



DEPARTMENT OF PLANNING AND ENVIRONMENT

Follow-up Review of 2022 Audit of Councils' use of clause 4.6

Internal Audit Report

March 2023



Follow-up of 2022 Audit of Councils' use of clause 4.6 - Audit Report

March 2023



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1. EXECUTIVE SUMMARY

In New South Wales, the Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) sets out development standards that need to be met when preparing a development application. Clause 4.6 of the Standard Instrument LEP (clause 4.6) provides flexibility in the application of development standards by allowing consent authorities including local councils, to approve a variation to development standards, provided the Secretary of the Department of Planning, Industry and Environment (department), has given concurrence to the consent authorities¹. Local councils can assume the Secretary’s concurrence for the majority of development applications and for most types of developments².

To ensure local councils exercise a consistent, fair, and transparent procedure in determining variation applications, the department conducts periodic audits to check council compliance with the requirements of clause 4.6 and the planning circulars.

For the 2022 audit, the department selected 13 new councils to be included in this cycle. Of these councils, 9 councils were found to have issues relating to compliance with the requirements of Clause 4.6 and the Planning Circular PS 20-002 Varying Development Standards. For the follow-up audit, RSM was appointed by the department to assess unmet audit recommendations and check if Councils were compliant with unmet audit requirements of the 2022 audit.

The audit found that all 9 councils subject to the follow-up audit were compliant with all the unmet requirements identified in the 2022 audit. For all 9 councils, these unmet requirements comprised of the timeliness of submissions of quarterly reports containing all variations to development standards and/or the maintenance of a publicly available online register of all variations to development standards. From testing, it was observed that councils subject to the follow-up audit demonstrated that they had taken steps to meet the requirements from the previous audit, with all 9 councils now meeting the requirements.

There are a range of measures available to the Secretary to address non-compliance. These include education and training to the more substantive measures outlined in the Planning Circular PS 20-002 Varying Developments Standards. Based on this follow-up audit, these measures have been determined to be operating effectively to ensure compliance with the requirements of Clause 4.6.

¹ See clause 4.6 provisions in [Standard Instrument – Principal Local Environment Plan](#).

² Councils have been notified that they may assume the concurrence of the Secretary (or the Director General) of the department since 1989 for the purposes of clause 4.6 variations.

2. CONTEXT

Clause 4.6 provides flexibility in the application of planning controls by allowing councils to approve development applications that may not strictly meet the requirements of the subject development standard but are consistent with the objectives of the development standard and the objectives of the zone. In these instances, varying a development standard may be allowed by a consent authority when there are sufficient environmental planning grounds to justify contravening the development standard. The Secretary's concurrence must be obtained before consent for development that contravenes a development standard is granted, however, in many cases this concurrence can be assumed by a council.

In 2008, the department published Planning Circular PS08-014 Reporting variations to development standards. The circular outlines the procedural and reporting requirements councils must implement with respect to their use of the Secretary's assumed concurrence. The requirements include measures to increase the transparency and accountability in clause 4.6 decisions, including reporting of decisions, online information on council's use of the Secretary's assumed concurrence and quarterly reporting of clause 4.6 variations to the department.

In 2009, in response to the findings of the Independent Commission Against Corruption (ICAC) investigation into corruption allegations against one of the Council³, the department conducted the first audit on local council use of clause 4.6. The investigation recommended the department monitor the use of the Secretary's assumed concurrence provided by both clause 4.6 and the now repealed State Environmental Planning Policy No1 - Development Standards (SEPP 1).

Since 2009 the department has undertaken periodic audits of council records from across the State to ascertain whether councils are complying with the procedural and reporting requirements. To date, 70 councils have been audited, inclusive of the 13 new audits in 2022. The clause 4.6 audit process ensures the Secretary's assumed concurrence, provided by clause 4.6, is used appropriately and reported quarterly by local councils. A delegate of council can assume the Secretary's concurrence, except if the development contravenes a numerical standard by greater than 10% or the variation is to a non-numerical standard.

The Secretary may withdraw the ability for a council to utilise the assumed concurrence to determine applications where the council is not meeting the requirements set out in the planning circular.

³ Report on an investigation into corruption allegations affecting Wollongong City Council, ICAC Report, Independent Commission Against Corruption, 2008

3. FOLLOW-UP TO THE 2022 AUDIT

For the follow-up audit, the Planning Circular PS 20-002 Variations to Development Standards published by the department in May 2020 is the applicable planning circular⁴. The circular retained all the same procedural and reporting requirements as the previous circular, and further included the requirement for all council reports to be submitted to the department through the Planning Portal.

In 2022 the department conducted an audit of 13 NSW councils on their use of assumed concurrence in determining clause 4.6 variation applications and their compliance with the reporting and procedural requirements in the planning circulars. Nine of these audited councils had recommendations subject to follow-up. These councils are listed in Table 1.

