

**DEPARTMENT OF URBAN AFFAIRS
AND PLANNING**

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CIRCULAR NO. D6

**Revised Issue
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All Councils

**CROWN DEVELOPMENT APPLICATIONS
AND CONDITIONS OF CONSENT**

BACKGROUND

This circular replaces the previous Circular No. D6 which was issued by the Department of Planning on 28 April 1993. The previous circular advised councils of the appropriate contributions and conditions of consent on Crown development applications (Crown DAs) lodged under section 91A of the Environmental Planning and Assessment Act 1979 (EP&A Act). In particular, the circular dealt with Crown activities provided with an underlying philosophy of essential community service: education, health, community services, law and order, and some housing.

On 22 June 1994, Councils were notified in Circular No. A26 that the whole of section 91A had been repealed and replaced with a new section 91A under the Environmental Planning and Assessment (Amendment) Act 1994.

SCOPE OF THIS CIRCULAR

This circular:

- suggests procedures for Crown agencies to follow prior to lodging DAs;

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Management Branch or the Regional
Office

■ Telephone: (02) 391 2000

■ Our reference: S91/07224/008

- sets out the procedures for consent authorities to follow when determining Crown DAs under section 91A (as amended in May 1994);
- provides advice on the policy on conditions of consent appropriate for Crown DAs, particularly section 94 conditions on Crown activities provided with an underlying philosophy of essential community service;
- notes the availability of the provisions of sections 91(3A), 91(3B), 91AA and 91AB in relation to Crown DAs; and
- advises on the policy on inappropriate conditions of consent.

SUGGESTED PROCEDURES PRIOR TO LODGING A CROWN DA

The following procedures are suggested to assist in ensuring that the lodgement and assessment of Crown DAs can be carried out as quickly as possible:

- (a) Prior to purchasing the site, the Crown should:
 - investigate as a matter of policy the likely extent of infrastructure needed with regard to all supply authorities; and
 - discuss the appropriateness of the site for the proposed development with the consent authority.
- (b) Prior to lodging the DA, discussions should take place between the Crown applicant and the consent authority to identify the issues to be addressed. This should include a discussion of the extent of the Crown activity's 'public benefit'.
- (c) Applications should be lodged sufficiently in advance of the desired construction start.

DETERMINATION OF CROWN DEVELOPMENT APPLICATIONS (SECTION 91A)

Section 91A of the EP&A Act applies to development applications made by or on behalf of the Crown or a prescribed person. The subject developments of these applications are known as 'Crown activities'.

"Prescribed persons" for the purposes of section 91A

Clause 66 of the Environmental Planning and Assessment Regulation 1994 specifies who are "prescribed persons" for the purposes of section 91A of the EP&A Act. These persons are:

- (a) a public authority (not being a council);
- (b) a public utility;

- (c) an official university within the meaning of the Higher Education Act 1988;
- (d) a TAFE establishment within the meaning of the Technical and Further Education Commission Act 1990;
- (e) the Totalizator Agency Board.

Appendix A provides examples of Crown agencies and their status.

Section 91A procedure

The Environmental Planning and Assessment (Amendment) Act 1994 repealed and replaced the whole of section 91A. Section 91A covers procedures for the determination of development applications for Crown activities under the EP&A Act. These procedures are illustrated at Appendix B and are explained below.

Section 91A limits the power of a consent authority to refuse or impose conditions of a development consent (not approved by the applicant) in respect of development applications for Crown activities, without the written approval of the Minister. There is a particular procedure by which a Crown DA may be referred to the Minister for determination.

'Trigger' mechanism for the referral of Crown DAs to Minister

A 'trigger' mechanism ensures that there is a clear method to initiate the process under section 91A where a consent authority:

- wishes to refuse a development consent;
- wishes to impose conditions of consent not acceptable to the Crown applicant; or
- has taken no action after 60 days from the initial lodgement of the application.

After 60 days from the initial lodgement of an application, either the Crown applicant or consent authority can refer the application to the Minister for Urban Affairs and Planning for determination. (The option of the Crown applicant taking action in the Land and Environment Court remains open but it is an option not generally pursued).

Compulsory negotiation meeting

Where a Crown DA is referred to the Minister by either the Crown applicant or consent authority in the above circumstances, a compulsory negotiation meeting between the two parties is required. The purpose of the meeting is to negotiate, as far as possible, a determination of the DA that is acceptable to both parties and in accordance with the EP&A Act.

The meeting is convened by the Director of Planning or a delegate of the Director. The procedures for the convening and conduct of this meeting are outlined in Appendix C.

- *If agreement is reached:*

If agreement on the determination of the Crown DA is reached at the meeting, the Director of Planning will provide a report of the agreement to the consent authority and the applicant in accordance with section 91A(7) and in line with the procedures given at Appendix C. The consent authority will then be obliged in accordance with section 91A(8) to issue a consent within an agreed period which will be specified in the Director's report. If the consent authority does not determine the DA within the agreed period of time, the consent authority will be taken to have determined the DA in accordance with the agreement reached.

