



PLANNING SYSTEM

Local planning

Circular	PS 07-008
Issued	17 July 2007
Related	Replaces PS 05-009; PS 06-006

New section 117 directions

The purpose of this circular is to advise councils of new ministerial directions under section 117(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that will commence on 19 July 2007.

Introduction

Section 117 of the *Environmental Planning and Assessment Act 1979* (the Act) allows the Minister for Planning to give directions to councils regarding the principles, aims, objectives or policies to be achieved or given effect to in the preparation of draft local environmental plans (LEPs).

The Minister has now issued new directions to councils under section 117(2) of the Act. The new directions replace all existing directions previously in operation and will commence on 19 July 2007.

Key changes

The key changes relative to the previous section 117 directions are summarised in the attached document. The changes aim to:

- ensure consistency with the Standard Instrument for LEPs
- improve readability by revising the format
- make directions clearer and more outcome-focused
- correct some identified minor errors and inconsistencies
- update references to key policy documents
- make it easier to identify the requirements for consistency with directions
- reduce the overall number of directions.

A revised direction relating to the Sydney's drinking water catchments is also included to support the implementation of the Drinking Water Catchment Regional Environmental Plan No.1.

Application of new directions to draft LEPs

The new directions will apply to all draft LEPs that are certified for public exhibition under section 65 of the Act **on or after** 19 July 2007.

Draft LEPs that are issued with certificate under section 65 of the Act **prior to** 19 July 2007 will not be subject to the new directions. Any relevant directions previously in force under section 117(2) of the Act (issued between 30 September 2005 and 19 July 2007– the 'old directions') will continue to apply with respect to those draft plans. The report to the Minister under section 69 of the Act for LEPs certified for exhibition before 19 July 2007 will need to address the draft LEP's consistency with the old directions only.

Draft section 65 certificate is used for draft LEP	Directions that apply
Before 19 July 2007	For the purposes of sections 65, 66, 68 and 69 of the EP&A Act Old directions (i.e. September 2005 to 19 July 2007, as applicable)
On or after 19 July 2007	New directions

Pre-September 2005 directions no longer apply

Councils are reminded that the section 117 directions revoked on 30 September 2005 no longer apply to the preparation of any draft LEPs. Those former directions were saved only in relation to draft LEPs that were submitted to the Director-General under section 68 of the Act, or the subject of a report under section 69 of the Act, before 31 December 2006.

General issues regarding draft LEPs and section 117 directions

Section 117 directions are an important statutory requirement in the preparation of draft LEPs. Issues relating to consistency with section 117 directions must be settled before draft LEPs are certified for exhibition. This includes gaining authorisation where required from the Director-General under the terms of relevant section 117 directions.

For example, a draft LEP may be inconsistent with the terms of some section 117 directions where the Director-General is satisfied that the provisions of the draft plan that are inconsistent are of minor significance, where the relevant provisions would be consistent with an approved regional or subregional strategy, or where the provisions are justified by a local environmental study prepared in accordance with the Act.

Councils should preferably address issues of consistency with section 117 directions as part of their section 54 notification documentation. While this information may not always be fully known at this stage, addressing these matters at the earliest opportunity will allow for the most efficient progression of draft LEPs.

If council does not provide the appropriate information or report on the issue at section 54 stage, any necessary approval from the Director-General will need to be obtained prior to certification of the draft LEP for exhibition.

This applies whether or not the draft LEP is being dealt with under delegation. It is important to note that an authorisation to a council to progress a draft LEP using delegated powers does not extend to the granting of the Director-General's approval, if required, under any applicable section 117 direction.

Submissions regarding section 117 directions should identify all directions that are applicable to the draft LEP and whether the Director-General's authorisation is required under the particular terms of any direction(s). Where this is required, sufficient information will need to be provided in the submission to allow the Director-General to be satisfied that the draft LEP would be in accordance with the relevant criteria set out in the direction.

Relevant section 117 directions and any authorisation from the Director-General in accordance with the terms of a direction should form part of the material exhibited with the draft LEP. If the draft LEP changes after exhibition, the council should also revisit the implications of any changes in respect of the section 117 directions and address those matters when the draft LEP is submitted to be made.

A draft LEP may be returned to a council for amendment if the Director-General is not satisfied that the draft LEP has been prepared in accordance with an applicable section 117 direction.

Further information

Further information relating to section 117 directions and other local planning matters can be found on the Department of Planning's website at: <http://www.planning.nsw.gov.au/planningsystem/local.asp>. Inquiries with respect to LEPs should be directed to the relevant regional planning team.

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