



PLANNING SYSTEM

Local planning

Circular	PS 09–011 (replaces PS 07–019)
Issued	9 April 2009
Related	LEP practice notes: PNs 07–001, 08–002, 09–001

Certification of draft Standard Instrument local environmental plans for public exhibition

The purpose of this circular is to update and clarify a number of issues relating to the consideration of draft Standard Instrument local environmental plans prior to public exhibition. Replaces Planning Circular PS 07–019 issued 30 November 2007.

Introduction

The arrangements outlined in this planning circular aim to ensure that draft Standard Instrument local environmental plans (draft SI LEPs) for public exhibition have a sound strategic and statutory basis, generally do not require re-exhibition, and can be finalised as promptly as possible following public consultation.

Draft SI LEPs for public exhibition

The public exhibition of a draft SI LEP, under section 66 of the *Environmental Planning and Assessment Act 1979* (the Act), is a significant stage in the plan-making process.

Draft SI LEPs are major planning policy documents that set the strategic framework for a local area for the next 10 to 15 years. They are typically the result of lengthy and detailed consideration by councils and government agencies and should be the product of a collaborative effort between council and the relevant Department of Planning regional team.

Once exhibited, draft SI LEPs become a statutory consideration in the assessment of development applications under section 79C of the Act.

Roles and responsibilities

Regional teams have the principal responsibility within the Department of Planning for roll-out of the SI LEP program. As best practice, councils are encouraged to hold regular discussions with the Department's regional team before and during the preparation of the draft SI LEP. This will help resolve major policy issues at an early stage and ensure a

robust draft SI LEP, in terms of its strategic basis, for public exhibition.

Working closely with the relevant regional team should also reduce the possibility of re-exhibition of a draft SI LEP unless significant policy changes occur following public consultation. This enables the community and key stakeholders to comment on a draft SI LEP that could be reasonably progressed toward gazettal, and allows for draft SI LEPs to be finalised without significant delay following consideration of public submissions.

It is important to note that draft SI LEPs will now **not** be referred to Parliamentary Counsel's Office for review prior to certification, unless authorised by the Department of Planning in exceptional circumstances.

Section 64 submissions

By the time council formally submits its draft SI LEP, under section 64 of the Act, it should already be supported by the Department in terms of its strategic basis and compliance with the standard instrument. Council's section 64 submission must include:

1. an electronic copy of the draft SI LEP, including schedules (in MS Word or RTF format), using coloured text (red) to distinguish local provisions from the Standard Instrument text (black)
2. an electronic copy of all maps prepared in accordance with *Standard technical requirements for LEP maps* (Department of Planning 2009) and *Standard requirements for LEP GIS data* (Department of Planning 2008). Note these documents are reviewed periodically to ensure they are kept up-to-date

3. an assessment of the consistency of the draft SI LEP with:
 - relevant environmental planning instruments
 - section 117 directions
 - relevant regional and subregional strategies
 - relevant LEP practice notes.

This should include justification of any inconsistencies against the specific terms of relevant directions

4. a report on the draft SI LEP and brief explanation of the intent of additional local provisions
5. a statement required under section 64 of the Act as to public authorities consulted, including a copy of the responses received
6. any other necessary supporting documents, e.g. local environmental study or strategies, as applicable
7. a completed land use matrix indicating council's intended permitted and prohibited land uses. This will help streamline the assessment of the land use tables, and will be used by the regional teams when checking plans. The matrix must be consistent with the land use tables.

The Department will return incomplete submissions to council with an itemised list of areas of inadequacy to ensure successful submission.

Mandatory pre-submission meetings

The Department will require mandatory pre-submission meetings between council staff and relevant Departmental staff prior to formal section 64 submission for all draft SI LEPs.

The purpose of this meeting will be to resolve strategic issues prior to formal lodgement of the draft SI LEP. A key focus will be ensuring that the draft SI LEP is in accordance with the standard instrument, as this is a threshold requirement under section 65(1A) of the Act for the issuing of a certificate for exhibition.

The Department will seek a preliminary draft version of the SI LEP and maps for review at least two to three weeks prior to the meeting and will provide detailed comments with respect to the matters referred to above.

The pre-submission meeting is to occur:

- when major policy issues with the draft plan have been resolved
- before council formally resolves to endorse a draft SI LEP for the purposes of public exhibition. This will avoid the possible need to seek a second council resolution if substantial changes are required to the plan to enable it to be certified for exhibition.