- *If no agreement is reached:*

If no agreement is reached between the Crown applicant and the consent authority at the meeting convened by the Director, the application will be referred to the Minister for determination in accordance with section 91A(9) and in line with the procedures given at Appendix C. The Minister will then notify both the consent authority and Crown applicant that he either:

- (a) approves the refusal of consent;
- (b) approves the consent authority's proposed condition(s) of consent and gives a date by which the Crown DA is to be determined;
- (c) does not agree with the consent authority's proposed refusal and gives the authority 40 days to allow it to submit to the Minister any conditions it wishes to impose. At the end of the 40 days the Minister must, within a reasonable period of time, notify in writing the consent authority and applicant of:
 - any of the consent authority's conditions the Minister approves and, if so, which conditions; and/or
 - the other conditions with which the Minister is in agreement.
- (d) does not agree with the consent authority's conditions, but may notify other or different conditions with which he is in agreement, and gives a date by which the DA is to be determined.

- *If agreement is partially reached:*

Where agreement is partially reached, the issues which are agreed and disagreed will be reported to the Minister in line with the procedures given at Appendix C. The Minister will then determine those issues which have not been agreed upon and notify the consent authority and the Crown applicant in the same way as where no agreement is reached in (b) and (d) above.

Failure of a consent authority to determine a DA in accordance with Minister's decision

In all instances, where the Minister gives a date by which an application is to be determined, the consent authority must determine the application by the date specified. If it does not, the consent authority is taken to have determined the Crown DA in accordance with the Minister's written notification.

Modification of Crown development consents under section 102 of the EP&A Act

The Minister has the same power to approve a modification to a Crown development consent as for the original DA. The same procedures as outlined above may apply to modification of these consents.

CONDITIONS OF CONSENT APPROPRIATE TO CROWN DEVELOPMENT APPLICATIONS

Delays in the determination of Crown DAs often occur due to the consent authority's desire to impose inappropriate conditions. Therefore, in considering Crown DAs, it is important that councils distinguish between the activities of Crown authorities when they are clearly providing a public service or facility and when they are acting as a commercial developer.

Councils should, as early as possible, notify Crown applicants of any conditions of consent it intends to impose. This will allow for early consultation over potentially contentious issues and may avert disputes at a later stage.

Section 91 conditions of consent

Examples of categories of conditions of development consent which are usually considered justifiable in relation to Crown developments are:

- reinstatement of council roads and facilities damaged as a result of construction.
- stormwater discharge to a specification agreed between the authorities.
- direct connection to water, sewer, electricity and gas.
- erosion control measures both during and after construction.
- on-site carparking where the Crown authority considers it necessary.
- landscape requirements as agreed to between the council and the Crown.

Section 94 contributions

Crown activities providing a public service or facility lead to significant benefits for the public in terms of essential community services and employment opportunities. Therefore, it is important that these essential community services are not delayed by unnecessary disputes over conditions of consent. These activities are not likely to require the provision

of public services and amenities in the same way as developments undertaken with a commercial objective.

The matrix on page 7 is a revised version of the one which appeared in the previous Circular No. D6. The purpose of the matrix is to provide a guide to councils and Crown agencies on justifiable categories of section 94 contributions towards off-site works for Crown developments that provide an essential community service. Councils are encouraged to use the matrix when assessing Crown DAs to ensure a quick and consistent assessment.

Where councils intend to levy contributions on Crown developments, they must be justified in a section 94 contributions plan. Consideration should also be given to the Crown's role in providing a community service, the cost of which is accountable to all taxpayers in the State. Accordingly, the matrix outlines which section 94 contributions are usually considered appropriate or inappropriate for Crown activities.

Contributions for drainage works

Both councils and Crown agencies are encouraged to apply techniques which ensure that development does not contribute additional run-off, particularly in established areas. This should be taken into account when councils levy contributions.

There will, of course, be instances where such techniques cannot be applied and contributions towards off-site drainage may then be sought. These contributions, as with any development, should be based on apportionment principles. That is, each development should only be required to contribute towards its 'share' of the cost of drainage works in the catchment.

Water and sewerage facilities

Levying for contributions towards water and sewerage facilities fell under section 94 of the EP&A Act when the previous Circular No. D6 was issued in April 1993. Section 94 has since been amended through the Local Government (Consequential Provisions) Act 1993 so that under section 94(9), levying for water and sewerage facilities was removed.

This amendment was in response to the decision of *Allsands Pty Ltd v. Shoalhaven City Council*, which raised concerns that section 94(2A) is too narrow for levying for complex long-life facilities like water and sewerage. While councils can still levy contributions towards the provision of water and sewerage facilities, this is now done under division 2 of part 3 of the Water Supply Authorities Act 1987 and not under the EP&A Act. (Refer to Circular No. A21, issued 30 June 1993).

MATRIX: SUMMARY GUIDELINES FOR APPROPRIATE CATEGORIES OF CONTRIBUTIONS TOWARDS OFF-SITE WORKS FOR CROWN DEVELOPMENTS PROVIDING AN ESSENTIAL COMMUNITY SERVICE UNDER SECTION 91A (see text for further details)

	PUBLIC SERVICE/AMENITY							
CROWN ACTIVITY	Open Space	Community Facilities	Parking	Drainage	Local Roads	Sub-Arterial Non-classified Roads	Arterial (classified)* Roads	Upgrading of Local Roads Local Traffic Management**
Educational Services	No	No	No	Yes	No	No	No	Yes (including bus bays)
Law/Order Services	No	No	No	Yes	No	No	No	Yes
Health Services	No	No	No	Yes	No	No	No	Yes
Housing:								
- SEPP 5 (Aged & Disabled Persons) (s94A direction)	No	No	No	No	No	No	No	No
- Medium density infill***	Yes	Yes	No	Yes	No	No	No	Yes

NOTE 1: All 'yes' entries rely on the contributions being justified by the council.

