



24 June 2026

Meagan Kanaley
Planning System Reform Director
Planning System Reform Team
NSW Department of Planning, Housing and Infrastructure
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By: upload to planning portal.

Dear Meagan Kanaley,

Variations and changes to complying development Explanation of Intended Effect

Southern Sydney Regional Organisation of Councils (SSROC) appreciates the opportunity to make a submission on the Explanation of Intended Effect – Variations and changes to complying development (the EIE) dated May 2026.

SSROC is an association of twelve local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC acknowledges the traditional custodians of the land on which we work and live, the peoples of the Darug, Dharawal and Eora Nations. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.9 million, one third of the population of Sydney, including Australia's most densely populated suburbs. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

The EIE outlines an intent to expand the share of applications determined under the complying development pathway by making changes to baseline development standards and allowing certain development standards to be varied.

In principle SSROC supports straightforward, low impact proposals proceeding via a simplified assessment path. The changes to development standards are sufficiently outlined; however, that same level of specificity has not been captured for the variation certificate process or implications for councils.

Several key aspects of the reform need to be better explained, implementation process developed and relationship with other assessment pathways refined to ensure complying development variations do not have an adverse impact on council operations and the useability of the NSW planning system.

Highlight on Recommendations

1. Collate and share the evidence base for the complying development variations approach to better understand the problem and to build consensus for the proposed reform.



2. Provide a blueprint with timeframes outlining the intended future state for streamlined approvals in NSW capturing complying development, complying development variations and targeted assessment
3. Councils request the ability to review and provide feedback on a consultation draft of an amending regulation so that they can understand, inform and prepare for the variation assessment process.
4. That the Department readjust the Statement of Expectations Order and associated League Tables to note councils' role in assessing variation certificates
5. Consider allowing a council to accept the stage 1 variations as an uplift in standards without the need for a variation certificate. Alternatively, allow a council to undertake upfront strategic work to determine where variations will be supported in their area.
6. That the EP&A Regulation be explicit as to the criteria a variation application is to be assessed against. The criteria will need to manage the cumulative impact arising from multiple variations and/or iterative variation requests.
7. That the number of days provided to a council for variation assessment be measured in business rather than calendar days to provide the full timeframe when factoring in public holidays and weekends.
8. That a certifier be required via a provision in the EP&A Regulation to provide certainty to the council that the proposed development (other than the sought variation) is a compliant complying development.
9. That an approved variation certificate be issued with a limitation that the variation applies only to the complying development certificate it was submitted with.
10. Variation standards should be worded to be prescriptive and measurable so as to not introduce performance-based standards into complying development.
11. Matters listed where 'a council should refuse a variation certificate' should be 'reasons for an incomplete application returned to the applicant' so that incorrect or incomplete applications are not forwarded to councils.
12. Merit grounds for refusing a variation certificate should be clearly identified in legislation so that councils have their authority to refuse based on impacts clearly documented.
13. That the Department share a consultation draft of the amending EP&A Regulation including the proposed deemed approval safeguards to give councils an opportunity to review the proposed approach.
14. The variation certificate should be modelled on an assumed concurrence function

rather than deemed approval. This way councils can manage their workload by exception, free of the optics of failing to determine an application.



15. That the proposed fees for a complying variation certificate be set to better reflect the application process, at a higher proportion of what would be charged for a development application of the same development type and estimated development cost (EDC).
16. That the Government opt for either flexible complying development or targeted assessment as conflating the two pathways will reduce clarity around application types and require more technical expertise upfront to navigate the system.
17. Remove the ability to vary tree-based and gross floor area development standards and consider instead variations to lot width development standards.
18. Consider council software builds that are not yet planned, funded or scheduled as part of the implementation of this reform and factor in accordingly an appropriate commencement date.

The sections below provide the detail on the aspects of the reform that would benefit from further consideration to support good planning practice and outcomes.

1. Are the changes informed by evidence from industry, certifiers and councils?

The EIE presents limited evidence to justify the proposed reform. While the Department's stated challenge in collecting quantitative data on non-qualifying development is appreciated, qualitative evidence could be collated. Presenting qualitative evidence to elucidate the proposed approach would build consensus for the reform.

