

Circular	PS 10 - 010
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Planning Certificates – Biobanking Agreements and Complying Development Exclusions

The purpose of this circular is to provide councils, property owners, accredited certifiers and the community with advice on changes to the requirements for planning certificates under the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

Introduction

The *Threatened Species Conservation Act 1995* (TSC Act) provides that the Minister for Climate Change and the Environment may enter into an agreement relating to land with the owner of the land for the purposes of creating a biobank site. This is called a 'biobanking agreement'. Biobanking agreements may include terms such as requiring the carrying out of specified management actions and restricting the use of the biobank site.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the 'Codes SEPP') allows complying development to be undertaken for certain low risk and low impact development types where specified standards have been adhered to. The Codes SEPP does not apply to areas that are identified in clause 1.19 as environmentally sensitive areas.

The amendment to the EP&A Regulation provides:

- For the notification of a section 149(2) certificate of the existence of a biobanking agreement applying to a property; and
- When preparing section 149(2) certificates councils must only exclude land affected by the matters identified under clause 1.19 of the Codes SEPP when answering question 3.

This circular provides advice on this regulation amendment.

Inclusion of biobanking agreements on planning certificates

The *Environmental Planning and Assessment Amendment (Planning Certificates) Regulation 2010* amends Schedule 4 of the EP&A Regulation to provide that biobanking agreements are a matter to be included on a planning certificate issued under section 149 of the *Environmental Planning and Assessment Act 1979*.

This means that if a person applies to a council for a planning certificate for a parcel of land and a biobanking agreement entered into under section 127D of the TSC Act applies to that land the planning certificate must include a statement to that effect.

However, the council is only required to include a statement about the biobanking agreement in the planning certificate if it has been notified of the biobanking agreement's existence by the Director-General of the Department of Environment, Climate Change and Water.

The requirement to notify of the existence of any biobanking agreement will apply to planning certificates issued on or after 4 June 2010. The deferred commencement of the provision is to give councils sufficient time to change their electronic systems to reflect the new requirements.

Clarifying what information should be used to answer the planning certificate question relating to complying development under the Codes SEPP

Clause 3 of Schedule 4 of the EP&A Regulation sets out what information is required to be provided on a section 149(2) certificate relating to complying development under each of the codes under the Codes SEPP.

The provision identifies whether land is affected by one of the general land exemptions identified under clause 1.19(1),(3)-(5) which would exclude one or more of the codes (clause 1.19(2)(a)-(d)) from operating on the land.

It has been brought to the Department's attention that the previous wording of Schedule 4 (3)(1) could be used by councils to identify broader exclusions beyond the general land exemptions of clause 1.19(1),(3)-(5).

The changes to Schedule 4 (3)(1) of the EP&A Regulation clarify what information should be relied upon when producing a section 149(2) planning certificate. When identifying if complying development may be carried out on land under the Codes SEPP, the response is to be based only on those matters identified under clause 1.19 of the Codes SEPP.

A section 149(2) certificate can not list other matters that may result in a development being precluded from complying development under the Codes SEPP such as development type, land use zone or minimum allotment size. These matters are lot requirements, which must also be satisfied, but should not be detailed in a planning certificate.

Councils will need to amend their information systems used for generating planning certificates to reflect the change to Schedule 4 (3)(1) of the EP&A Regulation. This amendment does not alter the information used to answer Schedule 4 (3) (2) of the EP&A Regulation.

The following is the new wording for Schedule 4 (3) of the EP&A Regulation:

- (1) *Whether or not the land is land on which complying development may be carried out under each of the codes for complying development because of the provisions of clause 1.19 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*
- (2) *If complying development may not be carried out on that land because of the provisions of clause 1.19 of that Policy, the reasons why it may not be carried out under that clause*

This requirement will come into effect on 4 June 2010. The deferred commencement of the provision is to give councils sufficient time to change their electronic systems to reflect the new wording.

Further information

NSW Acts and Regulations can be accessed on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au.

Information about the Codes SEPP, including the General Exempt Development Code, General Housing Code, Housing Internal Alterations Code, the Subdivisions Code and Commercial and Industrial Code is available on the Department's website at housingcode.planning.nsw.gov.au/

For further information, please contact codes@planning.nsw.gov.au or call the Department of Planning's Information Centre on Freecall 1300 305 695 or 02 9228 6333.

Note: This circular and others issued by the Department of Planning are available online at: www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/language/en-US/Default.aspx

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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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