NOTE 2: Contributions towards water supply and sewerage facilities can no longer be levied under section 94.

NOTE 3: Landcom have not been included in the above matrix, as Landcom has indicated that it will generally no longer operate under the provisions of section 91A.

NOTE 4: The Minister for Urban Affairs and Planning will consider waiving the section 94A Direction on SEPP 5 developments in cases where councils can show good cause.

* Where council is the construction authority.

** Works associated with the site entrance.

*** "Medium density infill" refers to dual occupancy development, townhouses, villas and walk-up flats in established areas, but does not include high rise development.

Arterial roads

Arterial roads are generally provided and maintained by the RTA. Therefore, section 94 contributions are not normally applicable. However, in some cases there may be particular agreements establishing a shared formal responsibility for arterial roads between the RTA and the council. In these circumstances council can levy contributions towards costs incurred by the RTA. Once contributions are paid, the council may do the road works itself or it may hire contractors or even the RTA to carry out the necessary roadworks on the council's behalf.

Local area traffic management measures required as a direct consequence of development

These may include contributions for bus lay-bys and towards the cost of kerb, gutter and footpath construction associated with the site entrance. It may also include traffic management facilities directly required to ensure safe access for the public. In some cases a contribution for half of the cost of roadworks relating to the site entrance to the Crown development may be required, but there will be no contributions towards the widening of roads or other general traffic management improvements.

Housing developments by Crown authorities

The following section 94 contributions are usually considered appropriate in relation to housing developments by Crown authorities:

- Open Space: Contributions towards the acquisition of new, or embellishment of open space.
- Community facilities.
- Drainage.
- Construction of local and sub-arterial roads in new release areas (i.e., non-established areas): It is considered inappropriate for such contributions to be levied on medium density infill developments because these developments can capitalise on existing road capacity.
- Local area traffic management measures.

Dual occupancy developments:

Dual occupancy developments can be levied for contributions, providing these contributions are justified in councils' section 94 Contribution Plans. (Refer to Circular No. D3, issued 31 August 1993). Therefore, in order to levy contributions, councils must prove the nexus between such development and the increased need for services in the area in a Contributions Plan. (Refer to Circular No. D16, issued 25 November 1993). As indicated in the matrix, contributions towards the provision of parking, local roads, sub-arterial and arterial roads are generally considered inappropriate in relation to medium density infill (including dual occupancy development).

generally considered inappropriate in relation to medium density infill (including dual occupancy development).

SEPP 5 developments:

No section 94 contributions can be levied on SEPP 5 developments as there is a section 94A Direction restricting this. However, the Minister for Urban Affairs and Planning will consider submissions on waiving the Direction for particular SEPP 5 developments where a council can show good cause. (Refer to Circular No. D3, issued 31 August 1993).

DETERMINATION OF CROWN DEVELOPMENT APPLICATIONS UNDER SECTIONS 91(3A), 91(3B), 91AA AND 91AB OF THE EP&A ACT

Section 91 of the EP&A Act has been amended to introduce various provisions for the determination of development applications:

- Section 91(3A) - *Operational Consent with an Ancillary Matter to be Finalised* (Refer to Circular No. A21, issued 30 June 1993).
- Section 91(3B) - *Performance Based Conditions of Consent* (Refer to Circular No. A26, issued 22 June 1994).
- Section 91AA - *Deferred Commencement* (Refer to Circular No. A21)
- Section 91AB- *Staged Development* (Refer to Circular No. A21).

Where appropriate, these provisions may apply to Crown DAs as for any other type of DA. Conditions of consent imposed under any of these provisions are of course subject to the agreement of the Crown applicant or the approval of the Minister. If the Crown applicant does not agree to the conditions, it may refer the application to the Minister in accordance with the procedure outlined previously in this circular.

INAPPROPRIATE CONDITIONS OF CONSENT FOR CROWN DEVELOPMENTS

Irrelevant conditions

Some councils seek to impose a number of standard conditions, not all of which are necessarily relevant to a particular application. Any condition which is not of relevance to a particular application, and does not relate to the activities associated with that development, is not authorised under section 91 and will not be approved by the Minister. Examples of irrelevant conditions include:

- conditions which require that a particular development be used only for the purpose sought.

- conditions which seek to restrict the hours of operation or the use of a building to be used solely for residential or tertiary education purposes.

Uncertain conditions

All conditions of consent require certainty of outcome for the applicant and should be specific and easy to understand. Uncertain conditions can delay the approvals process in situations where the applicant is not in a position to commence the development as soon as the consent is issued.

For example, deferred commencements under section 91AA of the EP&A Act provide that a consent does not operate until the applicant satisfies the consent authority in relation to a particular matter. If a consent authority imposes a vague or inexact condition, it will be difficult for the applicant to illustrate compliance and this will delay both the determination of the application and the commencement of the development. Under such circumstances, the Crown agency is unlikely to accept and the Minister unlikely to approve such conditions.

