



PLANNING SYSTEM

Development contributions

Circular	PS 09–020
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Related	PS 06–020, PS 09–001

Complying development – accredited certifiers to follow Minister’s directions on development contributions

The purpose of this circular is to advise accredited certifiers, councils and the community of a minor change to the way conditions requiring a development contribution are imposed on complying development certificates issued by accredited certifiers.

Introduction

The *Statute Law (Miscellaneous Provisions) Act 2009* amended section 94EC of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Accredited certifiers will now need to take into account certain types of directions issued by the Minister for Planning when they impose conditions on complying development certificates requiring the payment of monetary contributions under section 94 or 94A of the EP&A Act. The changes take effect on 17 July 2009.

Background

Under the existing provisions of the EP&A Act, accredited certifiers are to impose conditions on complying development certificates requiring the payment of a monetary contribution under section 94 or 94A of the EP&A Act when required to do so under a contributions plan.

When councils impose such conditions on complying development certificates they are also required to comply with any relevant direction issued by the Minister for Planning under section 94E of the EP&A Act. Such directions may relate to matters such as the maximum amount of any monetary section 94 contribution and the maximum percentage of a section 94A levy.

Until now an accredited certifier has not been required to comply with such directions. The new amendment rectifies this anomaly.

Accredited certifiers to comply with section 94E directions

The amendment to section 94EC of the EP&A Act provides that when an accredited certifier imposes a condition under section 94 or 94A on a complying development certificate, the condition must be in accordance with the relevant contributions plan but also comply with certain types of directions given by the Minister under section 94E of the EP&A Act—as is the case for councils.

In the case of any inconsistency between the contributions plan and direction, any conditions must be imposed in accordance with the direction.

Directions under section 94E will still be issued just to councils and other consent authorities—not to accredited certifiers. However, as a result of the amendment, accredited certifiers must also ensure the condition complies with the direction.

Accredited certifiers must comply with any applicable direction when imposing conditions under section 94 or 94A on complying development certificates from 17 July onwards.

Copies of section 94E directions issued by the Minister are available on the Department of Planning's website at <http://www.planning.nsw.gov.au/PlanningSystem/DevelopmentContributionsSystem/Technicaladviceandinformation/tabid/91/Default.aspx>.

The following is a summary of the current section 94E directions that are relevant to accredited certifiers, and advice on what certifiers now must do.

Section 94E direction—maximum percentage for section 94A levies and the type of development

On 10 November 2006, the then Minister for Planning signed a direction to all councils in relation to the maximum percentage of section 94A levies and types of development in respect of which a condition under section 94A may not be imposed.

In addition, the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) sets out specific maximum percentages for certain areas of land within the Liverpool, Wollongong, Gosford, Parramatta and Newcastle local government areas.

What accredited certifiers need to do

From 17 July 2009, accredited certifiers should ensure that where they are required under a contributions plan to impose a section 94A levy as a condition of a complying development certificate, the contribution:

- complies with the Minister's direction in relation to the types of development in respect of which a condition under section 94A may not be imposed
- does not exceed the maximum percentage set out in the direction or the EP&A Regulation (as applicable).

In the event that the contribution required under any relevant contributions plan would exceed the maximum percentage, the accredited certifier should ensure that the condition complies with the direction or EP&A Regulation (as applicable).

A copy of the direction can be found at: <http://www.planning.nsw.gov.au/PlanningSystem/DevelopmentContributionsSystem/TechnicalAdviceandInformation/tabid/91/Default.aspx>.

Section 94E direction—maximum amount for section 94 contributions for residential development

On 13 January 2009, as part of the NSW Government's review of local contributions plans, the Minister for Planning signed a direction to all councils which imposes a maximum amount on section 94 monetary contributions for 'residential development'.

From 30 April 2009, development consents and complying development certificates for 'residential development' (as defined in the direction) are not to require section 94 contributions the sum of which exceed:

- \$20,000 per lot in a residential subdivision, or
 - \$20,000 per dwelling authorised by the consent/complying development certificate,
- unless the Minister's approval is obtained to impose conditions exceeding the maximum amount.

A summary of the direction and approval process was detailed in Planning Circular PS 09–001. As a result of the amendment to section 94EC, accredited certifiers will have now to comply with the direction, and should have regard to the circular.

Directions to specific councils

Almost 30 councils sought approval to exceed the maximum amount in the direction for existing contributions plans. Those councils are listed in Addendum A.

The Minister has now determined those applications (with the exception of Great Lakes Council). Many of the determinations have involved the Minister issuing further directions under section 94E of the EP&A Act to individual councils which may, amongst other things:

- exempt the council from the maximum amount in the direction in respect of conditions imposed under certain contributions plans or in relation to certain land
- impose a new maximum amount (above \$20,000)
- direct the relevant council that it cannot impose conditions under section 94 in relation to certain public amenities or services (e.g. library book stock or street tree planting), or
- a combination of the above.

Copies of these determinations are available on the Department of Planning's website at <http://www.planning.nsw.gov.au/PlanningSystem/DevelopmentContributionsSystem/LocalContributionsReviewPanel/tabid/90/Default.aspx>.

What accredited certifiers need to do

From 17 July 2009, in the event that an accredited certifier is required under a contributions plan to impose a section 94 condition on a complying development certificate they should:

- if the complying development certificate is in respect of development not located in a local government area listed in Addendum A, ensure that the condition complies with the maximum amount set out in the direction
- if the complying development certificate is in respect of development located in a local government area listed in Addendum A, ensure that the condition complies with the Minister's determination (including any further direction which has been issued to the council).

Future directions

There may be further applications from councils to exceed the maximum amount set out in the direction in the future. Accredited certifiers should therefore make enquiries of the relevant council to ensure that they are referring to the current contributions plan and to keep aware of any further directions or determinations made by the Minister to allow the maximum amount to be exceeded.

Further information

Information on the section 94E review process is available on the Department's website at: <http://www.planning.nsw.gov.au/PlanningSystem/DevelopmentContributionsSystem/LocalContributionsReviewPanel/tabid/90/Default.aspx>.

If you have further enquiries in relation to this Planning Circular, please contact the Department's Information Centre, phone (02) 9228 6333 or email information@planning.nsw.gov.au

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practitioner.

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Addendum A

Councils who sought approval to impose conditions under existing contributions plans requiring monetary contributions in excess of the maximum amount set out in the section 94E direction dated 13 January 2009:

Bathurst Regional Council
Blacktown City Council
Camden Council
Campbelltown City Council
*Coffs Harbour City Council **
Council of the City of Sydney
Great Lakes Council
Hawkesbury City Council
Holroyd City Council
Ku-ring-gai Council
Lake Macquarie City Council
*Lane Cove Council **
Leichhardt Municipal Council
Liverpool City Council
Maitland City Council
*Manly Council **
*North Sydney Council **
Palerang Council
Penrith City Council
Pittwater Council
Shoalhaven City Council
*The Council of the Municipality of Hunters Hill **
The Hills Shire Council
Tweed Shire Council
Wollondilly Shire Council
Wyong Shire Council
Yass Valley Council

* Note: The application from the council was wholly refused therefore the maximum amount set out in the section 94E direction signed by the Minister for Planning on 13 January 2009 applies.

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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