As it stands, without documenting the barriers to complying development uptake, it is unclear whether the proposed changes will achieve the reform objective. It seems more likely that low uptake is due to land affectations and exclusions rather than a minimal deviation from complying development standards.

Recommendation:

Collate and share the evidence base for the complying development variations approach to better understand the problem and to build consensus for the proposed reform.

2. More responsibility and risk borne by local government

Department-held workshops on complying development variations referenced the current proposal as being stage 1. Councils would appreciate an overarching blueprint that outlines all proposed stages of complying development variations with an indication of timing and alignment with the reforms associated with Targeted Assessment. These two reforms are related and overlapping so a single document that explains the intended end state for streamlined approvals in NSW would provide essential context for councils.

This reform is based on the assumption that certifiers will lodge requests for variations. However, certifiers do not always comply with the relevant requirements. As a result, councils and their communities are concerned that these changes may lead to an increase in complaints about certifiers and create a need for additional compliance monitoring and enforcement activities.



SSROC councils do not issue a large share of complying development certificates (CDCs). Most CDCs are issued by private accredited certifiers. Introducing a council role into the assessment of these applications will divert council assessment resources away from development applications to consider variation certificates. This will affect development application (DA) assessment timeframes. While housing approval timeframes across all application types may ultimately recalibrate to shorter timeframes, in the interim DA assessment times are likely to increase, including as measured in council assessment league tables.

Councils need more detail on process and implementation than is included in the EIE to understand the risks that they will need to manage and potentially mitigate.

Recommendations:

- **Provide a blueprint with timeframes outlining the intended future state for streamlined approvals in NSW capturing complying development, complying development variations and targeted assessment**
 - **Councils request the ability to review and provide feedback on a consultation draft of an amending regulation so that they can understand, inform and prepare for the variation assessment process.**
 - **That the Department readjust the Statement of Expectations Order and associated League Tables to note councils' role in assessing variation certificates**
- 3. Utilising the existing mechanism for local variations under the Codes SEPP would allow for a more nuanced variation process**

The development standards within the Codes SEPP are, for some councils, greater than under a local environmental plan (LEP). In instances where a variation is not to exceed an LEP maximum, a variation will not be possible. To be clear where a variation is possible, it may be better to identify and exclude/include certain areas.

For other councils, a variation up-lift may be better dealt with by a baseline increase in the development standard. This would remove the need for a variation certificate. Consideration should be given to allowing a council to opt out of the variation certificate (stage 1) reform in favour of an increase in baseline standards. This may achieve the same result without creating an administrative and assessment burden on councils as well as a cost and process impost on applicants.

Recommendation:

Consider allowing a council to accept the stage 1 variations as an uplift in standards without the need for a variation certificate. Alternatively, allow a council to undertake upfront strategic work to determine where variations will be supported in their area.

4. Clarity on the criteria to use when assessing a variation certificate

It is unclear whether it is intended for a variation certificate to be assessed against local environmental plan objectives/standards/provisions or development control plan provisions. Further, how the hierarchy of environmental planning instruments and the evaluation requirements under s4.28 (3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) will be managed to ensure a legally valid assessment is not explained. It will be important for both applicants, certifiers and council officers to have certainty on how variations will be assessed and what requirements will apply.

As an example, primary road setback changes outlined on page 15 of the EIE suggests a future assessment would have regard for DCP controls in a variation assessment (noting this is inconsistent with 3.5.3 of the EIE). Controls included within a DCP are interdependent, designed so that in combination they create a permissive building envelope. This is the same approach used within each of the codes of the Codes SEPP. Substituting individual standards with controls, designed for a different building envelope, risks an assessment against a non-cohesive, potentially extraneous set of controls. This will likely have the unintended consequence of increasing complexity and confusion into the complying development pathway with increased reliance on technical advice, delayed determination timeframes and reduced uptake of this pathway.

Additional comments relating to assessment criteria:

- The EIE flags that councils are not to consider the cumulative impact of a development in their assessment. For instances where multiple variations are sought or if there is more than one round of variations it will be necessary to consider the cumulative impact to determine whether a proposed variation is appropriate.
- Extensive documentation will need to be reviewed for each variation – it is unrealistic and impractical to think that a single standard can be considered in isolation as most standards are interrelated so if one is being varied the interdependent standards will invariably need to also be looked at.
- If multiple variations are proposed and only one is granted this will change the proposal and require a redesign which is often not possible with project homes without a significant increase in costs.