Superfluous conditions

Examples of superfluous conditions would be conditions indicating that the proposed development be carried out in accordance with the development application or conditions requiring, for example, car parking when the applications already provides for these things.

Unenforceable conditions

Unenforceable conditions generally relate to activities which are beyond the control of the developer and unenforceable in practice. Examples include 'no reversing of vehicles across footpath'.

Conditions relating to subdivision

The Crown is not bound by Part XII of the *Local Government Act 1919*, which deals with subdivision. Part XII is in operation until new subdivision controls are brought wholly under the EP&A Act.

For those councils currently requiring development consent for subdivision under the EP&A Act, the provisions of section 91A of the Act and the advice contained in this circular apply as for any other type of development.

Councils will be notified of the new system of subdivision control, including any provisions relating to Crown subdivision applications, upon its introduction under the EP&A Act.

Conditions relating to detailed building requirements

The Crown is not required to obtain approval under section 68 of the Local Government Act 1993 from a council:

- to erect a building;
- to demolish a building; or
- to do anything that is incidental to the erection or demolition of a building.

Therefore, it is not appropriate for councils to impose detailed building requirements as conditions of development consent in relation to Crown activities.

FURTHER INFORMATION

For further information, contact the Planning Systems Management Branch or the relevant Regional Office of the Department of Urban Affairs and Planning.



E. Smith
Secretary

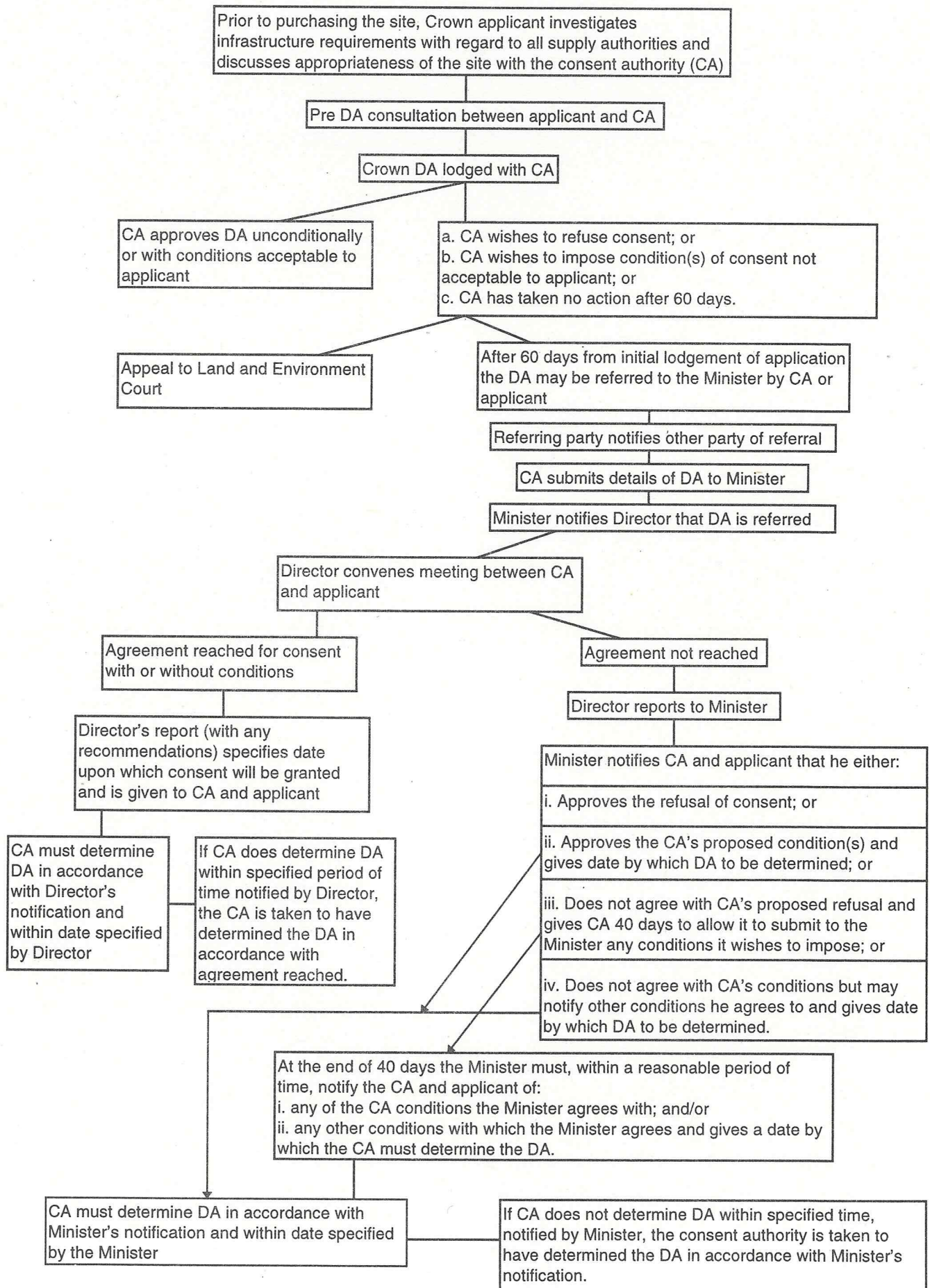
**APPENDIX A: EXAMPLES OF CROWN AGENCIES AND THEIR STATUS FOR
THE PURPOSES OF SECTION 91A OF THE ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979***

