

**INSTRUCTION ON FUNCTIONS EXERCISABLE BY COUNCIL ON BEHALF OF SYDNEY  
DISTRICT OR REGIONAL PLANNING PANELS – APPLICATIONS TO MODIFY  
DEVELOPMENT CONSENTS**

**CLAUSE 123BA OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000***

**Objective**

The objective of this instruction is to identify the applications to modify development consents that are **not** to be determined by a council on behalf of a Sydney district or regional planning panel (regional panel) under clause 123BA(2) of the *Environmental Planning and Assessment Regulation 2000* (Regulation).

**Interpretation**

A word or expression used in this instruction has the same meaning as it has in the *Environmental Planning and Assessment Act 1979* (Act).

**Instruction**

A council is **not** to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application:

- proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.

Note: Clause 123BA of the Regulation requires councils to determine all other applications for the modification of development consents under section 4.55(2) of the Act, as well as applications for the modification of development consents under section 4.55(1) and section 4.55(1A) of the Act.

This instruction takes effect on 1 August 2020 and applies to applications to modify development consents made but not determined before 1 August 2020.

## SCHEDULE 1

### 1. **Conflict of interest**

Development for which the applicant or landowner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

### 2. **Contentious development**

Development that is the subject of 10 or more unique submissions by way of objection.

A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

### 3. **Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.