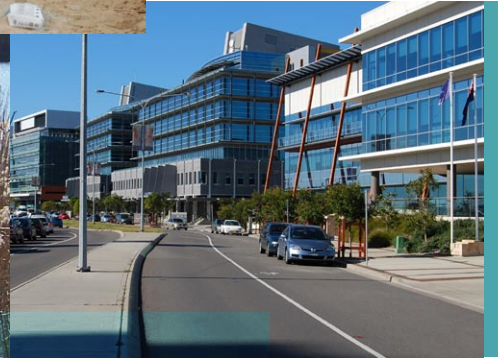




A guide to preparing planning proposals



DISCLAIMER

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The Guidelines do not affect or replace relevant statutory requirements. Where an inconsistency arises between the provisions of the Guidelines and relevant statutory provisions, the statutory requirements prevail.

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It should be noted that the Guidelines may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the Guidelines and the statutory requirements applying to plan making under the *Environmental Planning and Assessment Act 1979*.

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1. Introduction

A planning proposal is a document that explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making that plan. It will be used and read by a wide audience including the general community as well as those who are responsible for deciding whether or not the proposal should proceed. As such it must be concise and accessible to its audience. It must also be technically competent - founded on an accurate assessment of the likely impacts of the proposal and supported where necessary by technical studies and investigations.

The preparation of a planning proposal is the first step in preparing a LEP. Throughout the course of preparing the proposed LEP, the planning proposal evolves. This is particularly the case for complex proposals in which the initial gateway determination will confirm the technical studies and consultation required to justify the proposal. As the studies and consultation are undertaken, relevant parts of the planning proposal will be updated, amended and embellished.

The role of a planning proposal within the overall process for preparing LEPs is explained in the publication "*A guide to preparing local environmental plans*" (Department of Planning, 2009)

The purpose of this document is to provide further guidance on the matters that should be addressed in a planning proposal. It should be read in conjunction with "*A guide to preparing local environmental plans*" and *Circular PS 09–015 "Commencement of Certain Provisions of the EP&A Amendment Act 2008 and EP&A Amendment (Plan Making) Regulation 2009"*.

2. The Four Parts of a Planning Proposal

A planning proposal is comprised of four parts:

- Part 1 - A statement of the **Objectives or Intended Outcomes** of the proposed LEP;
- Part 2 - An **Explanation of the Provisions** that are to be included in the proposed LEP;
- Part 3 - The **Justification** for those objectives, outcomes and provisions and the process for their implementation;
- Part 4 - Details of the **Community Consultation** that is to be undertaken on the planning proposal.

The Director General has, under Section 55(3) of the EP&A Act, issued requirements regarding the specific matters that must be addressed in the Justification. These are set out in "*A guide to preparing local environmental plans*" and are discussed later in Part 3 - Justification.

Part 1 - Objectives or Intended Outcomes

Part 1 of the planning proposal should be a concise statement setting out the objectives or intended outcomes of the planning proposal. It is a statement of what is planned to be achieved, not how it is to be achieved. It should be written in such a way that it can be understood by the layperson.

For example, the objectives or intended outcomes of a planning proposal might be:

Example 1

To enable the redevelopment of the former Acme Factory at 3 Smith Road, Jonestown, for high-density housing, except for a corridor of public open space along the river frontage.

The objectives or intended outcomes (allied with Part 2 - the Explanation of Provisions, below) constitute the actual “proposal”. They will be the eventual basis for the drafting of the legal instrument (the LEP) and if at any stage they are varied during the course of the planning proposal, the entire amended planning proposal will need to be resubmitted to the Minister to enable a decision to be made as to whether to issue a revised gateway determination for any reasons, including to require additional community consultation, or any further assessment requirements.