PUBLIC AUTHORITIES	PUBLIC UTILITIES	OTHER "PRESCRIBED PERSONS"
Department of Housing	Sydney Water	An official university within the meaning of the Higher Education Act 1988
Department of Health	Hunter Water	A TAFE establishment within the meaning of the Technical and Further Education Commission Act 1990
Department of School Education		The Totalizator Agency Board
Department of Agriculture		
Department of Land and Water Conservation		
Department of Community Services		
Department of Corrective Services		
Department of Public Works and Services**		
Sydney Electricity		
Pacific Power		
Office of Marine Safety and Port Strategy		
Roads and Traffic Authority		
State Rail		

* The above table provides examples only and is not an exhaustive list of Crown agencies

** The status of the Department of Public Works and Services for the purposes of section 91A will depend on the client it is acting on behalf of, i.e, whether or not the client is a Crown agency.

APPENDIX B: PROCEDURES FOR THE LODGING AND CONSIDERATION OF A CROWN DA



APPENDIX C:

**RESOLUTION MECHANISM FOR DISPUTED CROWN
DEVELOPMENT APPLICATIONS BETWEEN CROWN
APPLICANTS AND CONSENT AUTHORITIES:
COMPULSORY NEGOTIATION MEETINGS UNDER
SECTION 91A OF THE ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT 1979**

Department of Urban Affairs and Planning

INTRODUCTION

Section 91A of the Environmental Planning and Assessment Act 1979, as amended by the Environmental Planning and Assessment (Amendment) Act 1994, provides that where a Crown development application (Crown DA) has not been determined by the consent authority within 60 days after lodgement, the application may be referred by either the Crown applicant or the consent authority to the Minister for his decision as to how the application may be determined. Where this occurs the Director of Planning or a delegate of the Director is required to convene a meeting between the two parties for negotiating, as far as possible, a determination of the application that is acceptable to both of them.

On June 7, 1994 the then Department of Planning conducted a workshop to determine the procedures for the convening and the conduct of the meetings (under section 91A). This workshop was facilitated by an independent, non-profit dispute resolution company (the Australian Commercial Disputes Centre) and was attended by representatives from local councils, Crown authorities and the Department of Planning.

The procedures set out in this document are those recommended by unanimous agreement at that workshop.

Section 1 sets out the procedures for convening a meeting should either the Crown applicant or consent authority decide to refer a Crown DA to the Minister. Neither party should refer such an application to the Minister where it is still the subject of negotiation between the two parties.

Sections 2 and 3 set out procedures that are essentially for the conduct of the meeting convened by the Director of Planning and are provided for the full information of parties involved.

SECTION 1

PROCEDURES FOR CONVENING A MEETING

This section outlines the procedures for convening a meeting as follows:

1. The Minister for Urban Affairs and Planning receives a referral from an applicant or consent authority, together with confirmation that the other party has been notified of the referral.
2. The Minister notifies the Director that a Crown DA has been referred for determination.
3. The referral is reviewed by the Director (usually Director's delegate). The Director's delegate would normally convene and conduct the meeting and

would not be involved in making any final recommendations to the Minister should any be necessary.

The Director may decide to seek an independent person external to the Department of Urban Affairs and Planning (DUAP) to conduct the meeting, or to conduct a mediation in lieu of a meeting. This would be decided in consultation with the applicant and the consent authority. The consent authority or the applicant may also request an independent person external to the DUAP to conduct the meeting or to conduct a mediation. Such an independent facilitator or mediator (referred to in this document as a “conductor”) would be selected in consultation with the applicant, consent authority and the Director. (See Attachment B for criteria for who conducts meetings and Attachment D for definitions of convenor and conductor.)

Note: Many Councils already have mediation programs whereby mediation occurs prior to the Council considering the application. Ideally, mediation would occur at this early stage. It is not advised to conduct two mediations on the same matter.

4. From the date of the Director’s notification from the Minister to the date of the meeting, the person who is to conduct the meeting (this will usually be either the Director’s delegate or an independent person external to the DUAP) will not speak with the consent authority or the applicant separately about the matter until there is a resolution.
5. The Director (usually Director’s delegate) sends a letter within 7 calendar days to the parties, inviting them to attend the meeting to be held at the DUAP (or other venue, as agreed). The Meeting Response Form in Attachment A is to be part of this letter.

