

PLANNING SYSTEM

Local infrastructure contributions

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Section 94E Direction – Section 94A fixed development consent levies

The purpose of this circular is to advise councils, accredited certifiers and the community of a new section 94E Direction in relation to the imposition of section 94A fixed development consent levies and the repeal of the section 94E Direction relating to projects funded through the Building the Education Revolution (BER program).

Introduction

The Minister for Planning has issued the *Environmental Planning and Assessment (Local Infrastructure Levies) Direction 2015 (new Direction)* to clarify the parameters for the imposition of section 94A levies. These levies are imposed as a condition of development consent for the funding of the provision, extension or augmentation of local public amenities or public services.

Background

Section 94A of the *Environmental Planning and Assessment Act 1979* (the Act) was introduced in July 2005 as part of a suite of changes to the development contributions system. It enabled the imposition of a levy based on a percentage of the estimated cost of the development.

On 10 November 2006, a Ministerial Direction was issued under section 94E of the Act. This Direction placed limitations on the imposition of section 94A levies. It specified the maximum percentage of the estimated cost of development that could be required to be paid by a levy and identified development for which a levy could not be imposed.

In January 2007 the *Environmental Planning and Assessment Regulation 2000* (the Regulation) was amended to reflect the effect of the Direction. The only exception to this was a provision of the Direction that related to the imposition of a contribution on development where a section 94 contribution had been paid at the subdivision stage.

BER funded projects

The Commonwealth funded Building Education Revolution program was implemented as part of a stimulus package and funded the construction of amenities for government and non-government schools.

On 9 September 2009 a Ministerial Direction was issued under section 94E of the Act which prohibited developer contributions (both s94 and s94A) from being imposed on projects funded through this program.

This program has now ceased and the Ministerial Direction is no longer required.

Overview of the changes

The Ministerial Directions dated 10 November 2006 and 9 September 2009 are repealed.

A new Ministerial Direction has been issued to restrict the imposition of section 94A levies to development where a section 94 contribution has already been imposed at the subdivision stage. This is substantially the same as the relevant provisions of the Direction dated 10 November 2006.

Clause 25J (3) of the Regulation excludes certain costs and expenses from being included in determining the cost of carrying out proposed development on which a section 94A levy is based. Provisions of clause 25J (3) have substantially the same effect as provisions of the 2006 Direction (namely, clause 2 (a) –(d)).

The maximum percentages for section 94A levies are identified in clause 25K of the Regulation, and the new Direction ensures there is no inconsistency.

The new Direction applies to consent authorities and accredited certifiers.

Timing of changes

The Direction takes effect when it is published in the Government Gazette. The Direction applies to conditions of development consent granted after that date.

Savings and transitional arrangements

The Direction revokes the Directions dated 10 November 2006 and 9 September 2009.

The Direction does not apply to conditions for section 94A levies imposed before the Direction dated 10 November was given.

The revocation of the earlier Direction does not affect the operation of a condition of a development consent imposed in accordance with that Direction.

Further Information

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available from planning.nsw.gov.au/circulars

Authorised by:

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Secretary

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