

LEP practice note

PLANNING SYSTEM

Local Planning

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Preparing LEPs using the Standard Instrument: standard clauses

The purpose of this practice note is to advise councils on the use of the clauses in the Standard Instrument when preparing local environmental plans (LEPs).

Introduction

This Practice Note addresses the clauses in the *Standard Instrument—Principal Local Environmental Plan* (the Standard Instrument). It provides guidance on how to use the mandatory (compulsory and optional) clauses and where and how a council may introduce local content, either into a mandatory clause or through a separate local clause.

The *Standard Instrument (Local Environmental Plans) Order 2006* (the SI Order) prescribes the form and content of a Standard Instrument for the purposes of section 33A of the *Environmental Planning and Assessment Act 1979*.

Clauses 1 to 7 of the SI Order set up the legal framework for a Standard Instrument, which is set out at the end of the SI Order.

Mandated clauses

The SI Order identifies 42 mandatory clauses for inclusion in new principal Standard Instrument LEPs. The clauses are identified as either compulsory or optional.

Compulsory clauses

There are two types of compulsory clauses, labelled either 'compulsory' or 'compulsory [if applicable].'

The first type, labelled 'compulsory' are to be adopted by every council in the State, without amendment or alteration. The numbering of compulsory clauses cannot be changed.

There are some mandatory clauses (either compulsory or optional) where a council may add some specific local criteria. (See the following section of this PN: 'When a council can add local content to a standard clause').

The second type of compulsory clause, labeled 'compulsory [if applicable],' are compulsory where specified conditions exist.

These generally relate to environmental or other attributes specific to certain areas of the State or in the local government area, e.g. in the coastal zone. If such specific circumstances apply, then those relevant clauses must be adopted without any amendment or alteration.

If not adopted, the number and name of the clause should appear with the words 'not applicable.'

The compulsory clauses in the Standard Instrument are:

- 1.1 Name of plan
- 1.1AA Commencement
- 1.2 Aims of Plan
- 1.3 Land to which Plan applies
- 1.4 Definitions
- 1.5 Notes
- 1.6 Consent authority
- 1.7 Maps
- 1.8 Repeal of planning instruments applying to land
- 1.9 Application of SEPPs
- 2.1 Land use zones
- 2.2 Zoning of land to which Plan applies
- 2.3 Zone objectives and Land Use Table
- 2.4 Unzoned land

- 2.5 Additional permitted uses for particular land
- 2.6 Subdivision—consent requirements
- 2.7 Demolition requires development consent
- 3.1 Exempt development
- 3.2 Complying development
- 3.3 Environmentally sensitive areas excluded
- 4.6 Exceptions to development standards
- 5.1 Relevant acquisition authority
- 5.2 Classification and reclassification of public land
- 5.4 Controls relating to miscellaneous permissible uses
- 5.8 Conversion of fire alarms
- 5.9 Preservation of trees or vegetation
- 5.9AA Trees or vegetation not prescribed by development control plan
- 5.10 Heritage conservation
- 5.11 Bush fire hazard reduction
- 5.12 Infrastructure development and use of existing buildings of the Crown

The compulsory [if applicable] clauses are:

- 4.2 Rural subdivision [compulsory if clause 4.1 adopted, and land to which Plan applies includes land zoned RU1, RU2, RU4 or RU6]
- 5.5 Development within the coastal zone [compulsory if land to which Plan applies includes land in the coastal zone]
- 5.7 Development below mean high water mark [compulsory if land to which Plan applies contains tidal waters]
- 5.13 Eco-tourist facilities [compulsory if eco-tourist facilities permitted with consent].

Optional clauses

Optional clauses are those that a council may elect to include in its principal Standard Instrument LEP, e.g. the clause on temporary use of land. However, if a council wishes to have a clause on this matter, then the standard clause *must* be used. Councils should not add local clauses that can be addressed using the optional clauses.

If not adopted, the number and name of the clause should appear with the words 'not adopted,' or words to the same effect.

The optional clauses are:

- 2.8 Temporary use of land
- 4.1 Minimum subdivision lot size
- 4.1AA Minimum subdivision lot size for community title schemes
- 4.3 Height of buildings
- 4.4 Floor space ratio
- 4.5 Calculation of floor space ratio and site area
- 5.3 Development near zone boundaries

- 5.6 Architectural roof features
- 5.9 Preservation of trees or vegetation - subclause 9 only is optional

Clauses 4.1, 4.3 and 4.4 on development standards will require councils to insert local objectives and relevant standards (see 'Principal development standards' below).