The follow-up audits are considered to be a necessary part of the department's ongoing commitment to maintaining the integrity of the planning system. The audits enable councils to demonstrate that they consistently implement the processes, procedures and obligations outlined in clause 4.6 and planning circulars issued on variations to development standards.

This audit report discusses the findings in relation to the councils implementation of the specific recommendations in the 2022 audit report

Summary of 2022 findings leading to the follow-up audit

The 2022 audit found instances where councils had not met the reporting or other administrative requirements associated with the use of clause 4.6. The unmet requirements included:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter; and
- Non-availability of an online register at time of the audit

4. AUDIT CRITERIA – PROCEDURAL AND REPORTING REQUIREMENTS

Criteria for this audit was based on the procedural and reporting requirements of clause 4.6 and the related planning circulars for councils⁵. Councils are advised in the planning circulars that the department will continue to undertake random audits on councils' use of the Secretary's assumed concurrence.

Since the 2022 audit, 9 councils were identified with non-compliances to the requirements of Clause 4.6 and the Planning circular. The councils were notified of their involvement in the follow-up audit on 20 January 2023. The audit were conducted by the department and RSM between January 2023 and March 2023, with fieldwork concluding on 14 March 2023.

Table 1. Metro and regional and councils subject to the follow-up audit in 2023

Metro councils	Regional councils
Burwood	Clarence Valley
Canada Bay	Coffs Harbour
Fairfield	
Hunters Hill	
North Sydney	
Strathfield	
Waverley	

⁴ See PS 20-002 Variations to Development Standards on the department's [website](#).

⁵ See clause 4.6 (3) and (7) provisions in [Standard Instrument – Principal Local Environment Plan](#), and [PS 20-002 Variations to Development Standards](#), pp 1-2

5. OBJECTIVES

The objectives of the clause 4.6 audit are to:

- Ensure councils have appropriate procedures in place for monitoring and reporting requirements set by the Planning Circular PS 20-002 *Variations to Development Standards*;
- Monitor use of the Secretary's assumed concurrence by councils against the requirements of:
 - the Secretary's assumed concurrence conditions;
 - clause 4.6 of the Standard Instrument LEP; and
 - any special exemptions issued to a council where staff may make decisions for certain variations over 10%.
- Advise audited councils of the results, recommendations, and timeframes for addressing any issues identified in the audit.

6. BENEFITS OF UNDERTAKING THE AUDIT

Undertaking a regular audit to monitor councils' use of clause 4.6 enables the department to:

- Ensure ongoing transparency and integrity of the planning system regarding the variation of development standards;
- Increase the level of awareness and importance within audited councils of the need to properly use the Secretary's assumed concurrence;
- Assess whether any development standards are being regularly varied by a council and may require review;
- Detect any anomalies, such as cases exceeding delegations; and
- Identify areas where the department could provide further guidance and advice (for example, by updating the planning circular) on the application of clause 4.6.

7. AUDITORS

For the 2022 Audit and the follow up audit the department appointed an external Auditor through a competitive tender. The auditors were selected according to the NSW Procurement Policy with reference to the current Procurement Policy Framework which complies with legislative and policy requirements. The department referred to the PMS Scheme (Performance and Management Services Scheme) to identify a prequalified suppliers with professional audit service. All suppliers considered have accepted the Standard Commercial Framework and in scheme ID SCM0005 (Performance and Management Services).

Due to the nature of the 2022 audit and its follow-up, RSM provided its services as the appointed auditor. RSM conducted the audit between February 2023 and March 2023, with fieldwork concluding on 14 March 2023. RSM's audit process, scope of the audit and methodology was developed by and in consultation with DPE.

8. FOLLOW-UP AUDIT OF COUNCILS

8.1 Process for the follow-up audit

On 20 January 2023, the department wrote to the 9 councils to notify them of the follow-up audit. The Councils were asked to provide documentation and/or web links to documents to demonstrate that the recommendations from the 2022 audit had been implemented.

Auditors considered council responses and documentation received and followed up with councils on any matters during audit field work between February 2023 and March 2023.

8.2 Scope of audit and objectives

The objective of the follow-up audit was to identify whether the councils had implemented measures to address the unmet audit requirements. The issues identified in the 2022 audit for the 9 councils were the focus of the follow up audit.

8.3 Methodology

The methodology for the follow-up audit were in line with that of the 2022 new audits, with a focus on reviewing council information to identify whether the councils have implemented the recommendations from the previous audit.

For all of the follow-up audit, a review of DAs was not necessary as the previous audit findings did not relate to DAs.

All documentation reviewed related to quarterly reporting of variations to DAs and the maintenance of a publicly available online register.

