

<b>Circular</b>	PS 11-007
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<b>Related</b>	

# Voluntary Planning Agreements and Development Control Plans

The purpose of this circular is to advise councils, accredited certifiers, planning authorities and the public generally of changes relating to voluntary planning agreements, and the procedural requirements for making, amending or revoking development control plans where the Minister so directs.

## Changes relating to voluntary planning agreements and Part 4A certificates

### Introduction

The *Environmental Planning and Assessment Act 1979* (the EP&A Act) provides for voluntary agreements between developers and planning authorities (planning agreements), under which the developer is required to provide a development contribution for a public purpose.

Provisions in the *Statute Law (Miscellaneous Provisions) Act 2009* (the Miscellaneous Provisions Act) that will be proclaimed on 25 February 2011 will prevent certifying authorities (an accredited certifier or a council) from issuing an occupation certificate or a subdivision certificate where a planning agreement contains a specific provision that requires certain things to be done before such a certificate can be issued, and those things have not been done.

On the same day, various provisions of the *Environmental Planning and Assessment Amendment (Part 4A Certificate and DCPs) Regulation 2011* (the Amending Regulation) will commence to introduce similar requirements for construction certificates.

The Amending Regulation also includes new provisions that:

- require explanatory notes for planning agreements to indicate whether the agreement includes such a provision,

- enable certifying authorities to require applicants for construction, occupation or subdivision certificates to provide additional information relating to voluntary planning agreements, if it is essential to the authority's proper consideration of the application, and
- make it clear that a planning authority that is a party to a voluntary planning agreement may, for the purposes of any such requirement to supply information, certify that specified requirements of the agreement have been met.

## Linking requirements of VPAs with the issue of certain Part 4A certificates

The arrangements in the Miscellaneous Provisions Act and the Amending Regulation give statutory recognition to the practice of providing, in a planning agreement, that the payment of a monetary contribution or the provision of a material public benefit must occur before certificates are issued.

Similar requirements already exist in the EP&A Act in relation to conditions of development consents (including any condition requiring a development contribution) that must be met before a construction certificate, occupation certificate or subdivision certificate is issued.

Voluntary planning agreements are only likely to be useful for large scale developments that have long time frames, are likely to be developed in stages, and in situations where the developer has a role in delivering public infrastructure.

The proposed changes only affects a small number of applications where there is a planning agreement in place and where that agreement has certain requirements that must be complied with before a certificate is issued.

### **Planning authorities**

Planning authorities need to consider whether including such a provision in a planning agreement is appropriate, on a case-by-case basis.

Where requirements of a planning agreement are linked to the issue of certificates, planning authorities will need to make arrangements to ensure they can quickly respond to applicants' requests.

Any response must be written and take the form of a certificate that clearly identifies the planning agreement's requirements and whether they have been met.

Where the Minister for Planning is not a party to a planning agreement, the planning authority that is a party to the agreement (or amendment) must provide a copy within 14 days after the agreement is entered into or the amendment is made.

Where an agreement is revoked a notice of revocation must be provided within 14 day after revocation.

### **Certifying authorities**

Certifying authorities should be aware of the new changes and what it means in terms of their ability to issue construction certificates, occupation certificates and subdivision certificates.

Certifying authorities are advised to amend their forms or checklists setting out the information that needs to be lodged with applications.

The application forms or checklists should be amended to provide that where there is planning agreement that would prevent the certifying authority from issuing a construction certificate, occupation certificate and subdivision certificate, a certificate must be provided from the relevant planning authority stating that the requirements of the agreement have been met.

### **Guidance to those preparing planning agreements**

Those preparing planning agreements on behalf of developers and planning authorities should be aware of the new provisions. Agreements must clearly indicate whether they contain such provisions and make it clear what obligations must be satisfied before a certificate is issued.

## **Changes relating to development control plans**

Section 74F of the EP&A Act allows the Minister to issue a direction to a council to make, amend or revoke a DCP. The Amending Regulation amends the EP&A Regulation to simplify the procedures for amending or revoking a DCP where such a Ministerial direction has been issued. This includes removing requirements for councils to exhibit or notify the amendment or revocation before the relevant DCP is amended or revoked.

However, the council is required to give public notice after the DCP is amended or revoked. The amendment or revocation then comes into effect on the date this notice is given, or 14 days after the council's decision to amend or revoke the DCP, whichever occurs first.

## **Commencement and transitional arrangements**

Revised arrangements for planning agreements take effect on 25 February 2011. New requirements for construction certificates, occupation certificates or subdivision certificates apply to applications made on or after 25 February 2011.

The new requirements relating to public notice apply where notice is given on or after 25 February 2011.

The amendments relating to DCPs commenced on 17 February 2011.

## **Related information**

Councils are required to keep planning agreements registers that include short descriptions of planning agreements (including any amendments) that apply to council areas, including dates agreements were entered into, the names of the parties and the land to which they apply.

Councils are also required to make registers and copies of planning agreements, (including amendments) and explanatory notes relating to those agreements or amendments, available for public inspection free of charge during ordinary office hours.

Similar obligations apply to the Director-General in relation to planning agreements where the Minister for Planning is a party and to other planning authorities.

## **Further information**

Copies of the EP&A Act, the EP&A Regulation are available online at

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

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](http://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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