



Statutory Guideline 05/09

Sufficient grounds for decisions that conflict with a relevant instrument

Guidelines to assist assessment managers to determine if there are sufficient grounds to make a decision that conflicts with a relevant instrument.

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About this guideline

The purpose of this guideline

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

- information about the decision rules in the SPA for development applications and the ability to consider sufficient grounds for departing from a relevant instrument under sections 326(1)(b) or 329(1)(b) of the SPA
- guidance on matters that may be considered in determining if there are sufficient grounds to justify a decision that conflicts with a relevant instrument under sections 326(1)(b) or 329(1)(b) of the SPA.

The purpose of this guideline is to assist assessment managers determine if there are sufficient grounds to decide an application in a way that conflicts with a relevant instrument.

What are sufficient grounds?

Sections 313, 314 and 316 set out the instruments that a development application must be assessed against. These include the state planning regulatory provisions, any relevant regional plan and state planning policies, any structure plans and master plans, any preliminary approvals that affect a planning scheme, the planning scheme and any temporary local planning instruments. These documents are referred to generally in the SPA as ***relevant instruments***.

The SPA provides that an assessment manager may decide a development application in a way that conflicts with a relevant instrument only in certain circumstances. One of these circumstances is that there are ***sufficient grounds*** to justify the decision, despite the conflict. This means that an assessment manager may:

- approve an application, even though the proposed development conflicts with a relevant instrument, if there are sufficient grounds for approving the development despite the conflict, or
- refuse an application, even though the proposed development complies with the relevant instruments, if there are sufficient grounds for refusing the development despite the fact that the decision would conflict with the relevant instruments.

The term ***grounds*** is defined in the SPA to mean matters of public interest. It does not include considerations such as the personal circumstances of the applicant, the owner of the land or another interested party. Apart from defining the term grounds, the SPA does not provide any guidance about what grounds are ***sufficient*** for justifying a decision that may conflict with a relevant instrument.

The term ***sufficient grounds*** has been considered by the Planning and Environment Court in the context of the *Integrated Planning Act 1997* (IPA), as a similar term was used in the IPA. This guideline has been prepared with regard to these decisions of the court about this term, as used in the IPA. Assessment managers are encouraged to consider any case law about the meaning of sufficient grounds.

Deciding if there are sufficient grounds

The following is a list of matters that may be considered when determining whether there are sufficient grounds to justify a decision that conflicts with a relevant instrument. For each development application, any decision about whether or not there are sufficient grounds will depend on the facts of the matter. The examples in this guideline are intended as a guide only and are not intended to be exhaustive.

Relevant instrument is out of date

The relevant instrument is out of date due to its age or changing circumstances in the area and the proposal reflects or responds to these changed circumstances.

Example— A new railway station has been constructed near the land proposed for development. Prior to the construction of the railway station, the land may have been zoned for low density residential development. Now that there is improved public transport in the area, a higher density may be considered desirable.

Example 2— The planning scheme is due for review and does not reflect current planning trends and principles, such as design principles, methods for addressing climate change or demographic shifts.

Relevant instrument is incorrect

The relevant instrument is incorrect in terms of its substance or underlying assumptions for the circumstances of the particular proposal.

Example 1— A planning scheme drafted on low growth or no growth assumptions is now experiencing unforeseen development pressure as a result of a new major economic development project being established in the area.

Example 2— Constraint mapping in the planning scheme does not reflect the physical site circumstances.

Relevant instrument inadequately addresses development

The type of development proposed is not adequately addressed by the relevant instrument.

Example— A proposal involves alternative technologies and ideals that are still in the research and development stage or that are not yet established in common practice.

Relevant instrument does not anticipate specific or particular development

The type of development proposed may be of international, national, state or regional significance and may not have been anticipated by the relevant instrument.

Example— A major infrastructure project is carried out in part of the local government area. The planning scheme may have envisaged residential development in the area. However, residential development may now be an incompatible use of the land due to community health and safety concerns.



Urgent need for the proposal

There is an exceptional and urgent need for the proposal to occur.

Example— A local government has identified that there is an undersupply of residential care accommodation in the local government area and, as a result, there is likely to be a significant shortfall in the amount of accommodation available in the next five years. Criteria to identify appropriate sites to accommodate this development are being formulated for inclusion in the planning scheme, however, finalisation of this detailed planning work would unduly delay the delivery of appropriate residential care accommodation.