6. **If a Site Visit is Required**

If either of the parties (as specified in the Meeting Response Form) or the Director (usually Director’s delegate) deems it useful to undertake a site visit, then that visit shall be undertaken by:

- the convenor/conductor alone;
 - the convenor/conductor and both parties together (this could be directly prior to the meeting);
 - the parties alone or together;
 - but never as the convenor/conductor with only one of the parties.
7. Within 21 calendar days from the time the consent authority and applicant receive the DUAP’s invitation to the meeting (usually faxed), the parties will

meet with the person who is to conduct the meeting at the DUAP offices or other agreed venue. The Meeting Response Form ensures each party:

- knows who will be present from the other party; and
- understands the process

8. At least 7 calendar days prior to the meeting date, the consent authority and the applicant will provide to each other and to the contact person at the DUAP:

- a short statement of issues which includes (wherever possible):
 - the history of the problem;
 - its understanding of the issues;
 - its concerns about the application/the delay or the conditions on the application; and
 - its ideas for possible solutions;

- a copy of the completed Meeting Response Form

9. **Procedures for the Conduct of the Directors Meeting**

(Refer Section 2)

10. **If the Parties Settle** (with or without conditions)

The person who conducted the meeting will prepare a report of the agreement and provide a copy to the consent authority and to the applicant.

11. **If the Parties do not Settle or Partial Agreement is Reached**

The person who conducted the meeting will prepare a report or statement about the meeting to the DUAP staff involved in preparing information to the Minister. This report or statement must be agreed upon by both the consent authority and the applicant, at the meeting. Time at the end of the meeting will be devoted to creating the statement which, by agreement of both parties, will be given to the DUAP.

The person who conducted the meeting may not be involved in the DUAP recommendation process in any other way. He or she may not reveal any information about the meeting or the matter other than what was agreed by the parties and written in the agreed statement.

SECTION 2

PROCEDURES FOR THE CONDUCT OF THE DIRECTOR'S MEETING

The role of the person who conducts the meeting is to:

- create a positive tone;
- ensure that an adversarial approach does not emerge;
- improve communication between the parties;
- assist the parties to establish and analyse the issues and the information;
- ensure each party has an opportunity to express its views;
- assist the parties to develop and consider solutions;
- ensure the parties have time to assess possible solutions;
- assist the parties to write a settlement agreement (for final consideration by their respective organisations);
- **this person will not be writing a report to the DUAP (other than as in the agreed statement) and will not be involved in the recommendation process in any way.**

The person who conducts the meeting can progress this role by establishing credibility and trust by:

- fully explaining his or her presence and role;
- demonstrating his or her willingness to learn about the circumstances of the dispute from the parties;
- showing objectivity and impartiality;
- not making value judgements;
- conveying empathy and respect for each party's problems and concerns;
- controlling the meetings in order to facilitate an agreement; and
- maintaining equality of status and power between and with the parties.

(Criteria For who Conducts Meeting, refer to Attachment B)

SECTION 3

SUMMARY OF PROCEDURES

The procedures below are designed to assist the person who conducts the meeting in his or her role and to provide sufficient flexibility to allow for the great variety of circumstances for such meetings.

1. Preparation
2. Opening Statement
3. Parties' Opening Statement
4. Joint Discussions
5. Finalising the Settlement Agreement
6. Keeping the Door Open if No Settlement.

1. Preparation

The person conducting the meeting will prepare for the meeting by:

- reading the short statements and Meeting Response Forms;
- ensuring the meeting room has a white board, round/oval table, window (if possible);
- ensuring the meeting room is generally comfortable and not too formal; and
- ensuring tea/coffee is available nearby.

2. Convenor's Opening Statement

- Introduce yourself.
- Have the parties introduce themselves and ensure that they all understand each other's role (Councillor, Town Planner etc.).
- State that you have no personal vested interest in the outcome of the negotiations.
- State that you will NOT be advising the parties of the DUAP's recommendations to the Minister or the likely decision of the Minister.

- State that you will not be involved in the DUAP report or recommendations to the Minister except as in the agreed statement.
- Establish the extent of authority of the negotiators.
- Establish what procedures and time frames will be used, should either of the parties need to take a settlement back to its organisation (e.g., full Council, Director-General of Health) for finalisation. The meeting may be adjourned for this purpose, usually not beyond the date of the consent authority's next meeting.
- Explain that if one side appears to be speaking for longer than the other at some stage, the parties should not be concerned as each will have a full opportunity to express its views.
- Thank everyone for attending and for preparing for the meeting. State that you feel optimistic about agreement on some (if not all) of the issues.
- State that the meeting might take any time between one and three hours. Any subsequent meetings, as a result of adjournment, would probably take less than an hour.
- Ask if there are any questions.
- State that the meeting is informal and designed to be their day to sort out the issues together.

3. Parties' Opening Statements

- Each party will give a brief view of:
 - the history of the problem;
 - its understanding of the issues;
 - its concerns about the application; and
 - its ideas for possible solutions.
- Restate briefly what was said (unless this seems inappropriate). Ask any clarifying questions.
- Repeat process with other party.
- Ask if anyone who has not already spoken would like to comment (for example, the Councillor spoke and now the town planner would like to comment).

4. Joint Discussions

- The parties should now begin negotiating. Attempt to ensure that:
 - issues are clearly defined (use the white board); and
 - contested facts are clarified.
- Be passive if the parties are negotiating well.
- If the parties are not negotiating well, or becoming adversarial, be active:
 - ask someone else to speak;
 - suggest moving to another issue as the one on the table has already been discussed fully; or
 - resort to strict procedures if necessary (for example, no interruptions).