When a council can add local content to a standard clause

Generally a local subclause should not be added to a standard mandated clause.

There are, however, a number of specific standard clauses where a council can, in accordance with a direction, add the type of local content specified. These are:

- 1.1 Name of plan
- 1.1AA Commencement
- 1.2 Aims of plan
- 1.6 Consent authority
- 1.7 Maps
- 1.8 Repeal of planning instruments applying to land
- 1.9 Application of SEPPs
- 2.3 Zone objectives and Land Use Table
- 2.8 Temporary use of land
- 3.3 Environmentally sensitive areas excluded
- 4.1 Minimum subdivision lot size
- 4.1AA Minimum subdivision lot size for community title schemes
- 4.3 Height of buildings
- 4.4 Floor space ratio
- 4.6 Exceptions to development standards
- 5.1 Relevant acquisition authority
- 5.3 Development near zone boundaries
- 5.4 Controls relating to miscellaneous permissible uses
- 5.6 Architectural roof features
- 5.10 Heritage conservation.

Councils can include local provisions

Councils can add local clauses that address specific local circumstances where justified. These could be as a result of relevant planning components of council's local strategic planning, or required under a section 117 direction, or regional or metropolitan strategy.

Any such local clauses are not to be inconsistent with and should not undermine the effect of: the mandated clauses in the Standard Instrument; the permissibility or otherwise of a land use as detailed in the Land Use Table; or any other relevant State and regional policies, strategies, directions etc.

To assist relevant planning authorities in preparing Standard Instrument LEPs, the

Department provides model local provisions that cover a range of common requirements. These are available on the Department's website.

Principal development standards

The Standard Instrument includes development standards for minimum subdivision lot sizes, height of buildings, and floor space ratio as optional clauses. If a council wishes to have such development standards in its LGA, then they *must* be included in the principal LEP and *not* through some other mechanism, such as a development control plan.

Councils are to:

- provide the local objectives for these development standards (for height of buildings and floor space ratio), and
- set out the numerical standards on the relevant maps accompanying the particular clause.

These standards may or may not apply to the whole zone, depending on how the map is drawn.

A council may wish to identify different standards in the one zone, e.g. in a rural area it may be appropriate to identify different lot sizes for different types of land within the primary production zone.

Development standard clauses include:

- 4.1 Minimum subdivision lot size
- 4.1AA Minimum subdivision lot size for community title schemes
- 4.3 Height of buildings
- 4.4 Floor space ratio.

Clauses that replace/amend SEPPs

The following State Environmental Planning Policies (SEPPs) are either fully or partially incorporated into the Standard Instrument:

- SEPP 1—Development Standards
- SEPP 4—Development without Consent and Miscellaneous Exempt and Complying Development (clause 6 and Parts 3 and 4)
- SEPP 60—Exempt and Complying Development.

Additional instruments (or provisions of instruments) may be added if the relevant instrument or provision is covered by the Plan. These are to be listed in Clause 1.9 of the LEP.

When an LEP is made, the relevant SEPPs, or parts of SEPPs, will not apply to land to which the plan applies.

Schedules

The Standard Instrument contains five schedules, although there is provision for additional schedules to be added over time if required.

The clauses that reference Schedules are:

- Clause 2.5 Schedule 1 Additional permitted uses
- Clause 3.1 Schedule 2 Exempt development
- Clause 3.2 Schedule 3 Complying development
- Clause 5.2 Schedule 4 Classification and reclassification of public land
- Clause 5.10 Schedule 5 Environmental heritage

A council may add local specific schedules, as a result of additional local provisions if justified and agreed with the Department of Planning. Any schedules added by a council will be identified as Schedule 6A, 6B, etc.

Clause-by-clause outline

Attachment A outlines how to prepare a basic Standard Instrument LEP. For more details please refer to the Standard Instrument, which provides instructions in italics (and in Note form or by way of a Direction to councils). Planning Circular PS 09-011 - *Certification of draft Standard Instrument LEPs for exhibition* may also assist as it includes additional drafting guidance.

Further information

A copy of this practice note, the Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department's website <http://www.planning.nsw.gov.au/LocalPlanning/t/abid/246/language/en-US/Default.aspx>

An updated version of the standard instrument is available on the NSW Parliamentary Counsel's office website: www.legislation.nsw.gov.au under 'Browse A-Z In Force'.

