



PLANNING SYSTEM

Local planning

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Related	

Minor amendments to local environmental plans using section 73A

This circular provides guidance on the process for amending local environmental plans in accordance with section 73A of the *Environmental Planning and Assessment Act 1979*.

Introduction

The 2005 NSW planning reforms included the introduction of section 73A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Section 73A allows certain types of minor amendments to be made to environmental planning instruments (EPIs) without following the usual procedures for preparing an EPI (particularly public exhibition) under Part 3 of the EP&A Act.

This circular provides guidance on the process to be followed when a council wishes to prepare an amendment to a local environmental plan (LEP) in accordance with section 73A.

What is a section 73A amendment?

Section 73A may be used to prepare a LEP to amend or repeal another LEP to:

- (a) correct an obvious error in the principal instrument such as a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,¹ or
- (b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature.

The ability to make an amendment in accordance with section 73A will need to be assessed on the facts of each individual case. While judgement will

need to be exercised in such assessments, the consequence of an amendment being made in accordance with section 73A should be that:

- there is no need for exhibition of the draft instrument (eg public exhibition has previously occurred and gazettal of the section 73A amendment will be sufficient notification), and
- the amendment will not have any material effect 'on-the-ground'.

Types of amendments that might be permitted using section 73A

Some examples of the types of amendments that might be permitted using section 73A are outlined below. (These examples are intended as a guide only and, as mentioned above, proposed amendments will need to be considered on the facts of each individual case.)

- The correction of a minor typographical error would be considered an appropriate amendment to be made in accordance with section 73A(a).
- An amendment to resolve a minor discrepancy between the map and the written instrument would be considered under section 73A(a) as a 'misdescription'.
- An amendment to a LEP to update a reference to the date of adoption of a development control plan (DCP) that contains exempt and complying development controls would be a 'consequential amendment' under section 73A(b) if there is no change to the exempt and complying development controls in the DCP. Such an amendment may arise if:
 - a number of DCPs, including exempt and complying development DCPs, are amalgamated and, as a result, the LEP's

¹ It should be noted that typographical errors in environmental planning instruments may also be corrected through a Statute Law Revision Bill. However, such Bills are only prepared twice a year and, as such, will only be appropriate for local environmental plan amendments that are not urgent. Section 73A amendments can be made at any time.

- reference to the exempt and complying development DCPs needs to be changed to a reference to the exempt and complying development controls within the amalgamated DCP, or
- if there is a subsequent amendment to some part of the amalgamated DCP, but not to the exempt and complying development controls within the amalgamated DCP and, as a result, the LEPs reference to the date of adoption of the amalgamated DCP needs to be updated.

Types of amendments that would not be permitted using section 73A

Some examples of LEP amendments that would not be permitted under section 73A are outlined below. As with the examples provided above, these examples are intended as a guide only and proposed amendments will need to be considered on the facts of each individual case.

- A change to a LEP to amend a SEPP or REP would not be permitted by section 73A. This is because such a change would be likely to have policy implications, the effect of which would need to be considered under the usual process for making a LEP under Part 3 of the EP&A Act.
- An amendment to a LEP to change a definition generally would not be permitted under section 73A (except, for example, if the amendment was to correct a spelling error in the definition).
- An amendment to a LEP to adjust zone boundaries would not be permitted under section 73A.

Process for making a section 73A amendment

Amendments can be made using section 73A without complying with the usual process for preparing LEPs under Part 3 of the EP&A Act. While there is nothing to stop council from complying with those processes if it considers it appropriate, council does not have to comply with requirements such as:

- formal notification of the Director General of the council's decision to make the LEP under section 54 of the EP&A Act
- public exhibition of the draft LEP under section 65 of the EP&A Act.

Given that the process for making LEP amendments using section 73A is not encompassed by the EP&A Act or Regulations, the Department will administer a process that comprises the following steps:

1. Council will first need to resolve to prepare a LEP amendment in accordance with section 73A. The resolution should set out:

- why there is a problem
- what needs to be done to rectify the problem
- the proposed amendment
- a statement indicating why the proposed amendment is suitable to be made in accordance with section 73A.

Council should then advise the Department of Planning of the proposed amendment. To do this, council should submit all of the information for the council resolution, set out in accordance with the **attached pro forma Section 73A EP&A Act Submission**. This will serve as a draft report, which can be endorsed by the Department before being provided to the Minister.

2. The Department will check the information submitted by the council and, if it agrees that all the relevant information has been provided and that the proposed amendment is subject to section 73A, the application will be referred to the LEP Review Panel for consideration. The Department's target benchmark for considering section 73A proposals is 15 days.
3. If the LEP Review Panel does not agree that the amendment is subject to section 73A, the Department will inform the council of this in writing. This advice will include reasons why the amendment may not be made in accordance with section 73A and any suggestions for addressing any outstanding issues.
4. If the proposed amendment is considered appropriate for section 73A, the Legal Services Branch of the Department will prepare drafting instructions for the Parliamentary Counsel and request an opinion.
5. Once the Department receives the Parliamentary Counsel's Opinion it will confirm with council that it wishes to proceed with the amendment.
6. The Department will then forward the Parliamentary Counsel's Opinion, along with the report prepared by council in accordance with Step One and endorsed by the Department, to the Minister.
7. The Minister will decide whether to make the plan amendment under section 70 of the EP&A Act and in accordance with section 73A.
8. If the Minister decides to make the plan amendment, public notification will occur through the publication of the amending LEP in the Government Gazette.

Further information

For more information, please contact the relevant Department of Planning local planning team.

Regional NSW

Barwon	02 6764 6831
Central Coast	02 4323 7000
Central West/Far West	02 6884 2560
Hunter	02 4904 2700
Illawarra/South Coast	02 4224 9450
Murray/Murrumbidgee	02 6297 6477
North Coast	02 6640 2160

Sydney East

City/East	02 8374 5915
Inner North/Inner West	02 8374 5913

Sydney North West

North/North East	02 8374 5926
North West	02 8374 5925

Sydney South West

South West	02 9895 7633
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General enquiries

Information Centre	02 9228 6333
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Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

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.

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Section 73A EP&A Act submission

Part A. Council to complete

Subject:

..... (Insert name of amending LEP)

Report requesting the making of amending local environmental plan under section 70 and section 73A.

Background:

..... (Insert name of council) resolved on

to amend..... (Insert name of LEP) and to request that the Minister for Planning make the plan under section 70 and section 73A of the *Environmental Planning and Assessment Act 1979*.

The draft amending plan is attached. (Attach copy of resolution.)

The land to which this amendment applies is.....

.....

..... (Specify area. Attach map if appropriate)

Why there is a need for the amendment:

.....
.....
.....
.....

(Please attach a separate sheet if necessary)

What the amendment does:

.....
.....
.....
.....

(Please attach a separate sheet if necessary)

Why the amending plan is suitable to be made in accordance with section 73A:

.....
.....
.....
.....

(Please attach a separate sheet if necessary)

The council requests that the Minister agree to make draft (Name of amending LEP)

Signed: Date:

Name: Position:

On behalf of: (Name of council)



Section 73A EP&A Act submission

Part B. Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:

- (a) under sections 70(1)(a) and (8) and section 73A of the *Environmental Planning and Assessment Act 1979* maketagged 'B')
(Name of LEP)
- (b) authorise the Department to advise council of the Minister's decision.

Date:

Signed: Name:

Position:
for Director-General