In the case of principal LEPs, particularly those that apply to a whole local government area and seek to achieve a number of changes, the objectives or intended outcomes will need to accurately reflect the full extent of those changes, and will be necessarily longer. For example:

Example 2

To implement a Standard Instrument LEP across the Mt Gray local government area that replaces but maintains the general effect of the existing LEPs applying to the land, except where:

- 1. It is intended to introduce a new provision permitting the approval of the temporary use of land for any purpose, as long as the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land; and*
- 2. It is intended to give effect to the Mt Gray Housing Strategy by:*
 - a. Enabling the future redevelopment of land within a reasonable walking distance of Jonestown Railway Station (as shown on the attached map) for residential flat buildings;*
 - b. Reserving land for future acquisition by the Mt Gray Metro Authority for the construction of additional commuter parking at numbers 4 and 6 Black Street, Jonestown.*
 - c. Etc.*

Part 2 - Explanation of Provisions

The explanation of provisions are an explicit statement of how the objectives or intended outcomes are to be achieved by means of new controls on development imposed via a LEP.

In the context of *Example 1* above, the explanation of provisions might be:

Example 3

Amendment of the Mt Gray LEP 2009 Land Zoning Map in accordance with the proposed zoning map shown at attachment 1; and

Amendment of the Mt Gray LEP 2009 Height Map in accordance with the proposed height map, shown at attachment 2, which indicates a maximum permissible height of 6 storeys on the former Acme Factory at 3 Smith Road, Jonestown.

Amendment of the Mt Gray LEP 2009 Floor Space Ratio Map in accordance with the proposed floor space ratio map, shown at attachment 3, which indicates a maximum permissible floor space ratio of 2.5:1 on the former Acme Factory at 3 Smith Road, Jonestown.

In the case of a new principal LEP, the Explanation of Provisions will be more detailed, even if it relates to the Standard Instrument. The Explanation of Provisions therefore, should take a form similar to the one as follows:

Example 4

A Standard Instrument LEP in the form shown at attachment 1 (to which the standard instrument is attached) and with accompanying maps as shown at attachment 2 (to which the proposed maps are attached).

The Standard Instrument will include the following additional local provision:

2.6B Temporary use of land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary purpose for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.*
- (3) Development consent must not be granted unless the consent authority is satisfied that:
 - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and**

- (b) *the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
- (c) *the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and at the end of the temporary use period the site will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (4) *Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or housing estate may exceed 52 days (whether or not consecutive days) in any period of 12 months.*
- (5) *Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

Part 3 – Justification

The justification sets out the case for changing the zones and/or development controls on the land affected by the proposed LEP.

Within the justification there are a number of specific questions that must be discussed with reasons explained.

The questions are described individually below; however, it is worth mentioning an overarching principle that should guide the response to these questions. Namely, that *the level of justification should be proportionate to the impact the planning proposal will have*. It is not necessary to address a question if it is not considered relevant to the planning proposal, so long as the reason why the question is not relevant is briefly explained.

In some cases it will be necessary to undertake technical studies or investigations to justify different aspects of a planning proposal. Generally, these studies or investigations should not be carried out in the first instance. Instead, the issues giving rise to the need for these studies or investigations should be identified in the planning proposal. The initial gateway determination will then confirm the studies or investigations required and the process for continuing the assessment of the proposal, including whether it will need to be resubmitted following completion of the studies or investigations.

When technical studies or investigations are carried out, their findings and consequences are described in the planning proposal under the relevant heading in the justification. The complete study or investigation is submitted separately with the planning proposal and made available during community consultation and consultation with public authorities. The aim is to ensure the planning proposal is comprehensive, yet is also concise for the benefit of a wide audience.

Section A - Need for the planning proposal.

1. Is the planning proposal a result of any strategic study or report?

The answer to this question helps explain the context of the planning proposal. If the planning proposal did arise from a strategic study or report of some kind, the nature of the study or report and its key findings should be briefly explained, particularly as far as it helps to explain the rationale for the proposal. A copy of the study or report should be submitted with the planning proposal.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Imposing or changing the controls on development (the effect of a planning proposal) is one means of giving effect to policy, but there are others that may be equally effective and impose less of a regulatory burden. These include community education and new administrative processes such as pre-application meetings.

