1. Introduction

This Report contains a variation to the development standards in accordance with the clause 4.6 of Botany Bay Local Environmental Plan 2013 (LEP), which provides the framework for consideration of proposed variations to development standards.

The variation sought under Clause 4.6 of the LEP has been prepared in accordance with the Land and Environment Court Ruling *Initial action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.* The case further clarified the correct approach of Clause 4.6 requests including that the clause does not require a development with a variation to have a better or neutral outcome.

The proposal seeks to vary the 3.2:1 Floor Space Ratio (FSR) development standard, which is set out in clause 4.4 of the LEP.

The variation to the floor space being sought matches the existing approval for the site as subdivided. Separate to this, Council has requested to update the clause 4.6 Variation to include the wall height adjacent to the communal open space as it is over 1.4m and technically requires a variation as well, even though there is no floor space being created. An explanation in this report shows that the there is no wall above 1.4m and therefore no additional floor space in in fact created from the outdoor area of the child care.

2. Definition of development standard

Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act) lists the items (not limited to) that are considered to be development standards, and are listed below.

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and

(o) such other matters as may be prescribed."

The proposed variation of the FSR under Clause 4.4 of the LEP is a development standard for the purposes of the EPA Act and Clause 4.6 of the LEP.

3. Proposed variation

The proposal seeks variation to Clause 4.4 of the LEP, which states:

> *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The Floor Space Ratio Map nominates a maximum Floor Space Ratio (FSR) of 3.2:1 for the site. FSR is defined in the LEP as follows:

> *The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

Gross Floor Area is defined in the LEP as follows:

> *means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*
>
> *(a) the area of a mezzanine, and*
>
> *(b) habitable rooms in a basement or an attic, and*
>
> *(c) any shop, auditorium, cinema, and the like, in a basement or attic,*
>
> *but excludes:*
>
> *(d) any area for common vertical circulation, such as lifts and stairs, and*
>
> *(e) any basement:*
>
> *(i) storage, and*
>
> *(ii) vehicular access, loading areas, garbage and services, and*
>
> *(f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
>
> *(g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
>
> *(h) any space used for the loading or unloading of goods (including access to it), and*
>
> *(i) terraces and balconies with outer walls less than 1.4 metres high, and*
>
> *(j) voids above a floor at the level of a storey or storey above.*

4. Extent of variation

a) Existing approval

On 12 June 2015, Council issued it consent to DA 2014/146 for the following:

> *Integrated development and Joint Regional Planning Panel Development Application for the demolition of the existing commercial building, removal of trees and construction of two 15 storey mixed use buildings containing 1440m² of retail and 542 residential apartments. Three basements levels and one ground level of car parking will be provided below Building A, linking with the basement for 39 Kent Road. Two basement levels and two above ground levels of car parking for 863 cars. A Voluntary Planning Agreement under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application for the proposed works which include: · Dedication and embellishment of a through site link to provide public pedestrian access from Coward Street to John Street. The dedication and embellishment will provide a significant public benefit. · Provision of a public carpark accommodating 93 cars.*

In terms of Gross Floor Area, the approved drawings of Building B in to DA 2014/146 have been surveyed by JBW Surveyors – refer to section 3.1 in the submitted Statement of Environmental Effects. The survey has found that approved Building B has a total GFA of 28,995 sqm. This equates to an approved FSR of 3.640:1 (3.64:1), based on a site area of 7,968 sqm.