Recommendation:

That the EP&A Regulation be explicit as to the criteria a variation application is to be assessed against. The criteria will need to manage the cumulative impact arising from multiple variations and/or iterative variation requests.

5. Variation certificate timeframes are unclear, do not allow for realistic processes or meaningful assessment and assume complete and accurate applications

The EIE specifies two variation certificate assessment times (calendar days) depending on whether a CDC is lodged with a council certifier (20 days) compared with a private certifier (10 days). The 10-day timeframe is too short when the processing steps that will likely be followed are factored in:

- triage of all received variation applications,
- site inspection (to consider impact and to verify retrospective approval is not being sought),
- assessment of the sought variation(s),
- preparation of assessment report, and
- approval – potentially centralised approval for consistency of decision making.

Calendar days are problematic when public holidays are counted and depending on the time of year may result in fewer than 4 days to receive, assess and determine a variation application.

Expediting the above steps is dependent on the proposed CDC variation:

- satisfying all land-based requirements,

- complying with the balance of Codes SEPP development standards, and
- the variation application being lodged with all necessary information.

Councils in exercising a consent function will want assurance that a variation application is made correctly. The burden of proof needs to fall on the certifier otherwise variation certificate timeframes will not be met. In approving a variation certificate, the validity of an approved variation must be limited to the CDC it was submitted alongside. This will go some way towards retaining the integrity of development controls and the assessment process for a future CDC or local development proposals.

Recommendations:

- **That the number of days provided to a council for variation assessment be measured in business rather than calendar days to provide the full timeframe when factoring in public holidays and weekends.**
- **That a certifier be required via a provision in the EP&A Regulation to provide certainty to the council that the proposed development (other than the sought variation) is a compliant complying development.**
- **That an approved variation certificate be issued with a limitation that the variation applies only to the complying development certificate it was submitted with.**

6. Certainty for councils and applicants on the grounds for refusal of a variation certificate

The grounds a council can use for refusal of a variation need to be clearly specified including identifying which environmental planning instruments/plan are to form the basis of the assessment. The evaluation of a traditional CDC is free of discretion. A CDC is either issued or not, the merit functions of approval or refusal in whole or in part are not constructs of the complying development pathway. Accordingly, how merit considerations will be accommodated within the complying development pathway needs to be addressed in the EP&A Regulation. As a minimum it is recommended that variation standards be worded to be prescriptive and measurable so that variations do not introduce performance-based standards into this assessment pathway.

Section 3.5.3 (page 18) of the EIE includes instances where a 'council should refuse' a variation certificate. This introduces ambiguity particularly where the cited reasons relate primarily to the making of a complete and proper application rather than the substance of whether a variation is appropriate. SSROC suggests that these listed reasons are matters that the certifier should resolve with the applicant prior to the variation application being submitted for council assessment.

Recommendations:

- **Variation standards should be worded to be prescriptive and measurable so as to not introduce performance-based standards into complying development**
- **Matters listed where 'a council should refuse a variation certificate' should be 'reasons for an incomplete application returned to the applicant' so that incorrect or incomplete applications are not forwarded to councils.**
- **Merit grounds for refusing a variation certificate should be clearly identified in legislation so that councils have their authority to refuse based on impacts clearly documented.**

SSROC supports the inclusion of safeguards in the EP&A Regulation to manage deemed approvals, it would be good to see the draft safeguards ahead of the Regulation being made.

While it may seem pragmatic for a council to rely on the deemed approval provisions to reduce the administrative burden of issuing an approval for acceptable variations, councils would need to manage the optics of not undertaking its consent role. It may be preferable to make the 'deemed approval' an 'assumed concurrence' so that a council can then focus on the potentially impactful variations without the appearance of not undertaking their duties.

Recommendations:

- **That the Department share a consultation draft of the amending EP&A Regulation including the proposed deemed approval safeguards to enable councils an opportunity to review the proposed approach.**
- **That the variation certificate should be modelled on an assumed concurrence function rather than deemed approval. This way councils can manage their workload by exception, free of the optics of failing to determine an application.**

7. Proposed fees are not reflective of the extent of resources councils will use in assessing variation certificate

The proposed fees are too low to reflect the work required for councils to receive, assess and determine variation certificates. Communities expect their council to undertake full and proper assessments, which necessarily involve established processes and significant staff time.