If you have further enquiries, please phone the Planning Information Centre 02 9228 6333 or email information@planning.nsw.gov.au.

Authorised by:

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Director General

Important note: This practice note 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 practice note.

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ATTACHMENT A. CLAUSE- BY- CLAUSE OUTLINE

The following is a clause by clause outline of how to prepare a basic Standard Instrument LEP. For more detailed instructions please refer to the Instructions in italics, Directions and Notes in the Standard Instrument.

[Title]

[<i>Name of local government area</i>] Local Environmental Plan [<i>Year</i>]	Replace <i>italics</i> with name of council local government area (LGA) and year in numbers.
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Part 1 – Preliminary

Clause No. and Name	Instruction
1.1 Name of plan	Compulsory Replace <i>italics</i> with name of council LGA and year in numbers.
1.1AA Commencement	Compulsory Can be amended as per the Direction if another date is required to be specified for commencement.
1.2 Aims of plan	Compulsory Insert name of LGA in 1.2(1). Insert council's particular aims for its LEP in subclause (2)(a). Note that the aims should not repeat the objects of the EP&A Act, nor should they refer to other documents. Instead, they should reflect the local strategic planning underpinning the LEP.
1.3 Land to which plan applies	Compulsory The Standard Instrument specifies that there is to be a Land Application Map. This may be a separate map or be constituted by the outer boundary of the Land Zoning Map by an annotation on that map. It should generally apply to the whole of the LGA.
1.4 Definitions	Compulsory The Dictionary at the end of the document contains both land use terms (to be used in the Land Use Table) and explanatory terms (not to be used in the Land Use Table). Direction 5 lists all types of development that may be included in the Land Use Table.
1.5 Notes	Compulsory The notes are non-statutory guidance to aid in the understanding of a clause and do not form part of the legal instrument. Notes will remain in councils' LEPs. Councils are not to insert notes. Directions are included to aid in preparing a Standard LEP. They should be deleted from the draft LEP.
1.6 Consent authority	Compulsory The consent authority for the purposes of this Plan is (subject to the Act) the Council. If required, another person or body may be specified as the consent authority for all or any particular kind of development.
1.7 Maps	Compulsory Requirements relating to the maps are set out in the documents entitled <i>Standard technical requirements for LEP maps</i> and <i>Standard requirements for LEP GIS data</i> which are available on the Department of Planning's website.
1.8 Repeal of planning instruments applying to land	Compulsory This clause repeals all existing environmental planning instruments that apply to the land to which the Plan applies. See the Direction to this clause in the Standard Instrument template regarding other possibilities.

1.9 Application of SEPPs	<p>Compulsory</p> <p>s.36 of the Act generally provides that SEPPs prevail over LEPs. However, an LEP may (by an additional clause included in the plan) displace or amend a SEPP to deal specifically with the relationship between this plan and the SEPP, where agreed by the Department of Planning.</p> <p>SEPPs that have already been incorporated into the Standard Instrument are listed in 1.9(2). Councils are to add any additional SEPPs which will not apply to the land to which the Plan applies.</p>
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Part 2 – Permitted or prohibited development

Clause No and Name	Instruction
2.1 Land use zones	<p>Compulsory</p> <p>Additional zones or subzones are not to be inserted.</p> <p>If there are zones that are not applied in the Plan, the reference to such zones in this clause and the provisions relating to them in the Land Use Table in clause 2.3 may, but need not, be included.</p>
2.2 Zoning of land to which Plan applies	<p>Compulsory</p> <p>For the purposes of the Plan, land is within the zones shown on the Land Zoning Map.</p>
2.3 Zone objectives and Land Use Table	<p>Compulsory</p> <p>The notes applicable to this clause explain the elements of the Land Use Table and the relationship between the Land Use Table and other provisions of the Plan. Councils may fill in Note 5 if they wish.</p> <p>Any additional objectives must be consistent with the zone and must not repeat the aims of the LEP, the objects of the Act, nor any SEPP to which the LEP is subordinate.</p>
2.4 Unzoned land	<p>Compulsory</p> <p>All land must be zoned. However, the purpose of this clause is generally to capture any land that a council may inadvertently not zone.</p>
2.5 Additional permitted uses for particular land	<p>Compulsory</p> <p>Councils may insert a list of additional permitted uses in Schedule 1 for particular land, e.g. by lot and DP number. Listings in the LEP Schedule 1 should be minimised, with appropriate justification provided to the Department for any inclusions. Wherever possible, land uses should be governed by the Land Use Table and Schedule 1 should only be used where council has demonstrated why this cannot be achieved.</p>
2.6 Subdivision – consent requirements	<p>Compulsory</p> <p>The purpose of this clause is to clarify that land may be subdivided with consent. The exception to this relates to the subdivision of land on which there is a secondary dwelling in particular circumstances.</p> <p>Subdivision that is identified as exempt development in an applicable environmental planning instrument, such as the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> may be carried out without development consent.</p> <p>Note: An amendment was made to this clause in 2011, so that controls relating to minor boundary adjustments are only contained in the <i>Exempt and Complying Development Codes SEPP 2008</i></p>
2.7 Demolition requires consent	<p>Compulsory [formerly 2.6AA]</p> <p>States that, unless identified as exempt development under Schedule 2 or the <i>Exempt and Complying Development Codes SEPP 2008</i>, the demolition of a building or work may be carried out only with consent.</p>

