



PLANNING SYSTEM

Development contributions

Circular	PS 09–025
Issued	15 September 2009
Related	

Building Education Revolution Program — section 94E Direction

The purpose of this circular is to advise councils, accredited certifiers and the public of a Direction issued under section 94E of the *Environmental Planning and Assessment Act 1979* preventing the imposition of development contributions on development carried out under the Building Education Revolution Program.

Background

The Commonwealth Government has committed funding of \$14.7 billion over three years to provide new facilities and refurbishments in Australian schools through the Building Education Revolution Program (BER Program).

The BER Program is a critical component of the Government’s economic stimulus package, ensuring the timely construction and refurbishment of school infrastructure.

Preventing the imposition of development contributions for development in relation to the BER Program will improve the ability of schools in NSW to efficiently respond to the Commonwealth Government’s economic stimulus package.

Section 94E Direction

Attached to this circular is a Direction executed by the Minister for Planning under section 94E of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Effect of this Direction

This Direction, as of 9 September 2009, has the effect of:

- preventing a consent authority from imposing a condition pursuant to section 94A of the EP&A Act in respect of any component of a school development that is a BER Project
- there being no public amenities or public services to which a condition under section 94 of the EP&A Act in respect of any component of a school development that is a BER Project may be imposed.

Development to which the Direction applies

This Direction applies to a development, or a component of a development, that is a BER Project under the Nation Building and Jobs Plan.

A BER Project refers to development that is carried out under the BER Program and funded by the Commonwealth under the Nation Building and Jobs Plan, *Appropriation (Nation Building and Jobs) Act (No. 1) 2008–2009* and *Appropriation (Nation Building and Jobs) Act (No. 2) 2008–2009*.

A list of funded projects approved under the Nation Building and Jobs Plan is available from the Department of Education, Employment and Workplace Relations at <http://www.deewr.gov.au/Schooling/BuildingTheEducationRevolution>.

The Direction applies to BER projects undertaken in relation to both government and non-government schools.

Where a project is partially funded through the BER Program

Where a project is also funded through other sources the Direction does not apply to the non-BER funded component of the project.

Complying development

As a result of changes to the EP&A Act that took effect on 17 July 2009, accredited certifiers now need to take into account section 94E directions issued by the Minister for Planning. Therefore, in regard to any component of development that is a BER project, an accredited certifier cannot impose conditions on complying development certificates requiring the payment of monetary contributions under section 94 or 94A of the EP&A Act.

State infrastructure contributions

A State infrastructure contribution should not be levied on any component of a development that is a BER Project.

Further information

Information on the Building Education Revolution Program and a list of funded projects is available from the Department of Education, Employment and Workplace Relations website at:

<http://www.deewr.gov.au/Schooling/BuildingTheEducationRevolution>.

Information on the Nation Building and Jobs Plan can be found at:

<http://www.nsw.gov.au/nationbuildingtaskforce.asp>.

The *Nation Building Jobs Plan (State Infrastructure Delivery) Act 2009* is available on the NSW legislation website at:

<http://www.legislation.nsw.gov.au/>.

The *Appropriation (Nation Building and Jobs) Act (No. 1) 2008–2009* and the *Appropriation (Nation Building and Jobs) Act (No. 1) 2008–2009* is available online at <http://www.fedlaw.gov.au/>.

Copies of section 94E directions issued by the Minister are published on the Department's website at:

<http://www.planning.nsw.gov.au/PlanningSystem/DevelopmentContributionsSystem/Directionsandtechnicaladvice/tabid/91/Default.aspx>.

This and other Planning Circulars are published on the Department's website at

<http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/Default.aspx>.

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

Authorised by:

Sam Haddad
Director-General

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.

© State of New South Wales through the Department of Planning
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

DIRECTION UNDER SECTION 94E

I, the Minister for Planning ("**Minister**"), being the Minister administering the *Environmental Planning and Assessment Act 1979* ("**the Act**"), pursuant to s94E of the Act, direct consent authorities that:

- (1) A condition pursuant to section 94A of the Act cannot be imposed in respect of any component of a school development that is a BER Project.
- (2) There are no public amenities or public services in relation to which a condition pursuant to section 94 of the Act may be imposed in respect of any component of a school development that is a BER Project.

Notes do not form part of this Direction.

Definitions:

- (1) Words and expressions used in this Direction have the same meaning as in the Act, except where otherwise indicated.
- (2) The following definitions apply in this Direction:

"**BER Project**" means a Building the Education Revolution project undertaken pursuant to the Building the Education Revolution program and funded by the Commonwealth under the *Nation Building and Jobs Plan, Appropriation (Nation Building and Jobs) Act (No.1) 2008 - 2009* and the *Appropriation (Nation Building and Jobs) Act (No.2) 2008 - 2009*.

"**School**" means a government school or non-government school within the meaning of the *Education Act 1990*.



Minister for Planning

Dated 9 September 2009

Notes:

1. Section 94EC(1A) of the Act provides as follows:
The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 94E (1) (a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.
-