



# Planning circular

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## PLANNING SYSTEM

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Act and Regulation changes

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<b>Circular</b>	PS 21-013
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<b>Related</b>	Replaces PS 06-012

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## Transitional arrangements for development control plans

This circular is to advise of the transitional provisions applying to development control plans (DCPs) in relation to the adoption of a Standard Instrument local environmental plan, and to confirm previous advice on the one DCP per planning authority per site rule.

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### Introduction

On 30 September 2005, Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) was amended to, amongst other things, introduce new requirements in respect to development control plans (DCPs).

The *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) includes transitional provisions in relation to the commencement of these DCP requirements, in particular the requirements in section 3.43 (previously section 74C) of the EP&A Act.

### Transitional provisions

Clause 289A of the EP&A Regulation includes a transitional provision which has the effect of deferring the commencement of sections 3.43(2) and (5) (previously sections 74C(2) and (5)) of the EP&A Act.

Section 3.43(2) of the EP&A Act states that only one DCP per planning authority may apply in respect of the same land (non-compliance with this provision renders all DCPs invalid).

Section 3.43(5) of the EP&A Act states that a provision of a DCP is rendered invalid if it is the same as, or is inconsistent with, the provisions of an environmental planning instrument applying to the same land.

Clause 289A of the EP&A Regulation provides that section 3.43 (previously section 74C) does not render a DCP invalid until:

- the principal local environmental plan (LEP) that applies to the same land as the DCP adopts the provisions of the Standard Instrument, or

- in the case of a provision that is not inconsistent with, and capable of operating in conjunction with, the principal LEP - six months after that day.

The transitional provision means that where a Standard Instrument LEP is not in place, more than one DCP per planning authority may apply to the same land, and provisions of DCPs will not be rendered invalid if they are inconsistent with or prevent compliance with a LEP.

Once a Standard Instrument LEP is in place, a timeframe of six months is allowed for DCP provisions that are inconsistent with or prevent compliance with the LEP to still apply.

### How can council comply with the one DCP per site rule?

A DCP can apply to a site, a precinct or the whole local government area (LGA). It is up to council how it chooses to comply with the one DCP per planning authority per site requirement.

For example, if council wishes to make a single DCP for its entire LGA, it could simply amalgamate all of its existing DCPs into a single plan. Each of the existing DCPs could make up a chapter of the amalgamated DCP.

Alternatively, council may wish to have a number of site-specific DCPs as well as a single DCP that contains generic, issues-based controls (e.g. for drainage, car parking and child care). The issues-based DCP would apply to any land in the LGA that is not subject to a site-specific DCP. The site-specific DCP could adopt relevant provisions of the issues-based DCP. It would also need to include a provision to exclude the issues-based DCP from the land to

which the site-specific DCP applies (despite adopting its provisions).

Another option would be to prepare a DCP for each precinct of an LGA. Each of these DCPs could contain common development controls. Council may choose to locate these common controls in one of the precinct DCPs. The other precinct DCPs could then adopt those common controls by reference (while also providing that no other DCP applies in that precinct).

It should be noted that section 3.43(3) enables a DCP to adopt the provisions of another DCP by reference. This means that the DCP does not need to replicate the provisions of another DCP (however, there is nothing to prevent this if council prefers such an approach). If a DCP is delivered electronically, it could include a hyperlink to any provisions that have been adopted by reference. This will ensure that the relevant provisions are easily accessible without creating a lengthy document that repeats controls from other plans.

Finally, it should be noted that section 3.43(2)(b) enables an amending DCP to be made without complying with the one DCP per planning authority per site rule. That is, the amending DCP may apply to the same land as the DCP it will amend, but only until the amendment is made. After that time, the amending DCP and the DCP that has been amended are considered to be a single plan. Section 3.43(2)(b) does not permit any other DCP to apply to the same land as the amending and amended DCP.

### **Further information**

For further information please contact Service NSW on 13 77 88.

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