<p>2.8 Temporary use of land</p>	<p>Optional [formerly 2.6BB] This clause enables councils to consider land uses for a certain period of time (52 days per 12 months is suggested). Councils can change the number of days as considered appropriate, provided it reflects the ‘temporary’ intent of the clause. Exceptions to subclause (2) may be added where justified.</p>
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Land Use Table

Clause No and Name	Instruction
<p>Rural Zones RU1 Primary Production RU2 Rural Landscape RU3 Forestry RU4 Primary Production Small Lots RU5 Village RU6 Transition</p> <p>Residential Zones R1 General Residential R2 Low Density Residential R3 Medium Density Residential R4 High Density Residential R5 Large Lot Residential</p> <p>Business Zones B1 Neighbourhood Centre B2 Local Centre B3 Commercial Core B4 Mixed Use B5 Business Development B6 Enterprise Corridor B7 Business Park B8 Metropolitan Centre</p> <p>Industrial Zones IN1 General Industrial IN2 Light Industrial IN3 Heavy Industrial IN4 Working Waterfront</p> <p>Special Purpose Zones SP1 Special Activities SP2 Infrastructure SP3 Tourist</p> <p>Recreation Zones RE1 Public Recreation RE2 Private Recreation</p> <p>Environment Protection Zones E1 National Parks and Nature Reserves E2 Environmental Conservation E3 Environmental Management E4 Environmental Living</p> <p>Waterway Zones W1 Natural Waterways W2 Recreational Waterways W3 Working Waterways</p>	<p>Compulsory</p> <p>The following directions must be followed when developing the provisions to apply in each zone in the Land Use Table.</p> <p>Direction 1. Additional objectives may be included in a zone at the end of the listed objectives to reflect particular local objectives of development, but only if they are consistent with the core objectives for development in the zone as set out in the Land Use Table. See LEP Practice Note PN09-005 for more information about local zone objectives.</p> <p>Direction 2. Specified uses may be added to (but not removed from) the list of development that is permitted or prohibited in a zone. Additional uses may be added to an Item of a zone even if some uses are already specified in that item. Additional permitted uses for particular land (but not all land in a particular zone) may be set out in Schedule 1.</p> <p>Direction 3. Items 2, 3 and 4 of each zone requires a relevant entry to be inserted. The following may be entered:</p> <ul style="list-style-type: none"> (a) particular uses, (b) the word “Nil”, (c) the words “Any development not specified in item [<i>specify item number or numbers</i>]”, <p>so long as all residual (i.e. non-specified) uses are covered.</p> <p>Direction 4. Respite day centres must be permitted wherever a child care centre is permitted in the Land Use Table.</p> <p>Direction 5. Only certain types of development defined in the standard Dictionary by be included in the Land Use Table (a list of types of development are provided).</p> <p>Directions in each Zone. After the heading of each zone is a list of uses that must be incorporated into the Land Use Table as either “Permitted without consent” or “Permitted with consent”.</p> <p>See Practice Note 11-002, <i>Preparing LEPs using the Standard Instrument: standard zones</i>, for further information on using standard zones including ‘closed’ and ‘open’ zone approaches.</p>