Consideration of draft SI LEPs

The regional team will undertake a thorough consideration of draft SI LEPs and accompanying council section 64 submission to ensure that they:

- are consistent with State policies, relevant environmental planning instruments, regional

and subregional strategies, section 117 directions, and advice contained in the relevant LEP practice notes

- are consistent with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) for the Housing Code and any subsequent codes
- are in accordance with the Standard Instrument (Local Environmental Plans) Order 2006 as required by section 65(1A) of the Act
- contain appropriate local provisions that are within power, do not conflict with or alter mandatory provisions or definitions, do not repeat provisions in existing legislation, and provide clarity and certainty for decision makers and the community
- include the complete set of maps consistent with the LEP text and the Department's latest *Standard technical requirements for LEP maps* (including data sets).

If all documentation (including mapping) is submitted in the correct format and consultation has occurred with the relevant regional team, in accordance with this circular, a section 65 certificate for public exhibition should be issued within a reasonable timeframe.

What else can be done to minimise turnaround time

Councils can help to further reduce the time for certification of draft LEPs for exhibition in the following ways.

Using 'model' clauses

Use 'model' clauses that have been previously agreed by Parliamentary Counsel wherever possible in drafting local provisions.

The Department will provide a selection of model local clauses that can be used by councils where appropriate. It should be noted that as plans are published [on the NSW legislation website] and tested, it is likely the example model clauses will get refined, as such, they are subject to change. Note the model clauses will be updated on the Department's website so it is important to check this regularly.

Meeting the standard technical requirements for LEP maps

Ensure that all draft LEP maps are submitted and that they are prepared in accordance with the latest *Standard technical requirements for LEP maps* published by the Department. This includes making sure that the Map Cover Sheet is completed accurately, the adopted maps are properly referenced and appropriately dated, and the electronic files are named correctly.

Note the requirement for all maps to be submitted in electronic (PDF) format. LEP maps may be submitted to the Department on CD, DVD or, with prior arrangement, by uploading to a nominated File Transfer Protocol (FTP) site or email address.

Completing the land use matrix

Provide a fully completed land use matrix at the same time as the draft SI LEP is submitted. The matrix must be consistent with the draft SI LEP.

Drafting of the land use table

In completing the land use table, councils must:

- use 'group terms' in the land use table wherever possible
- avoid the 'other than' or 'except' approach when specifying permissible or prohibited land uses in the land use table
- generally aim to maximise the range of appropriate uses that are permissible with or without consent
- ensure zones specifically list all mandatory development/uses or prohibitions stated in the standard instrument
- ensure that ancillary uses, for example caretakers residences, are not listed in the land use table
- ensure 'exempt development', 'temporary structures' and 'telecommunication facilities' are not listed in the land use table
- ensure 'bushfire hazard reduction work' is not shown as 'permitted with consent' in any zone in the land use table, as it is covered by clause 5.11 of the Standard Instrument and clause 48(3) of the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- ensure the Codes SEPP, Infrastructure SEPP and all other relevant SEPPs have been considered.

Further guidance for drafting SI LEPs is provided in the Appendix.

Future updates

This circular will be updated once the new Part 3 'gateway' LEP process commences.

Further information

The following information is available from the Department's website:

- this and other Department of Planning circulars at: <http://www.planning.nsw.gov.au/planningsystem/practicenotes>
- Standard Instrument for LEPs (including any consequential amendments), the most recent section 117 directions, *Standard technical requirements for LEP maps* (Department of Planning 2009) and *Standard requirements for LEP GIS data* (Department of Planning 2008) at: <http://www.planning.nsw.gov.au/planningsystem/local.asp>
- links to relevant SEPPs at: <http://www.planning.nsw.gov.au/planningsystem/sepp1.asp>
- regional strategies and draft subregional strategies at: <http://www.planning.nsw.gov.au/plansforaction/index.asp>.

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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Appendix. Additional drafting guidance

1. Using 'group terms'

Councils must use 'group terms' in the draft SI LEP land use table wherever possible. This avoids the need to specifically list individual uses as the Department will not accept long lists of uses in any of the parts to the land use tables.

Example:

If the term 'agriculture' is listed in the land use table, then all types of agricultural land uses are included. This avoids the need to individually list all uses such as animal boarding or training, extensive agriculture, grazing of livestock, beekeeping, feed lots, horticulture, turf farming, viticulture etc.

2. Specifying land uses

Councils should avoid the 'other than' or 'except' approach when specifying permissible or prohibited land uses in the land use table. In cases where councils wish to restrict certain uses under 'group terms', clause 2.3(3)(b) of the SI LEP enables this to occur.