Even when changing the controls on development is the appropriate means of giving effect to policy, there is still a range of options regarding how, and when, those controls are changed.

3. Is there a net community benefit?

The Draft Centres Policy includes guidance on conducting a Net Community Benefit Test that should be followed when assessing the net community benefit of a planning proposal. This guidance has been reproduced below but adapted to suit all types of planning proposals.

Because of the difficulty in assigning values to certain costs and benefits associated with planning proposals, the Net Community Benefit Test will not be a purely quantitative test. Nevertheless, carried out diligently and in a manner proportionate to the likely impact of the planning proposal, it is an extremely useful tool to inform debate and help decision making on planning proposals.

Conducting a Net Community Benefit Test (adapted from draft Centres Policy)

The Net Community Benefit Test should be used to help assess the merits of a planning proposal.

The assessment should be prepared by the proponent in conjunction with the relevant planning authority to be submitted to council for endorsement prior to submitting to the Department of Planning as part of the Gateway test. The level of detail and analysis should be proportionate to the size and likely impact of the rezoning.

The assessment should only evaluate the external costs and benefits of the proposal (i.e. the externalities). The assessment should generally assume that any private costs will be cancelled out by any private benefits.

However, consideration must be given to changes that reflect a higher community benefit that result from changes in private costs such as a resultant change in rents caused by a proposal that has created a change in the value the community places on a land use.

The assessment should only include costs and benefits that have a net impact on community welfare (i.e. welfare effects). Impacts that simply transfer benefits and costs between individuals and businesses in the community (i.e. transfer effects) should not be included, since they result in no net change in community benefits.

The proposal should be assessed against the matters specified in the justification. The assessment should evaluate the proposal against a base case, or base cases, including retaining the existing zoning on the land.

For larger and more complex proposals, the proponent should consider the use of more formal cost benefit analysis techniques. Such analysis should be carried out objectively taking into consideration matters such as the number and type of jobs generated, the local or regional economy multiplier effects and any infrastructure and likely travel cost implications.

Section B - Relationship to strategic planning framework.

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Regional and sub-regional strategies have been prepared for many parts of NSW and include outcomes and specific actions for a range of different matters relevant to that region or sub-region. In all cases the strategies include specific housing and employment targets also.

When preparing a planning proposal for an area covered by a regional or sub-regional strategy, the relationship between the planning proposal and the applicable strategy must be considered in the context of those outcomes and actions, including housing and employment targets. Where an outcome or action is directly relevant to the planning proposal it should be briefly described and the planning proposal should set out the reasons why the proposal is either explicitly consistent with, or explicitly inconsistent with the outcome or action - or whether the planning proposal is not inconsistent with the outcome or action. That is, the planning proposal is not explicitly consistent with the outcome or action, but it is not explicitly inconsistent with the outcome or action either.

A planning proposal that is explicitly consistent with a regional or sub-regional strategy has a good chance of being supported. A planning proposal that is explicitly inconsistent with a regional or sub-regional strategy is going to have great difficulty being supported, unless there has been a change in circumstances, or there was a matter relevant to the planning proposal that was not considered in the preparation of the strategy. Regional strategies include sustainability criteria that provide a framework to consider planning proposals that are not consistent with the strategy but may nonetheless have merit. In such cases, the sustainability criteria should be addressed in the planning proposal.

Planning proposals that are not inconsistent with the applicable regional or sub-regional strategy are assessed with no presumption regarding their particular merits.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Councils are increasingly preparing local strategic plans. If a local strategic plan has been prepared for the local government area concerned, relevant matters must be identified and the relationship of the planning proposal to those matters should be discussed.

6. Is the planning proposal consistent with applicable state environmental planning policies?

State Environmental Planning Policies (SEPPs) that are relevant to the planning proposal must be identified and the relationship of the planning proposal with those SEPPs must be discussed.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Section 117 of the Environmental Planning and Assessment Act 1979 (the EP&A Act) enables the Minister for Planning to issue directions regarding the content of LEPs to the extent that the content must achieve or give effect to particular principles, aims, objectives or policies set out in those directions.