Part 3 – Exempt and complying development

Clause No and Name	Instruction
3.1 Exempt development	Compulsory Councils may insert a list of exempt development in Schedule 2 not covered by the <i>SEPP (Exempt and Complying Development Codes) 2008</i> .
3.2 Complying development	Compulsory Councils may insert a list of complying development in Schedule 3 not covered by the <i>SEPP (Exempt and Complying Development Codes) 2008</i> .
3.3 Environmentally sensitive areas excluded	Compulsory This clause defines an ‘ <i>environmentally sensitive area</i> ’ where exempt or complying development must not be carried out. Note that in 2011, the clause was amended to clarify that <i>environmentally sensitive area</i> includes land reserved under the <i>National Parks and Wildlife Act 1974</i> in relation to exempt and complying development. Whilst the direction states that additional areas may be added to this list, any such additions must be agreed by the Department of Planning and must be in addition to (and not repeat) those in the <i>SEPP (Exempt and Complying Development Codes) 2008</i> . These additional areas do not apply to exempt or complying development arising out of other environmental planning instruments such as the <i>SEPP (Exempt and Complying Development Codes) 2008</i> .

Part 4 – Principal development standards

Clause No and Name	Instruction
4.1 Minimum subdivision lot size	Optional If a council wishes to identify subdivision lot sizes in its LGA, these are to be shown on a Lot Size Map to the LEP. Different lot sizes may be identified for different categories of land in the same zone.
4.1AA Minimum subdivision lot size for community title schemes	Optional if clause 4.1 is adopted As clause 4.1 does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme, and the 2011 amendments removed the wording ‘(not being an individual lot in a strata plan or community title scheme)’ in certain residential accommodation land use terms, this clause enables a council to control the size of lots under community title schemes through the Minimum lot size map, if desired. It also includes a direction enabling councils to further specify exceptions for residential accommodation development suited for community title subdivision such as ‘multi dwelling housing.’
4.2 Rural subdivision	Compulsory if clause 4.1 is adopted and land to which Plan applies includes land zoned Primary Production RU1, Rural Landscape RU2, Primary Production Small Lot RU3 or Transition RU6. The purpose of this clause is to provide some flexibility in the subdivision of land for <i>primary production purposes</i> , without creating opportunities for dwellings on undersized lots.

Clause No and Name	Instruction
4.3 Height of buildings	<p>Optional</p> <p>If a council wishes to identify building heights in its LGA, they are to be shown on a 'Height of Buildings Map' in the LEP. Local objectives for building height restrictions are to be inserted into the clause.</p> <p>Different heights may be shown on the 'Height of Buildings Map' for different zones or for different land in the same zone. The Plan may also provide for specific height restrictions to be varied or modified in certain circumstances, for example, to prevent overshadowing of public open space, for air safety reasons or for the purposes of promoting design excellence.</p> <p>See LEP Practice Note 08-001, <i>Height and floor space ratio</i>, for further information.</p>
4.4 Floor space ratio	<p>Optional</p> <p>If a council wishes to identify floor space ratios in its LGA, they should be shown on a 'Floor Space Ratio Map' to the LEP. Local objectives for floor space ratios are to be inserted into the clause.</p> <p>Different floor space ratios may be shown on the 'Floor Space Ratio Map' for different zones, for different land in the same zone or for different land uses within a building.</p> <p>In exceptional cases, where agreed by the Department of Planning, the Plan may provide that despite subclause (2), the maximum floor space ratio for a building is to be determined partly by the FSR map and partly by other means, or wholly by other means.</p> <p>See LEP Practice Note 08-001, <i>Height and floor space ratio</i>, for further information.</p>
4.5 Calculation of floor space ratio and site area	<p>Optional</p> <p>This clause sets out additional provisions for the purposes of applying floor space ratios to development sites. This clause should be adopted wherever a council adopts clause 4.4 Floor space ratio.</p>
4.6 Exceptions to development standards	<p>Compulsory</p> <p>This clause sets out where an exception to a development standard (for example Minimum subdivision lot size, Height of buildings and Floor space ratio) may be requested.</p> <p>Subclause (8) sets out situations where this clause does not apply. Additional exclusions may be added.</p> <p>The clause requires the concurrence of the Director General to be obtained prior to the granting of consent for development that contravenes a development standard. Prior to granting concurrence, consideration must be given to whether contravention of the development standard raises any matter of significance for State or regional environmental planning and the public benefit of complying with the standard.</p> <p>Clause 4.6 cannot be used to allow subdivision of land that will result in 2 or more lots less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard in most Rural Zones (RU1, RU2, RU3, RU4, RU6), Large Lot Residential Zone R5, and Environment Protection Zones E2, E3 and E4.</p> <p>The clause also cannot be used to vary standards in relation to complying with BASIX or controls established under <i>Clause 5.4 Controls relating to miscellaneous permissible uses</i>.</p> <p>Once the principal LEP is made, then SEPP 1 will no longer apply to that land. See LEP Planning circular 08-003 <i>Variations to development standards</i> for further information (or its replacement).</p>