Table 2. Follow-up audit assessed requirements for metro and regional councils

Metro councils	Number of quarterly reports reviewed	Online register reviewed (Y/N)	Regional councils	Number of quarterly reports reviewed	Online register reviewed (Y/N)
Burwood	2	N/A	Clarence Valley	N/A	Y
Canada Bay	2	Y	Coffs Harbour	2	Y
Fairfield	2	N/A			
Hunters Hill	2	Y			
North Sydney	2	N/A			
Strathfield	2	N/A			
Waverley	2	N/A			
Total	14	-	Total	2	-

9. AUDIT FINDINGS AND RECOMMENDATIONS

9.1 Assessment of previously unmet requirements

During the follow-up audit, the auditors reviewed whether the councils had met the specific requirements identified in the 2022 audit report as unmet with the requirement of clause 4.6. The auditors found no issues regarding compliance during the follow-up audit.

Table 3 provides a snapshot of audit findings for all councils subject to the follow-up audit. This snapshot shows the audit requirements met/unmet by each council subject to the audit.

Table 3. A summary of audit findings – Follow-up of 2022 audit

Council audited M = Metropolitan R = Regional	All quarterly reports submitted to department	Timely submission of quarterly reports to department	Online clause 4.6 register	Adequate online register details
Burwood (M)	✓	✓	-	-
Canada Bay (M)	✓	✓	✓	✓
Fairfield (M)	✓	✓	-	-
Hunters Hill (M)	✓	✓	✓	✓
North Sydney (M)	✓	✓	-	-
Strathfield (M)	✓	✓	-	-
Waverley (M)	✓	✓	-	-
Clarence Valley (R)	-	-	✓	✓
Coffs Harbour (R)	✓	✓	✓	✓
Total compliant councils	100%	100%	100%	100%

Table 4 shows a summary of the audit findings by audit criteria.

Table 4. Council compliance with audit recommendations – follow-up audit

Audit requirement outstanding from the 2022 audit	Number of non-compliant councils 2022	Number of non-compliant councils 2023
Maintaining an online clause 4.6 register	4	0
Quarterly reports submitted to the department within four weeks	8	0

10. AUDIT FINDINGS AND RECOMMENDATIONS (CONT.)

10.1 Assessment of previously unmet requirements (Cont.)

Table 5 shows a summary of audit findings by council and number of non-compliances.

Table 5. Audit findings from the follow-up audit

Council	Number of non-compliances 2022	Number of non-compliances 2023
Burwood	1	0
Canada Bay	2	0
Fairfield	1	0
Hunters Hill	2	0
North Sydney	1	0
Strathfield	1	0
Waverley	1	0
Clarence Valley	1	0
Coffs Harbour	2	0

10.2 Recommendations and next steps

The audit findings and the recommendation for individual councils are discussed in the “Results by councils: follow-up audit” section of this report. Following the Audit Report, the Department will:

- Write to individual councils to advise them of the outcome of the follow-up audit for the nine councils
- Write to all councils in NSW to remind them of the procedural and reporting requirements applying to clause 4.6 variations. The letter may advise councils of any new reforms (if finalised) adopted by the department on varying development standards.

11. RESULTS BY COUNCIL: FOLLOW-UP AUDIT

11.1 Burwood Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit that resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter.

Result of follow-up audit

The council has implemented the recommendation on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.2 City of Canada Bay Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit that resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter; and
- Maintaining a publicly available online register of approved variations to development standards under clause 4.6 that provides adequate information.

Result of follow-up audit

The council has implemented all the recommendations on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.3 Fairfield City Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit which resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter.

Result of follow-up audit

The council has implemented the recommendation on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.4 Hunter's Hill Council

Audit requirements from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit which resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter; and
- Maintaining a publicly available online register of approved variations to development standards under clause 4.6 that provides adequate information.

Result of follow-up audit

The council has implemented all the recommendations on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.5 North Sydney Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit which resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter.

Result of follow-up audit

The council has implemented the recommendation on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.6 Strathfield Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit which resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter.

Result of follow-up audit

The council has implemented the recommendation on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.7 Waverley Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit which resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter.

Result of follow-up audit

The council has implemented the recommendation on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.8 Clarence Valley Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit that resulted in a follow-up audit in 2023:

- Maintaining a publicly available online register of approved variations to development standards under clause 4.6 that provides adequate information.

Result of follow-up audit

The council has implemented the recommendation on unmet requirements from the 2022 audit.

Further action for council

Nil

10. RESULTS BY COUNCIL: FOLLOW-UP AUDIT (CONT.)

11.9 Coffs Harbour City Council

Audit findings from the 2022 audit

The auditors found the following unmet requirements during the 2022 audit that resulted in a follow-up audit in 2023:

- Submitting to the Department quarterly reports of all variation decisions within 4 weeks of the end of each quarter; and
- maintaining a publicly available online register of approved variations to development standards under clause 4.6 that provides adequate information.

Result of follow-up audit

The council has implemented all the recommendations on unmet requirements from the 2022 audit.

Further action for council

Nil

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