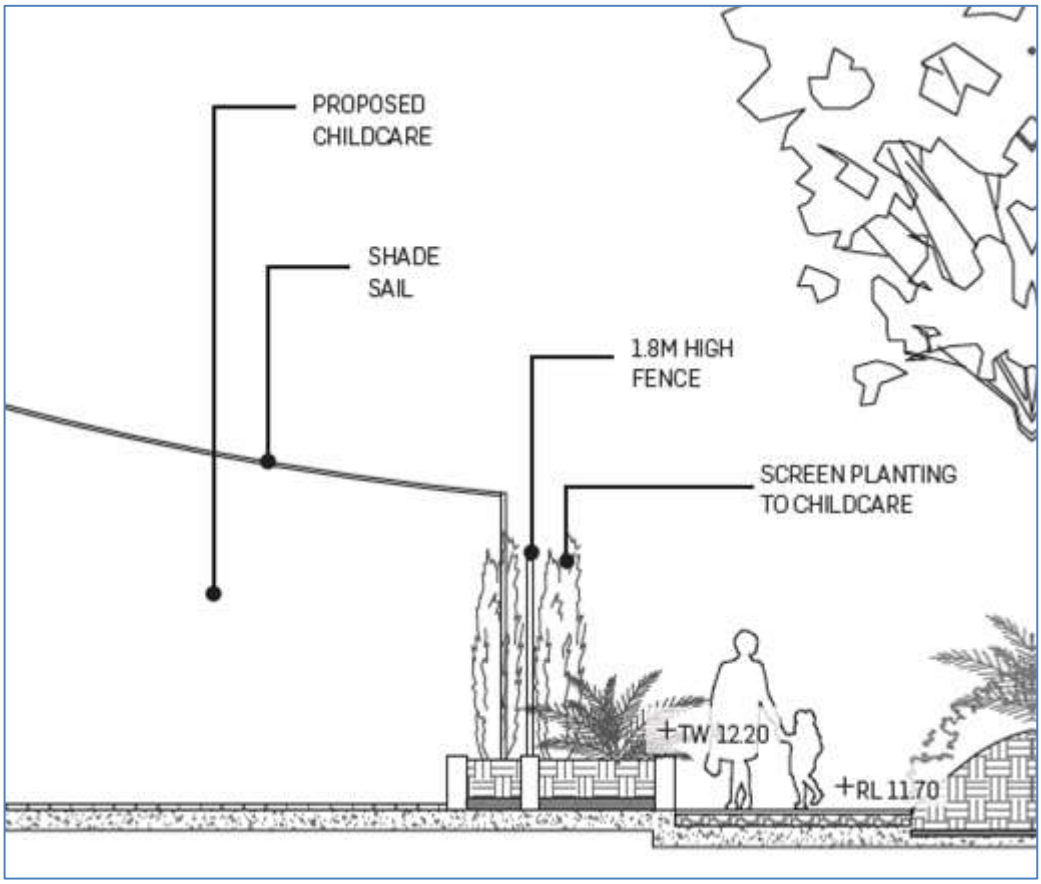
b) Subject proposal

The proposal seeks an FSR of 3.638:1 (3.64:1) with a gross floor area of 28,988 sqm, being slightly lower than the approved Building B, which is 28,995sqm.

Bayside Council has also requested that the outdoor play area of the childcare centre should be included in the GFA calculations because it is bound by a fence (interpreted as an external enclosing wall) of more than 1.4 metres in height. The interpretation of the fence creating gross floor area is considered to be incorrect. The definition of floor space under the LEP specifically state ***"terraces and balconies with outer walls less than 1.4 metres high"*** are excluded from gross floor area. In this regard, the subject perimeter fencing to the communal open space is not on a balcony or terrace. Secondly, the exclusion states "outer wall", not fences. The wall height proposed is 0.5m with a fence above. The fence proportion is not a wall and therefore does not create gross floor area This is shown in the diagram below.

Notwithstanding this, should it be considered that the unroofed fence is gross floor area, then an additional 548sqm of open space is technically considered as gross floor area.

The two above figures combined create a GFA figure of 29,536 sqm, and a consequential FSR of 3.71:1.



5. Clause 4.6(3)(a) – Is the development standard unreasonable or unnecessary?

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, 5 matters were listed to demonstrate whether compliance of a development standard was unreasonable or unnecessary, as established in Wehbe v Pittwater Council (2007) NSWLEC 827. This case also stipulated that all 5 methods may not need demonstrate compliance is necessary where relevant. Each of the matters are addressed below.

a) Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: <u>Wehbe v Pittwater Council at [42] and [43].</u>

The proposed development and additional floor space ratio satisfies the objectives of the development standard, as detailed in section 8 below.

b) Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

The underlying objective is to ensure that no amenity impacts occur. The additional floor space ratio (excluding the childcare outdoor play area) is identical to the current DA approval, to which the amenity afforded to the public domain, adjoining sites and of proposed units was deemed suitable.

Specifically, the floor space being sought is no different what has been approved, and the development has been improved with SEPP 65 compliance and satisfying the Apartment Design Guidelines. The development incorporates a superior level of amenity afforded with a swimming pool, gymnasium, podium communal open space, public car park, an open space thoroughfare and ground floor retail for cafes, restaurants and the like.

c) Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

Given that the proposal will have no adverse amenity impacts, the underlying objective of protection of amenity would be defeated / thwarted if compliance was required.

d) Establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

Previous approvals have contributed to a standard of development density in the area that is not consistent – and well above – the Council's LEP. The proposal seeks approval for a development that has the same gross floor area as the existing approved development on the site. Examples of previously approved developments in the Mascot Station area that exceed the 3.2:1 FSR control is shown in the table below.