Part 5 – Miscellaneous provisions

Clause No and Name	Instruction
5.1 Relevant acquisition authority	<p>Compulsory</p> <p>This clause provides, for the purpose of section 27 of the EP&A Act, the identification of the relevant public authority for acquiring land reserved exclusively for certain public purposes. The clause supplements existing owner initiated acquisition procedures where acquisition can be triggered if the owner will suffer hardship, if there is any delay in the land being acquired by the relevant authority.</p> <p>Direction. Land is required to be shown on the 'Land Reservation Acquisition Map' if it is expressly set apart by the Plan exclusively for a public purpose referred to in section 26 (1) (c) of the Act. However, any such land that is held by an authority of the State, or by a public company or a subsidiary of a public company (within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth) is not required to be shown on that Map. An authority of the State is to be listed for all land shown on the 'Land Reservation Acquisition Map', but the land is not to be so reserved and the authority listed unless the authority consents to its being listed.</p> <p>A 'Land Reservation Acquisition Map' must be prepared even when no land is identified for acquisition at the time the plan is made.</p> <p>The table in subclause 2 lists the type of land to be shown on the 'Land Reservations Acquisition Map'. The clause prescribes that the relevant council is responsible for acquisition in relation to local open space, the relevant public corporation in relation to regional open space, RTA in relation to classified roads and the Minister for the Environment in relation to national parks lands.</p>
5.2 Classification and reclassification of public land	<p>Compulsory</p> <p>Councils are to insert in relevant parts in Schedule 4, land that is to be classified or reclassified as either 'operational land' or 'community land' (this is for new classifications or reclassifications only).</p> <p>See LEP Practice Note 09-003 (<i>Re</i>)<i>classification of public land through a LEP</i> for further information.</p>
5.3 Development near zone boundaries	<p>Optional</p> <p>This clause provides flexibility to allow a use that is permitted on one side of a zone boundary to occur on the immediate other side if this would enable a more logical and appropriate development of the site.</p> <p>Council is to insert the relevant distance from the zone boundary.</p> <p>The clause provides that such a use must be compatible with the objectives of the zones. The clause identifies a number of zones where this clause will <u>not</u> apply. A council may also add to this list in a separate paragraph numbered (a1).</p>
5.4 Controls relating to miscellaneous permissible uses	<p>Compulsory</p> <p>This clause enables councils to insert numerical standards for certain types of development to reflect the characteristics of a local government area. In 2011, the controls relating to secondary dwellings and industrial retail outlets were amended to simplify the floor area calculation.</p>
5.5 Development within the coastal zone	<p>Compulsory if land to which Plan applies includes land in the coastal zone</p> <p>This clause provides for implementing the principles of the Coastal Policy and provides heads of consideration for certain types of development in the Coastal zone. In 2011, a subclause was added to require specific consideration of coastal hazards.</p>

Clause No and Name	Instruction
5.6 Architectural roof features	Optional This clause enables consent to be granted to development that includes an architectural roof feature which exceeds the height limits set by clause 4.3.
5.7 Development below mean high water mark	Compulsory if land to which Plan applies contains tidal waters This clause requires consent for any development that may be proposed below mean high water mark.
5.8 Conversion of fire alarms	Compulsory This clause specifies when consent is required for the conversion of fire alarm systems, and which development is complying development. In 2011, the name of the relevant authority was changed from NSW Fire Brigades to Fire and Rescue NSW.
5.9 Preservation of trees or vegetation	Compulsory [except subclause (9) – optional] If a council wishes to use this clause to require either a permit or development consent for the damage to, or removal of trees or vegetation, then the species, size, location or other criteria of the trees and vegetation should be prescribed in a DCP. In 2011, an optional subclause was added to allow a permit or development consent for certain clearing of native vegetation listed under the <i>Native Vegetation Act 2003</i> . Subclause (7) was also amended to clarify the assessment process when the tree or vegetation is within a 'heritage conservation area' or 'Aboriginal place of heritage significance,' or forms part of a 'heritage item' or an 'Aboriginal object'. The clause lists exclusions from the application of this clause.
5.9AA Trees or vegetation not prescribed by development control plan	Compulsory This clause provides that damage to, or removal of, any tree or vegetation not prescribed by a development control plan under clause 5.9 is permitted without development consent. It was introduced in 2011 to clarify the status of works to trees and vegetation not prescribed under a DCP.
5.10 Heritage conservation	Compulsory Council is to insert the name of the local government area in the objective of the clause. Heritage items (if any) are to be listed and described in Schedule 5. The Heritage Map may also show the location of a heritage item. Heritage conservation areas (if any) must be shown on the Heritage Map as well as being described in Schedule 5. In 2011, the clause was amended to clarify the terminology to separate out 'Aboriginal place of heritage significance' and 'Aboriginal object' from other heritage items that need to be described in Schedule 5. The location and nature of 'Aboriginal objects' and 'Aboriginal places of heritage significance' may (but need not) be described in Schedule 5 and shown on the sheet of the Heritage Map marked 'Aboriginal Heritage Map'. The 2011 amendments also introduced 'heritage management documents' to provide for a broader and more flexible range of documentation, clarified consent requirements for non-structural changes to listed elements inside a heritage item, clarified the process for granting consent for the demolition of a nominated State heritage item, and added new directions regarding what needs to be mapped.
5.11 Bushfire hazard reduction	Compulsory This clause makes it clear that bush fire hazard reduction work which is authorised by the <i>Rural Fires Act 1997</i> can be carried out without consent.

