



## **Statutory Guideline 04/09**

### **Preliminary approvals that affect a local planning instrument**

Assisting applicants to prepare, and assessment managers to assess and decide, an application for preliminary approval to which section 242 applies.

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# About this guideline

## The purpose of this guideline

This guideline has been prepared under section 759(1) of the *Sustainable Planning Act 2009* (SPA). This guideline provides guidance about:

- (a) what is a preliminary approval
- (b) how to assess and decide development applications for preliminary approvals to which section 242 of the SPA applies
- (c) the form of a preliminary approval to which section 242 of the SPA applies.

## Preliminary approvals under SPA

The SPA identifies four types of approvals under the Integrated Development Assessment System (IDAS):

- preliminary approvals
- development permits
- compliance permits, and
- compliance certificates.

A preliminary approval under section 242 of the SPA is a particular type of preliminary approval.

### Preliminary approval (section 241)

A preliminary approval approves development however it does not authorise assessable development to occur. A development permit is required in order to carry out assessable development.

There is no requirement to obtain a preliminary approval. However, applicants may choose to use preliminary approvals to stage development or to gain approval for a development concept before undertaking detailed planning.

Key aspects of preliminary approvals are:

- They approve development (not merely assessable development as for a development permit). The reference to development rather than assessable development reflects the fact that preliminary approvals are often conceptual in nature, and are not for development that is identifiably assessable.

*Example—A preliminary approval may seek a conceptual approval for a “residential precinct” or an “industrial precinct”. Concepts like these may encompass a range of assessable, self-assessable or exempt development under various planning instruments.*

- They approve development to the extent, and subject to the conditions, stated in the approval. However, they do not authorise assessable development to occur. A conceptual



or general application for a preliminary approval would result in a conceptual or general approval. The more specific the proposal in the development application, the greater specificity any resulting approval is likely to have.

*Example—A preliminary approval may approve a “residential precinct” as described in the previous example, but may not state the nature or density of the development. In other words, the approval only goes so far as to approve the concept of a residential use for the premises, but does not authorise the nature, scale or density. These aspects of the development would be the subject of further preliminary approvals or development permits.*

## Preliminary approval that affects a local planning instrument (section 242)

Under section 242 of the SPA, a preliminary approval may affect how a local planning instrument is applied or the effect it has on the proposed development. This type of preliminary approval may establish specific assessment provisions that will then apply in assessing any future development applications relating to the land.

In addition to approving the proposed development, a section 242 preliminary approval may vary the effect of a local planning instrument until the approved development is completed or the time limit for completing the development ends.

The preliminary approval may change the level of assessment for the proposed development or related development. For example, the planning scheme may state that a particular aspect of the development is assessable development requiring impact assessment. The preliminary approval may instead require code assessment for that aspect. The preliminary approval may also identify or include codes for the development. For example, the preliminary approval may state that particular codes in the planning scheme apply to the proposed development, or it may include new codes for assessing the proposed development.

## How to assess and decide applications for preliminary approvals to which section 242 of SPA applies

Generally the assessment manager for a development application for a preliminary approval to which section 242 of the SPA applies, is the relevant local government. The chief executive administering the SPA is a concurrence agency for these applications (see schedule 7 of the Sustainable Planning Regulation 2009).

Sections 313 and 314 of the SPA set out the matters an assessment manager must consider when assessing a development application, or any part of a development application, requiring code or impact assessment.

Before considering the proposed variations to the local planning instrument, the assessment manager must first consider the development that is proposed by the application. The assessment manager must assess the proposed development against the matters set out in sections 313 and 314 of the SPA. This includes assessing the application against the relevant



planning scheme (**not** the variations to the planning scheme proposed in the application) and any relevant state planning instruments.

After the assessment manager has assessed the proposed development, the assessment manager must then assess the proposed variations against the matters set out in section 316 of the SPA. When carrying out this assessment, the assessment manager must consider the results of its assessment of the proposed development under sections 313 and 314. The assessment manager must also assess the proposed variation against the local planning instrument, other than those parts which are sought to be varied.

When deciding the development application, the assessment manager must firstly make a decision about whether or not to approve the proposed development using the decision rules in section 323 to 326 of the SPA. In deciding whether or not the proposed development complies with a local planning instrument, the assessment manager must consider the existing local planning instruments, **not** the proposed variations to the local planning instrument identified in the development application.

After deciding whether or not approve the proposed development, the assessment manager must then make a decision about the proposed variations. The decision rules for deciding whether or not to approve the proposed variations are set out in sections 327 to 329 of the SPA. The assessment manager's decision about the proposed variations must not conflict with any relevant state planning instruments or the planning scheme, other than in limited circumstances, such as where there are sufficient grounds to justify the decision despite the conflict.

If the assessment manager decides not to approve the proposed development, the assessment manager must also refuse the proposed variation to the local planning instrument (see section 327(4)).

Guidance about making a decision which is in conflict with a relevant instrument is provided in *Statutory Guideline 05/09 Sufficient grounds for decisions that conflict with a relevant instrument*.

## Form of a preliminary approval under section 242

A development application for a preliminary approval that affects a local planning instrument must be made using the approved form, *Preliminary approvals that vary the effect of a local planning instrument— IDAS form 31*. Other forms relevant to the proposed development must also be submitted (e.g. if the proposed development involves a material change of use assessable against a planning scheme, *IDAS form 5* must also be completed).

In addition to the information required in these forms, it is recommended that a development application for a preliminary approval to which section 242 applies be prepared in accordance with the following best practice standards.

### General

It is recommended that the development application should:

- clearly identify the elements of the local planning instrument that are proposed to be varied



- if the proposed development or variations are inconsistent with a relevant instrument, include a written statement about why, in the applicant's view, the development application should be approved, despite the conflict
- for the proposed variations—be drafted in a way that is consistent with the local planning instrument. For example, the proposed variations should use a consistent format and structure and the same terminology as the planning scheme. If the local planning instrument reflects the standard planning scheme provisions, the proposed variations should also reflect the standard planning scheme provisions.

## Varying codes

A preliminary approval may seek to affect the planning scheme by varying an existing code or by creating a new code.

If the development application seeks to vary the effect of a code identified in the planning scheme, the development application must include a copy of the planning scheme code and a copy of the proposed variation to the code, with a written statement about the differences between the two codes. Any new codes or variations to codes should be drafted in a way that reflects the format and structure of codes in the planning scheme.

## Varying levels of assessment

If the development application seeks to vary the level of assessment identified in the planning scheme, the development application must include a copy of the provisions of the planning scheme that prescribe the level of assessment and a copy of the proposed level of assessment table, with a written statement of the differences between the two documents. Any new level of assessment tables, or variations to existing tables, should be drafted in a way that reflects the format and structure of level of assessment tables in the planning scheme.