Site	Approved FSR
256 Coward Street, Mascot	4.41:1
39 Kent Road, Mascot	4.26:1
214 Coward Street, Mascot	4.24:1
208-210 Coward Street, Mascot	4.00:1
246 Coward Street, Mascot	3.88:1
133-141 O'Riordan Street, Mascot	3.87:1
8 Bourke Road & 37 Church Avenue	3.82:1
2-4 Haran Street, Mascot	3.79:1
7-9 Kent Road, Mascot	3.78:1
7 Bourke Street & 30-32 John Street, Mascot	3.75:1
19-33 Kent Road, Mascot	3.72:1
230 Coward Street, Mascot (25 John Street)	3.60:1
671-683 Gardeners Road	3.43:1

The table above demonstrates that the development standard has been previously exceeded in various instances, which contributes to a standard of density in the area of the same scale as that proposed. Historically, it is clearly evident that the Council has abandoned its floor space ratio control in the Mascot Town Centre and the proposed floor space ratio of 3.64:1 is well within the range of past approvals outlined above.

e) Establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48].

The same zoning and floor space ratio development standard of the subject site has been applied over a large proportion of the Mascot Station precinct, and the floor space ratio has been exceeded in a number of cases/sites as outlined in 5(d) of this report. The reasonable scale of buildings in such a key precinct is limited only by the height allowable with regard to the safe operation of civil aviation with the operations from Sydney Airport. The proposal has been designed to comply with the permissible height of RL 51.0 allowable by the Sydney Airport authority.

6. Clause 4.6(3)(b) – Is there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, the written request under Clause 4.6 must be "environmental planning grounds" by their nature established under Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA.

a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

The welfare of the community is served by the proposal in that is will provide for additional housing stock and additional retail and childcare facilities. The proposal also includes a landscape pedestrian space for a public through site link from Coward Street to the Mascot Central Shopping Centre and Mascot Train Station. Additionally, 90 public car parking spaces will be provided in the proposed development.

b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

The proposal and associated additional floor space ratio has been designed to meet the State imposed environmentally sustainable practices. In doing so, compliance with BASIX is achieved and ensures that the development plays its part in facilitating ecologically sustainable development. In addition to this all private landscaped areas and communal open space will be watered from collected rainwater.

c) to promote the orderly and economic use and development of land,

The proposed development and additional floor space ratio has been designed to provide for the highest and best use of the land, which ensures the orderly and economic use and development of land.

The proposed development and additional floor space ratio also promotes the orderly development of the land in that it is essentially the same as the approved development. A comparison of the approved development (see **Figure 1**) and the proposed development

(see **Figure 2**) shows that the scale and form of the proposal is a significant improvement over the approved development for the site.

Figure 1: Approved southern elevation

Figure 2: Proposed southern elevation

d) to promote the delivery and maintenance of affordable housing,

The proposal and associated floor space ratio will deliver additional housing stock that will ensure the market supply promotes housing choice and affordability.

e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

The subject site is a former commercial industrial use and contains no habitat. The proposal will have no impacts in respect of threats to native animals and plants, ecological communities and their habitats.

f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The subject site is a former commercial industrial use and contains no Aboriginal cultural heritage. The proposal will have no impacts in this respect.

g) to promote good design and amenity of the built environment,

The proposal and associated floor space ratio has been designed to a high standard of architectural design. The proposal will also be complemented by a well-designed landscape that will offer a high level of amenity to residents and to visitors to the site.

The proposal has been designed to improve upon the solar access and natural cross ventilation achieved under the existing development approval on the site.

As shown in the table below, the development manages to increase natural cross ventilation by 12% to achieve a new result of 74%.

Solar access to apartments has been improved by 6%, achieving a result of 64%. The proposed development has been designed to maximise the possible solar access to the highest extent, and has managed to do this by slight variations to the DCP building footprints. The result in solar access that is not only better than that under the existing approval, but also better than what could be achieved under buildings that comply with the DCP footprints.

	PREVIOUS DA	NEW DA
APARTMENTS		
Studio	1 (0%)	0 (0%)
1 Bedroom	147 (47%)	117 (39%)
2 Bedrooms	150 (48%)	147 (48%)
3 Bedrooms	12 (4%)	41 (13%)
Total Units	**310**	**305**
Two Storeys: Cross-Over Units	20	0
CROSS VENTILATION	62%	74%
SOLAR ACCESS	58%	64%

h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

The proposed buildings and additional floor space ratio will be constructed to the required standards, including the Building Code of Australia, to ensure the protection of the health and safety of their occupants. The childcare centre has been designed to comply with the relevant requirements – this includes the outdoor play area.

i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

The proposal will have no impacts on the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

j) to provide increased opportunity for community participation in environmental planning and assessment.

