

STATE ENVIRONMENTAL PLANNING POLICY No. 1

What is SEPP No. 1?

This is a State Government Policy which can be used to relax numerical development standards set by planning instruments (usually those contained in Local Environmental Plans such as the Shoalhaven Local Environmental Plan, 1985).

A 'development standard' is used to control such things as site area, height, density, setbacks etc. and is generally expressed numerically as a minima or maxima. For example, a Local Environmental Plan may require that a lot in a particular zone has a minimum area upon which a house can be built. If the land has a lesser area, it would be unlawful for the Council to approve of a house unless the standard was relaxed via SEPP No. 1.

The policy recognises that in **exceptional circumstances** such standards may not be necessary or reasonable and provides a mechanism for obtaining a variation to the standard.

A strong case must be made out when using this policy, because the Council (and in many cases the NSW Department of Urban Affairs & Planning) must be satisfied that the proposal is consistent with state, regional and local planning objectives for the locality.

Under What Circumstances is the Use of SEPP No. 1 Appropriate?

This policy should only be used where a numerical development standard that is contained in a planning instrument would need to be varied to give Council the legal ability to approve of the development. A common example is where a certain zone specifies a minimum lot size into which land can be subdivided.

The use of SEPP No. 1 is appropriate where it can be clearly demonstrated that the proposed development achieves the underlying purpose of the standard, just as well as one that complies. In some cases, a numerically large variation can be supported just as well as one which is numerically small. For example, a 40-hectare standard for approving a dwelling may apply but in certain circumstances, there may be as much justification to allow a house on 2 hectares as on 35 hectares.

SEPP No. 1 **should not** be used where approval under the policy is likely to lead to other similar applications being made in the locality. Council must consider whether the cumulative effect of similar approvals will undermine the objective of the standard or the planning objectives for the locality.

The policy cannot be applied where a numeric standard forms part of a planning definition, eg. within Council's Local Environmental Plan, the definition of 'Home Activity' requires that a sign cannot be exhibited if it exceeds 1 metre x 0.6 metre.

What Matters Need to be Addressed in the Objection?

When objecting under SEPP No. 1, it is the objector's responsibility to prepare and document a case which justifies a variation from the standard. There is no automatic 'right' to a variation.

The submission must identify the standard for which variation is sought and address the purpose and underlying objectives of that standard. It must show how the purpose and objectives of the standard will still be achieved even though the standard is not adhered to.



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Compassionate circumstances are not regarded as grounds for a SEPP No. 1 objection.

Who Can Prepare a SEPP No. 1 Objection?

Anyone can prepare a SEPP No. 1 objection, however the likelihood of a successful objection will be increased if the purpose of the standard, the planning principles behind the standard and the procedures for objection are well understood.

Many people don't feel confident to prepare their own submissions and choose to engage a consultant with expertise and experience in this area.

Who Makes the Decision?

The Director General of the NSW Department of Urban Affairs and Planning is empowered to decide whether the policy should be applied to allow approval of an application, however, local Councils have been given delegation to make this decision in certain circumstances. They can use this delegation **except** where an application seeks variation:

- a. to erect a dwelling on allotment of land zoned rural or environmental protection, or
- b. to subdivide land which is zoned rural or environmental protection.

Council can assume the Director's concurrence to vary the standard in the above circumstances, but only if **only one** allotment does not comply with the standard and it has an area greater than 90% of that specified by the standard.

An example of this is where a dwelling may not be approved unless the land has a minimum area of 40 hectares. If the land has an area of 36 hectares or more, Council may choose to deal with the SEPP 1 objection without reference to the Director General of Urban Affairs and Planning.

What are the Procedures for Making a SEPP 1 Objection?

Objections can only be made in conjunction with a development application (including subdivision applications). They must be made **in writing** and submitted with the application.

Unless Council has delegation, it cannot approve of applications involving SEPP No. 1 objections unless the Director General of Urban Affairs and Planning has given **concurrence** to the approval.

This means that Council must support the application before it is referred to the Director General for consideration. Council's support for an application is usually decided by the elected Council after considering a report by the professional staff. The report will contain a thorough merit assessment of the proposal as well as a copy (or summary) of the applicant's objection. It will usually make a recommendation to the elected Council as to whether the objection should be supported.

What Council Fees Apply when Making a SEPP No.1 Objection?

No additional fees apply unless the concurrence of the Director General of Urban Affairs and Planning is required (see heading 'Who Makes the Decision?')

If the Director's concurrence is required, Council charges an additional fee over and above the normal development (or subdivision) application fees.

This additional fee varies annually and is contained within Council's annual Fees and Charges Listing. Development and Environmental Services Group staff will be able to advise you of the current fee.

Further Advice

If you require information on the use of SEPP No.1, please contact Council's Development and Environmental Services Group.