

Changes to the arrangements for implementing new requirements for development control plans

This circular provides advice on changes to the transitional arrangements for the introduction of new requirements for development control plans.

Introduction

The *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* amended the requirements for development control plans (DCPs) under the *Environmental Planning and Assessment Act 1979* (the Act).

The amendments commenced on 30 September 2005 and introduced a requirement that only one DCP (per planning authority) may apply to the same land. If this requirement is not complied with then all DCPs applying to the same land have no effect. On 9 November 2005, the Department of Planning issued a circular to clarify the new requirements for DCPs (Planning Circular PS 05–010).

This circular provides advice on changes made since 9 November 2005 to the transitional arrangements for the introduction of the new requirements for DCPs.

Changes to the transitional arrangements for DCPs

Prior to commencement of the changes, the Act required that only one DCP could apply to the same land if a DCP for that land was made or amended after 30 September 2005 (or only one DCP could apply to the same land after the date the principal local environmental plan (LEP) for that land adopts the provisions of the standard LEP).

The Environmental Planning and Assessment Amendment (Development Control Plans) Regulation 2005 (the Regulation) commenced on 9 December 2005. The Regulation amends the transitional provisions in the Environmental Planning and Assessment Regulation 2000 to **postpone** the commencement of the requirement that only one DCP may apply to the same land.

The Regulation provides that DCPs made before the Act amendments commenced on 30 September 2005 (including DCPs that came into operation after that date), and DCPs made after 30 September 2005, do not need to comply with the one DCP requirement until:

- a DCP applying to the same land is made or amended after 30 April 2006, or
- the principal LEP adopts the provisions of the standard LEP

whichever is sooner.

This means that, **until** 30 April 2006, DCPs may be made and amended without complying with the requirement for only one DCP to apply to the same land.

DCPs made or amended **after** 30 April 2006 (or DCPs applying to the same land as the principal LEP once it adopts the provisions of the Standard LEP) must comply with the requirement that one DCP applies to the same land. If not, all DCPs applying to the same land will be of no effect. To avoid this occurring, all DCPs applying to the same land will need to be amalgamated or otherwise amended to comply with the requirement that only one DCP may apply to the same land (see Department of Planning circular PS 05–010 for further information on amalgamating and amending DCPs for this purpose).

Reasons for the changes

The introduction of the new requirements for DCPs has been postponed to respond to difficulties that councils have experienced implementing the requirements.

Some councils have adopted DCPs since the Act amendments commenced, which do not comply with the requirement that only one DCP may apply to a site. The previous transitional provisions provided that those DCPs, and any other DCP that would otherwise apply to the same land, were invalid.

Those DCPs will now not be invalid because the amending Regulation is taken to have commenced on 30 September 2005.

Some councils raised concerns that the previous transitional provisions prevented them from implementing new or amending existing development controls within the timeframes anticipated by those councils. This is because they would need to amend (so only one DCP applied to the same land) and re-exhibit DCPs that had already been through public consultation.

Under the Regulation, DCPs made or amended between 30 September 2005 and 30 April 2006 will not need to be remade, amended or re-exhibited to comply with the one DCP per site requirement.

However, after 30 April 2006, new or amended DCPs must comply with the requirement that only one DCP applies to the same land. Councils therefore have until 30 April 2006 to ensure that DCPs that will be adopted after that date will comply with the new requirements.

Other changes to the transitional arrangements

The previous transitional provisions provided that DCPs must not be inconsistent with, or prevent compliance with, an environmental planning instrument once a DCP is made for the same land after 30 September, or once the relevant principal LEP adopts the provisions of the Standard LEP (whichever is sooner).

For consistency, the introduction of the requirement for a DCP to be consistent with an environmental planning instrument has also been extended until a DCP is made or amended after 30 April 2006 (or after the date the principal LEP adopts the provisions of the Standard LEP, if applicable).

Further information

Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

The new Regulation may be accessed on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au – see 'In force' database.

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Important note

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