There is a range of section 117 Directions (Local Planning Directions) requiring certain matters to be addressed if they are affected by a proposed LEP. The Directions can be found on the Department of Planning web-site at <http://www.planning.nsw.gov.au/planningsystem/local.asp>.

Each planning proposal must identify which, if any, section 117 Directions are relevant to the proposal, and whether the proposal is consistent, or otherwise, with the Direction. Where the planning proposal is inconsistent with any of the relevant Directions, those inconsistencies must be specifically justified in the planning proposal.

Certain Directions require consultation to take place with particular government agencies. If such a direction is relevant to the planning proposal, this should be identified in the planning proposal in the first instance, however, consultation with that government agency should not take place until the initial gateway determination is issued, confirming the public authorities to be consulted on the planning proposal.

Section C - Environmental, social and economic impact.

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

If the land affected by the planning proposal contains habitat of any sort, it will be necessary to carry out an assessment of significance in accordance with section 5A of the EP&A Act and the "*Threatened Species Assessment Guidelines*" issued by the Department of Environment and Climate Change, that can be found at <http://www.environment.nsw.gov.au/resources/threatenedspecies/tsaguide07393.pdf>.

The assessment of significance will determine whether there is any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

Notwithstanding the significance of the impact, any adverse impact will trigger the requirement under section 34A of the EP&A Act for the relevant planning authority to consult on the planning proposal with the Director General of the Department of Environment and Climate Change (or the Director General of the Department of Primary Industries, in the case of fish or marine vegetation). Such consultation if required does not take place until after the issuing of the initial gateway determination.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The aim of the strategic planning framework addressed already in the planning proposal is to provide comprehensive guidance regarding the matters that will shape the growth of NSW. Nevertheless, it is possible that there are other likely environmental effects unique to a particular planning proposal that are not already addressed in the strategic planning framework but may be identified in informal guidelines, codes or policies produced by different public authorities including local councils. These might include natural hazards such as flooding, land slip, bushfire hazard and the like.

It is important these are identified and addressed in the planning proposal. Again, if it is necessary to undertake technical studies or investigations to address an identified matter, these should be undertaken following the initial gateway determination.

10. How has the planning proposal adequately addressed any social and economic effects?

The response to this question should be similar to the response to the preceding question but addressing social and economic effects. This will include effects on items or places of European or aboriginal cultural heritage not already addressed elsewhere.

Section D - State and Commonwealth interests.

11. Is there adequate public infrastructure for the planning proposal?

Typically, this question applies to planning proposals that may involve result in residential subdivision in excess 150 lots, substantial urban renewal, or infill development. Where applicable, the justification for the planning proposal should address whether existing infrastructure (such as public transport, roads, utilities, waste management and recycling services; essential services such as health, education and emergency services) is adequate to serve or meet the needs of the proposal. If it is not, the justification should address how any shortfall in infrastructure provision is to be met.

For planning proposals that are likely to place additional demands on public infrastructure, this section will be developed following consultation with the public authorities responsible for the provision of that infrastructure. The public authorities to be consulted would be identified in the initial gateway determination.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

This section of the planning proposal is completed following consultation with the State and Commonwealth Public Authorities identified in the gateway determination and must summarise any issues raised by public authorities not already dealt with in the planning proposal, and address those issues as appropriate.

Part 4 – Community Consultation

The document “*A guide to preparing local environmental plans*” outlines the consultation required for different types of planning proposals. For the purpose of public notification the guide distinguishes between “low impact” and other types of planning proposals.

This part of the planning proposal should outline the community consultation that is to be undertaken in respect of the proposal, having regard the requirements set out in the guide.

If a RPA considers a greater period of public notification is required, or that a public hearing should be held, it should be explained in this part of the planning proposal.

The gateway determination will then confirm the public consultation that must be undertaken in respect of the planning proposal having regard to the details set out in planning proposal. If the gateway determination specifies different consultation requirements this part of the proposal must be revised to reflect the terms of the gateway determination.