at: [planning.nsw.gov.au/circulars](http://planning.nsw.gov.au/circulars)

## Authorised by:

**Marcus Ray**  
**Group Deputy Secretary,**  
**Planning and Assessment**  
**Department of Planning, Industry and Environment**

**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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## ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

### Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

#### Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	<p>Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size:</p> <ul style="list-style-type: none"><li>– Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition</li><li>– Zone R5 Large Lot Residential</li><li>– Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living</li><li>– a land use zone that is equivalent to one of the above land use zones</li></ul> <p>This condition does not apply to State significant development or development for which a Minister is the consent authority</p>
2	<p>Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:</p> <ul style="list-style-type: none"><li>– development that contravenes a numerical development standard by more than 10%</li><li>– development that contravenes a non-numerical development standard</li></ul> <p><b>Note.</b> Local planning panels constituted under the <i>Environmental Planning and Assessment Act 1979</i> exercise consent authority functions on behalf a council and are not delegates of the council</p> <p>This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority</p>

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17-006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018



**Carolyn McNally**  
Secretary, Department of Planning and Environment