Councils are already experiencing growing revenue shortfalls due to rising costs associated with delivering core business. Introducing an additional assessment function without adequate cost recovery will further exacerbate this financial pressure. The suggestion that councils will experience a reduced workload as more development shifts to complying development misunderstands how councils plan budgets and allocate resources. Staffing is based on projected application volumes across all pathways over time, with allowances for fluctuations in assessment demand, system changes, and appropriate contingencies. It would be impractical for councils to restructure planning teams based on anticipated or aspirational reductions in applications.

Recent State reforms have reduced the number of development applications that generate revenue for councils, while simultaneously increasing expectations for councils to undertake time-intensive assessments and contribute to State-assessed applications without corresponding funding.

Fees for complying development variation certificates should be proportionate to the cost of assessing a comparable development application, based on development type and estimated development cost (EDC), and should factor in a site inspection and managerial sign off. Applicants are seeking a merit-based assessment for deviations from development standards, and the cost of that assessment should be borne by the applicant rather than the council.

Applying a fee set at approximately one-third of the equivalent development application cost particularly where multiple variations are proposed would more appropriately reflect the resource requirement. For example, for a two-storey dwelling with an EDC of \$750,000, a variation certificate fee should be in the order of \$900.



Recommendation:

That the proposed fees for a complying variation certificate be set to better reflect the application process, at a higher proportion of what would be charged for a development application of the same development type and EDC.

8. Conflating complying development and local development

For a clear and user-friendly planning system, only one approach should be progressed - either a broadening of complying development through flexible standards and land-based exclusions or introduce targeted assessment. Pursuing both pathways concurrently will make for a more complex planning system. The proposed changes create multiple, overlapping approval pathways for the same development type, reducing the certainty that industry and certifiers have traditionally relied on with complying development. Under a new hybrid system, determining the applicable pathway would require a detailed pre-assessment to identify where a proposal sits on the low-rise housing application spectrum, with applicants likely to choose whichever pathway offers the greatest certainty.

Recommendation:

That the Government opt for either flexible complying development or targeted assessment as conflating the two pathways will reduce clarity around application types and require more technical expertise upfront to navigate the system.

9. Specific feedback on proposed standards that allow variations

SSROC councils consider the inclusion of variations to the provisions relating to tree removal to be problematic and inconsistent with tree canopy targets.

Allowing variations to gross floor area is also likely to create complexity. Being a principal development standard, it interacts with most of the complying development code standards and if it is increased it is likely other standards will also need to be varied such as height and setbacks.

Allowing variation to lot width may be a more effective way of introducing variation to the building envelope and capturing under-sized lots that are otherwise excluded. Similarly, excavated basements are a typical reason why complying development is knocked out and may be a better variation to be considered initially.

Recommendation:

Remove the ability to vary tree-based and gross floor area development standards and consider instead variations to lot width development standards.

10. Implementation and software interaction

ePlanning changes will be required to facilitate the new variation process. These software changes will take time and money to implement. Many council systems are already going through an upgrade process and cannot accommodate more immediate changes. The Department's focus appears to be on the state planning portal and not council workflow integration changes which are equally important to enable the processing of this new hybrid pathway. SSROC councils have estimated that a lead time of 12 months is likely required to effectively accommodate this new pathway into their electronic assessment systems.

Recommendation:

Factor in appropriate commencement dates cognisant of council software builds that are not yet planned or budgeted for and essential for implementation of this reform.

The above comments are provided to support drafting and implementation of variations for complying development so that unintended consequences are minimised and council processes and risks are given due weight and consideration. Member council submissions should be reviewed for detailed and council-specific comments and feedback.



It has not been possible to obtain SSROC Delegates endorsement within the timeframe for this submission. If there are any changes, SSROC Secretariat will contact the Department. Should you wish to discuss any of the matters raised within this submission, please contact Aoife Wynter at SSROC on 02 8396 3800 or ssroc@ssroc.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "Helen Sloan".

Helen Sloan
Chief Executive Officer
Southern Sydney Regional Organisation of Councils (SSROC) Inc