



## PLANNING SYSTEM

### Act and Regulation changes

<b>Circular</b>	PS 06-006
<b>Issued</b>	17 February 2006
<b>Related</b>	PS 05-009 issued 30 Sep 05

# Changes to the transitional arrangements for the introduction of new section 117 directions

This circular is to advise of changes to the transitional provision in the Environmental Planning and Assessment Regulation 2000 regarding Ministerial directions issued under section 117 of the *Environmental Planning and Assessment Act 1979*.

### Introduction

This circular provides advice on an amendment to the transitional provision for Ministerial directions issued under section 117 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The transitional provision governs the introduction of a new set of section 117 directions issued on 30 September 2005, and the associated phasing-out of directions issued before that date.

### What was the old transitional provision?

Previously, the transitional provision in clause 289 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) provided for the old set of section 117 directions to continue to apply to draft LEPs submitted under section 68 or section 69 of the EP&A Act up until 31 January 2006.<sup>1</sup>

### What is the new transitional provision?

On 27 January 2006, the Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2006 (the Amendment Regulation) amended the EP&A Regulation to extend the transitional arrangements for the old set of section 117 directions.

The Amending Regulation provides that section 117 directions made before 30 September 2005 continue to be in force for draft LEPs that are:

- submitted to the Director General under section 68 of the EP&A Act before 31 December 2006, or
- the subject of a report under section 69 of the EP&A Act that is furnished before that date.<sup>2</sup>

The change was made to give councils more time to adjust to the new section 117 directions. In particular, the amended regulation gives more time to councils that recently have prepared and exhibited a draft LEP using the old set of section 117 directions but have not been able to meet the previous 31 January 2006 deadline. This will avoid the need for such councils to amend and re-exhibit those plans to reflect the new directions.

### How does the new transitional provision apply to LEPs?

The transitional provision only applies to draft LEPs that were in existence when the old set of section 117 directions was repealed on 30 September 2005. This means that it only applies to draft LEPs that councils resolved to make, under section 54 of the EP&A Act, before that date. As a result, there are several different

<sup>1</sup> With the commencement of clause 289(6) of the EP&A Regulation on 30 September 2005 the transitional provision in clause 96(2) of Schedule 6 of the Act became redundant. This is because clause 87 of Schedule 6 of the EP&A Act allows a savings and transitional provision in the Regulation to prevail over a savings and transitional provision in the Act.

<sup>2</sup> Again, the transitional provision in the EP&A Regulation applies **instead of** the transitional provision in clause 96(2) of Schedule 6 of the EP&A Act, because clause 87 of Schedule 6 of the Act allows a savings and transitional provisions in the Regulation to prevail over a savings and transitional provision in the Act).

scenarios for the application of the section 117 directions:

- A draft LEP that council resolved to prepare under section 54 before 30 September 2005, and that will be submitted under section 68 or section 69 of the EP&A Act before 31 December 2006, should be made using the old section 117 directions.
- A draft LEP that council resolved to prepare under section 54 before 30 September 2005, and that will be submitted under section 68 or section 69 on or after 31 December 2006, should be made using the new section 117 directions.
- A draft LEP that council resolved to prepare under section 54 resolution after 30 September 2005 should be made using the new section 117 directions regardless of when it will be submitted under section 68 or section 69.

There may be circumstances where a council resolved to prepare a draft LEP before 30 September 2005 but exhibited the draft LEP with the new directions (rather than the old directions) as required by the amended transitional regulation. Where this is the case, council should continue to prepare the LEP with the new directions but take care to identify and justify any inconsistencies with the old directions when the draft LEP is submitted under section 68 or section 69. This will allow the Minister to make an informed decision in deciding whether or not to make the LEP.

### What happens if a REP applied instead of the old directions?

In the past, some of the old section 117 directions were revoked for certain parts of the State. In those areas, a regional environmental plan (REP) provided guidance for the preparation of LEPs instead of the revoked directions. For those areas, the transitional arrangements are as follows:

- A draft LEP that council resolved to prepare under section 54 before 30 September 2005, and that will be submitted under section 68 or section 69 of the EP&A Act before 31 December 2006, should be made using the old section 117 directions that applied in that area (i.e. those that were not previously revoked) and the relevant REP.
- A draft LEP that council resolved to prepare under section 54 before 30 September 2005, and that will be submitted under section 68 or section 69 on or after 31 December 2006, should be made using the new section 117 directions and the relevant REP. Any previous revocation of particular section 117 directions only applies to the old set of directions and, as such, does not apply to LEPs that will be made using the new section 117 directions.

- A draft LEP that council resolved to prepare under section 54 after 30 September 2005 should be made using the new section 117 directions (regardless of when it will be submitted under section 68 or section 69) and the relevant REP. As above, any previous revocation of particular section 117 directions only applies to the old set of directions and, as such, does not apply to LEPs that will be made using the new section 117 directions.
- If a council resolved to prepare a draft LEP before 30 September 2005, but exhibited the draft LEP with the new directions (rather than the old directions), as required, the council should continue to make the LEP with the new directions and the REP. It should also take care to identify and justify any inconsistencies with the old directions (i.e. those that previously did apply) when the draft LEP is submitted under section 68 or section 69.

There may also be minor inconsistencies between the REP and the new directions. If this is the case, any such inconsistencies that are reflected in the draft LEP should also be identified and justified.

### Further information

Both the Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2006 and consolidated EP&A Regulation 2000 are available on the Parliamentary Counsel Office's website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

### Authorised by:

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### 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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DOP 06\_001

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