The proposal will be subject to neighbour notification upon Council's receipt of the subject Development Application.

7. Clause 4.6(4)(a)(i) – The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

This written justification has been carried out in accordance with the most recent court cast *"Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC11"* demonstrating the variation of the development standard is acceptable.

8. Clause 4.6(4)(a)(ii) – The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

From the case *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC1,* the proposed development and additional floor space ratio will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. Further the case states that *"It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest"*.

A response to each of the objectives of the Floor Space Ratio control in clause 4.4 follows:

a) to establish standards for the maximum development density and intensity of land use,

Although the proposal seeks a variation from the allowable floor space ratio on the site, the proposal also results in a slight overall reduction from the approved gross floor area on the site – if the outdoor play area is not considered in the numbers. The floor space ratio proposed is mid range compared to previous approvals in the locality.

b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

The site is located within the Mascot Town Centre. The proposed development and additional floor space ratio has delivered an improved built form that has reduced the "walled" scaled effect compared to the original approval as shown in the diagrams above.

c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,

The site is located within a precinct undergoing transition from a predominantly industrial area, to a town centre. The design of the development using the approved gross floor area is a significant improvement to the streetscape and improves upon the existing character of the area.

d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,

The departure from strict compliance with the numerical FSR control will reduce the bulk or scale of the current approval by removing the large horizontal facade.

e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

The proposal will not have any adverse impacts on the amenity of the public domain from matching the floor space to the current approval. In fact there will be improvements by constructing a 90 spaces public car park and public open space area between adjoining properties.

f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

The proposed development has been designed to a scale that is consistent with the previous approval for the site having the same gross floor area and height. The design is entirely suitable in relation to the subject site, and also to the surrounding built form that makes up the Mascot Station Town Centre.

g) to facilitate development that contributes to the economic growth of Botany Bay.

The proposed development will contribute to the economic vitality of the Mascot Station precinct. The addition of employment opportunities in the form of retail tenancies and a childcare centre will support this. The inclusion of a public car parking area will add to the convenience for visitors to the area, further adding to the economic growth of the locality.

9. Clause 4.6(4)(b) - The concurrence of the Secretary has been obtained

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6 of the LEP, subject to the conditions in the table in the notice (**Annexure 1**).

The Development Application being of regional significance and therefore considered by the Sydney Planning Panel, assumes the concurrence of the Secretary under the Circular and can determine the variation to the development standard.

10. Conclusion

The proposed variation has been reported in accordance with the requirements under Clause 4.6 of the LEP and relevant Court Cases. The variation to the development standard is warranted as it:

- Is deemed unreasonable or unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The objectives of the zone are not contravened and the development is therefore in the public interest. The public benefit of maintaining the development standard in this instance is not put at risk by allowing the departure from the LEP;
- Variation to the development standard is consistent with the relevant objects in clause 1.3 of the EPA Act;
- The variation to the development standard remains consistent with the objectives of the zone; and
- Council has abandoned/departed from the standard and hence compliance with the standard is unnecessary and unreasonable.

On this basis, the proposed variation to the development standard should be supported under the provisions of Clause 4.6(2) of Botany Bay Local Environmental Plan 2013.

ANNEXURE 1: CIRCULAR PS18-003 SECRETARY CONCURRENCE

NSW GOVERNMENT | Planning & Environment

Planning circular

PLANNING SYSTEM

Varying Development Standards

Circular	PS 18-003
Issued	21 February 2018
Related	Revokes PS17-006 (December 2017)

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.

Overview of assumed concurrence

This circular replaces Planning Circular PS 17-006 and issues revised assumed concurrence, governance and reporting requirements for consent authorities.

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 effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

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 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 23I, to be renumbered 4.8 from 1 March 2018).

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 will be required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 23I, to be renumbered section 4.8 from 1 March 2018).

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 will apply 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), or clause 6 of SEPP 1.

The notice takes effect on the day that it is published on the Department of Planning'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 to developmentstandards@planning.nsw.gov.au within 4 weeks of the end of each quarter (ie 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.

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 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 of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at:

www.planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

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	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: – 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 does not apply to State significant development or development for which a Minister is the consent authority
2	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: – development that contravenes a numerical development standard by more than 10% – development that contravenes a non-numerical development standard **Note.** Local planning panels constituted under the *Environmental Planning and Assessment Act 1979* exercise consent authority functions on behalf a council and are not delegates of the council This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority

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