NOTES: (i) **Making recommendations**

The aim of the meeting is for the parties to find their own solution. If the parties are not seeing solutions, the convenor/conductor may make suggestions. These suggestions should be offered in such a manner as not to convey any notion that the Minister or the DUAP would necessarily seek that solution, should the matter not be resolved at the meeting.

(ii) **Minister's determination**

It is likely that the parties will want to find out what the DUAP would recommend to the Minister, and how the Minister would determine the matter. It is crucial that the convenor/conductor make no statement on this. It is crucial that the convenor/conductor convey no hint of bias towards one party's point of view.

(iii) **Site Visit**

If it unfolds during the negotiations that a site visit would be helpful (and one has not occurred) then the meeting should be adjourned to have one conducted by all present.

5. Finalising the Agreement

If an agreement is reached, the convenor/conductor should attempt to ensure the terms of the agreement are comprehensive, specific and clear:

- Restate the procedures for taking the statement back to their respective organisations for finalisation, including the time frame;

- Write down (or ask the parties to write down) the specifics of the agreement;
- Read the agreement aloud to the parties (“We agree that within 8 working days we will take to our respective organisations the following agreement....”);
- Ask both parties to sign the agreement;
- Ensure each party has a copy of the agreement;
- Congratulate the parties.

If an agreement is not reached or is partially reached, the consent authority and applicant will write a report or statement to the DUAP which:

- is agreed upon by both the consent authority and the applicant;
- will be in writing;
- will be written at the end of the meeting; and
- will be given to the person in the DUAP responsible for reporting on the matter to the Minister.

The person who conducted the meeting will not be involved in the DUAP’s report and recommendation process in any further manner.

ATTACHMENTS

- **ATTACHMENT A:** “Meeting Response Form”
- **ATTACHMENT B:** Criteria for selecting who conducts the meeting
- **ATTACHMENT C:** Meeting process (flow chart)
- **ATTACHMENT D:** Definitions

ATTACHMENT A
MEETING RESPONSE FORM

The Director of Planning has been notified by the Minister of a referral (under the terms of Section 91A of the Environmental Planning and Assessment Act, 1979) on _____ . The referral concerns:

Crown Applicant: _____ (Name)

Consent Authority: _____ (Name)

Date of application to consent authority: _____

Reason for referral to the Minister:

- ☐ consent authority has not made a decision within the requisite 60 days
- ☐ consent authority wishes to impose conditions unacceptable to the applicant
- ☐ consent authority wishes to refuse the application and applicant is contesting that decision

The DUAP will convene a meeting (within 21 calendar days of receipt of this letter) of the parties for the purpose of assisting the parties to negotiate, as far as possible, a determination of the development application that is acceptable to them and that is in accordance with the EP&A Act.

The date of the meetings is proposed to be Please advise the DUAP contact person immediately if there is a difficulty with this date (refer to point 3 over page).

1. Site Visit

Would it be useful for the person conducting the meeting or for the parties to have a site visit?

2. Attendance at the Meeting

While it is understood that negotiators may need to refer settlement solutions to their organisations for finalisation, it is important that people with authority to negotiate for the applicant and the consent authority attend the meeting. It is also important that each party knows in advance who will be attending (as near as possible). It is hoped that only one to three people need to attend from each party. Please advise below who is expected to attend.

Applicant

Consent Authority

Name

Position

Name

Position

3. Contact Person

For the purposes of co-ordinating site visits (if required) and the meeting day, please advise who is the contact person:

Applicant

Name: _____

Position: _____

Telephone: _____

Facsimile: _____

Consent Authority

Name: _____

Position: _____

Telephone: _____

Facsimile: _____

The contact person at the DUAP is:

Name: _____

Position: _____

Telephone: _____

Facsimile: _____

4. Conductor

It is proposed that _____, Director's delegate of the _____ Region of the DUAP convene and conduct the meeting.

Please advise if there are any reasons why this person is not acceptable to either of the parties (e.g. has a close association with the representatives of the parties).

Under normal circumstances, the DUAP convenor also conducts the meeting. Please advise if you wish to have an outside independent person to either conduct the meeting or to conduct a mediation (in lieu of a meeting):

5. Preparing for the Meeting

Before the meeting, please ensure that those attending:

☐ are familiar with the details of the application

☐ come to the meeting with a short prepared statement

6. **7 calendar days before the meeting, the parties must send to each other and to the contact person at the DUAP:**

- (i) this Meeting Response Form; and
- (ii) a short statement of issues (no more than 3 pages) which include:
 - the history of the problem;
 - any previous attempts to solve it;
 - concerns about the application; and
 - what the parties see as a solution.