Clause No and Name	Instruction
5.12 Infrastructure development and use of existing buildings of the Crown	Compulsory This clause specifies that nothing in the Plan in any way restricts or prohibits permitted or exempt development undertaken by or on behalf of a public authority under <i>State Environmental Planning Policy (Infrastructure) 2007</i> .
5.13 Eco-tourist facilities	Compulsory. Introduced in 2011 to compliment the new land use term <i>eco-tourist facility</i> . The clause requires the consent authority to be satisfied that the eco-tourist facility is sympathetic to and maintains the environmental and cultural values of the land, and is designed and managed to have minimum impact on the environment.

Schedules

Schedule	Instruction
Schedule 1 Additional permitted uses (clause 2.5)	Compulsory Councils may insert a list of additional permitted uses for particular land. Consideration should be given to existing uses, appropriate zones and potential future land uses. Therefore it is not considered that many listings will be supported (if any) when the Plan is made. Principles for drafting Schedule 1: <ul style="list-style-type: none"> • Clearly identify the land affected including the address and lot numbers. • Entries are to be listed by alphabetical order of suburb and then by street name and number, where possible. • Use terms in Land Use Table Direction 5 in the Standard Instrument. • Keep conditions and standards to a minimum. Where possible, these standards should be incorporated into the relevant maps (e.g. FSR/height). Any conditions are to be discussed with the Department on a case-by-case basis.

Schedule	Instruction														
<p>Schedule 2 Exempt development (clause 3.1)</p>	<p>Compulsory</p> <p>Only development types that are not specified as exempt development under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> can be listed in the schedule.</p> <p>The following principles should be applied when nominating exempt and complying development:</p> <ul style="list-style-type: none"> • EP&A Act provisions should not be repeated. It is recommended not to duplicate exempt development that is enabled under a SEPP, such as the Infrastructure SEPP, as the SEPPs prevail. Avoid calling up other legislation or Codes. • Avoid subjective terms such as ‘must not interfere with the amenity of the area’, ‘generally consistent with all relevant requirements’, ‘appropriately lit’, ‘satisfactory surveillance’, ‘structurally adequate’, etc. as they are either ambiguous or require a merit consideration. • Avoid blanket exclusions that prevent types of exempt and complying development being carried out across the local government area. • Compliance with the BCA is already covered under clauses 3.1 and 3.2 of the Standard Instrument and the EP&A Regulations and does not need to be a standard or condition. • Minimise references to Australian Standards. Where it is necessary to refer to AS, the full reference of the standard with a date is required. • It is not necessary to identify requirements from other Acts, Regulations or Codes in the LEP. Do not include references to DCPs or other policies, or standards that require the opinion of the consent authority. • Additional process requirements should not be included. • Keep notes to a minimum. <p>The 2011 amendments deleted items from schedule 2 that are already provided for in the Codes SEPP.</p>														
<p>Schedule 3 Complying Development (clause 3.2)</p>	<p>Compulsory</p> <p>Councils to insert a list of complying development only where it is additional to those development types specified in the <i>Exempt and Complying Development Codes SEPP 2008</i>.</p>														
<p>Schedule 4 Classification or reclassification of public land (clause 5.2)</p>	<p>Compulsory</p> <ul style="list-style-type: none"> • Part 1: Any lands classified, or reclassified, as operational land – no interests changed - to be listed. <table border="1" data-bbox="687 1391 1313 1458"> <tr> <td>Column 1</td> <td>Column 2</td> </tr> <tr> <td>Locality</td> <td>Description</td> </tr> </table> • Part 2: Any land classified, or reclassified, as operational land – interests changed – to be listed. <table border="1" data-bbox="687 1525 1380 1592"> <tr> <td>Column 1</td> <td>Column 2</td> <td>Column 3</td> </tr> <tr> <td>Locality</td> <td>Description</td> <td>Any trusts etc not discharged</td> </tr> </table> • Part 3: Any land classified, or reclassified, as community land – shall be listed. <table border="1" data-bbox="687 1659 1313 1727"> <tr> <td>Column 1</td> <td>Column 2</td> </tr> <tr> <td>Locality</td> <td>Description</td> </tr> </table> <p>See LEP PN 09-003 (<i>Re</i>)classification of public land through a LEP.</p>	Column 1	Column 2	Locality	Description	Column 1	Column 2	Column 3	Locality	Description	Any trusts etc not discharged	Column 1	Column 2	Locality	Description
Column 1	Column 2														
Locality	Description														
Column 1	Column 2	Column 3													
Locality	Description	Any trusts etc not discharged													
Column 1	Column 2														
Locality	Description														