ATTACHMENT B

CRITERIA FOR WHO CONDUCTS MEETING

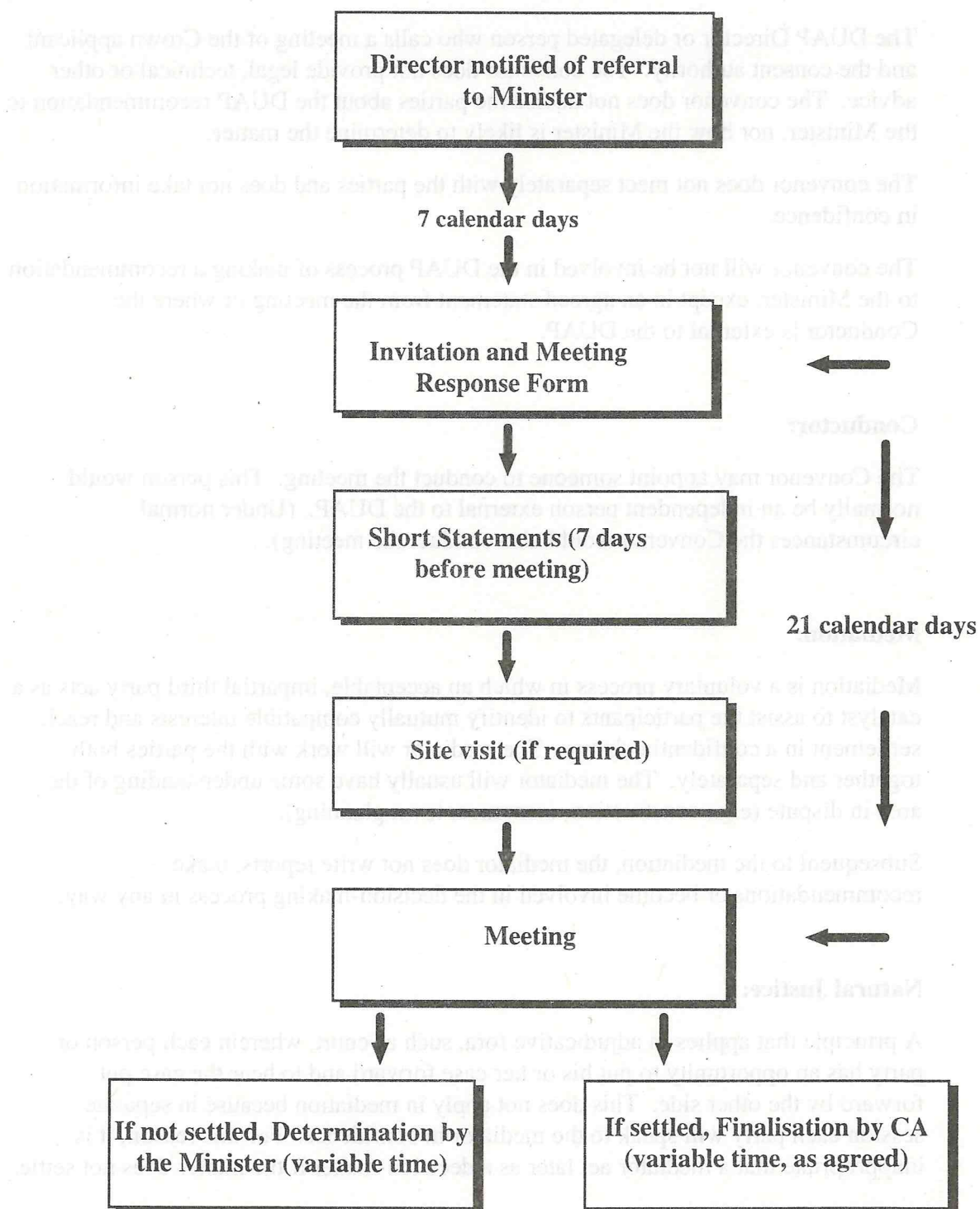
The person who conducts the meeting:

- must have no personal vested interest in the outcome of the negotiations (such as owns adjacent land).
- must not have any close associations with either of the parties (such as a former employee or a family relative), or must declare any associations and proceed only with the agreement of all attending
- will have received training in the conduct of such meetings.

The consent authority, the applicant or the Convenor may request that an independent person external to the DUAP conduct the meeting or conduct a mediation in lieu of a meeting. In this instance, the DUAP will consult with the parties as to the selection and payment of the outside person.

ATTACHMENT C

MEETING PROCESS



ATTACHMENT D

DEFINITIONS

Convenor:

The DUAP Director or delegated person who calls a meeting of the Crown applicant and the consent authority. The convenor does not provide legal, technical or other advice. The convenor does not advise the parties about the DUAP recommendation to the Minister, nor how the Minister is likely to determine the matter.

The convenor does not meet separately with the parties and does not take information in confidence.

The convenor will not be involved in the DUAP process of making a recommendation to the Minister, except in an agreed statement from the meeting or where the Conductor is external to the DUAP.

Conductor:

The Convenor may appoint someone to conduct the meeting. This person would normally be an independent person external to the DUAP. (Under normal circumstances the Convenor would also conduct the meeting).

Mediation:

Mediation is a voluntary process in which an acceptable, impartial third party acts as a catalyst to assist the participants to identify mutually compatible interests and reach settlement in a confidential forum. The mediator will work with the parties both together and separately. The mediator will usually have some understanding of the area in dispute (e.g., construction, insurance, town planning).

Subsequent to the mediation, the mediator does not write reports, make recommendations or become involved in the decision-making process in any way.

Natural Justice:

A principle that applies in adjudicative fora, such as court, wherein each person or party has an opportunity to put his or her case forward and to hear the case put forward by the other side. This does not apply in mediation because in separate session each party will speak to the mediator in confidence. For this reason, it is inappropriate that a mediator act later as a decision-maker if the matter does not settle.