**Schedule 5
Environmental
Heritage
(clause 5.10)**

Compulsory

This Schedule should be divided into 3 sections being heritage items, heritage conservation areas, and archaeological sites. Where agreement is reached with the Aboriginal community to list Aboriginal objects and/or Aboriginal places of heritage significance, the Schedule should also include separate parts listing any such object or place.

A Heritage Map may also show the location of all heritage items. Heritage conservation areas (if any) must be shown on the Heritage Map as well as being described in Schedule 5. The location and nature of 'Aboriginal objects' and 'Aboriginal places of heritage significance' described in Schedule 5 may be shown on the sheet of the Heritage Map marked 'Aboriginal Heritage Map.'

The items in this Schedule must be in alphabetical order in each respective Part, according to suburb or locality name (and by street name within each such suburb or locality).

The description of a heritage item should be included in a column headed "Item" and should include a brief description of those things that are part of the heritage significance of the item—for example,

- "House, front garden and front fence", or
- "Lindesay (building, summer house, grounds, 6 London Plane trees, Hoop Pine)" or
- "Dunmore Park (including bandstand, fountain and avenue of fig trees)."

If any interior features are part of the heritage significance of a heritage item, these should also be described—for example

- "Science House (including original interiors)" or
- "Buckle House (former) (street façade, awning, part interior)" or
- "Leamington (Building Including Interior)"

Any thing that is part of the heritage significance of a heritage item should also be included in the inventory of heritage items.

Heritage items cannot be identified as having "State significance" unless they are listed on the State Heritage Register. However, a heritage item may be listed in the Schedule as a "nominated item of State significance" if the item has been identified as an item of potential State significance in a publicly exhibited heritage study and the Council has nominated the item in writing to the Heritage Council.

Moveable objects that are not attached to land may, but need not, be listed in this Schedule. Moveable objects may be considered to be heritage items under the definition of heritage item under the provisions of the *Heritage Act 1977*. Items not listed in the Schedule will not appear on s.149 Planning Certificates.

The Schedule is to be set out as follows:

Schedule 5 Environmental heritage

Part 1. Heritage Items

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Suburb	Item Name	Address	Property Description	Significance	Item Number
<i>Example</i>					
<i>Adamstown</i>	<i>Adamstown Post Office</i>	<i>195 Bruncker Rd</i>	<i>Lot 1 DP 222812</i>	<i>Local</i>	<i>118</i>

Part 2. Heritage Conservation Areas			
Column 1	Column 2	Column 3	Column 4
Description	Identification on heritage map	Significance	Item number
<i>Example</i>			
<i>Cooks Hill</i>	<i>Shown by red hatching and marked 'Cooks Hill Heritage Conservation Area'</i>	<i>State</i>	<i>C71</i>

Part 3. Archaeological Sites					
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Suburb	Site Name	Address	Property Description	Significance	Item Number
<i>Example</i>					
<i>Prospect</i>	<i>Veteran Hall house remains</i>	<i>Great Western Highway</i>	<i>Lot X DP 123456</i>	<i>State</i>	<i>A665</i>