Example:

If council wishes to list 'retail premises' as permissible but 'service stations' as prohibited in a certain zone, under clause 2.3(3)(b) 'service stations' can be listed separately and are then taken to be excluded from the group term 'retail premises' within that zone.

It is easier for readers to understand a 'service station' is prohibited, rather than to see it listed as 'retail premises (other than service stations)' in the permitted with consent section of the land use table.

3. The range of uses

When completing the land use table, councils should generally aim to maximise the range of appropriate uses that are permissible within each zone with or without consent by ensuring that the words:

- 'Any development not specified in item 2 or 4' should normally be in item 3 of the land use table for the residential, business, and industrial zones (R1, R3, R4, R5, B1–B7, IN1–4)
- 'Any development not specified in item 2 or 3' should normally be in item 4 of the land use table for the environmental protection, recreation, rural and low density residential zones (E1-4 compulsory, RE1–2, W1–3 compulsory, RU1–6 and R2).

This approach minimises the need to undertake 'spot rezonings' or other ad hoc LEP amendments to permit additional acceptable uses that were not anticipated during the initial SI LEP preparation.

4. Mandatory uses or prohibitions

Councils must ensure that zones specifically list all mandatory development/uses or prohibitions stated in the SI LEP. This applies even if the development or use would be included without being specifically listed by use of the general words identified above, i.e. 'any development not specified in...'.

In addition, councils can not exclude specific identified uses after a mandatory development/use. This is considered to be an attempt to dilute the mandatory provisions.

5. Follow the Infrastructure SEPP

Councils should avoid listing items in a zone which are permissible in a 'prescribed zone' under the Infrastructure SEPP.

6. Adding to compulsory and optional clauses

Clause 5 of the Standard Instrument (Local Environmental Plans) Order 2006 permits both compulsory and optional clauses to be added to if the additions are not inconsistent with the standard clauses and comply with any relevant directions in that instrument. However, any additions must be made as separate subclauses with local numbering. This allows future changes to the SI LEP to be more easily effected without impacting on particular LEPs.

7. Adding local clauses

Unless an additional local clause specifically relates to a subject matter heading (e.g. clause 4.3 of the SI LEP—Height of buildings), additional local clauses should be placed in Part 6 of the draft SI LEP, called 'Additional local provisions', or in Part 7, if Part 6 is the settled model Part called 'Urban release areas', and arranged as follows:

- provisions that affect all land in the local government area first
- followed by provisions that only affect certain zones, lots or areas.

The provisions in these two groups may then be listed in alphabetical order, then order of importance or some other appropriate order.

8. Schedule 1 (Additional permitted uses)

The entries in Schedule 1 of the SI LEP must be in clause style, not a table, with an address in each clause heading. Entries should be listed firstly by alphabetical order of suburb and then by street name and number (as in Schedule 5). Standard Instrument definition and uses apply.

9. Schedule 2 (Exempt development) and Schedule 3 (Complying development)

Council must ensure that Schedule 2 (Exempt development) and Schedule 3 (Complying development) reflect the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) where relevant, and follow the principles for drafting as provided by the Department (refer to Practice Note PN 09–001 Exempt and complying development).

10. Particular items to be included in Schedule 2

Filming: The *Filming Related Legislation Amendment Act 2008* recently made changes to the compulsory 'filming' provision included in Schedule 2. It is important that the latest version of the Standard Instrument is used which includes consequential amendments made as a result of other legislation.

Rainwater tanks and satellite TV dishes: Whilst these items are now exempt development under the Codes SEPP, until they are removed from the Standard Instrument the following note should be included after the heading for each:

Note. Rainwater tanks and satellite TV dishes are exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

11. Schedule 4 (Classification and reclassification of public land)

Schedule 4 must not contain a reference to any land that has already been classified or reclassified. Schedule 4 should instead reference land that will be classified or reclassified by the making of the draft SI LEP or the trusts, estates, interests, dedications, conditions, restrictions or covenants over the land that will change as a result of the making of the draft SI LEP.

12. Schedule 5 (Environmental heritage)

Council must ensure that Schedule 5 is divided into three parts, heritage items, heritage conservation areas and archaeological sites. The entries should be listed firstly by alphabetical order of suburb, then by alphabetical order of street name increasing by numerical order.

Part 1 of Schedule 5 should only contain entries for heritage items. Heritage items should be identified by a prefix of 'I' followed by a number, e.g. I1, I2, I3...

Part 2 should only contain a listing of heritage conservation areas. Heritage conservation areas should be identified by a prefix of 'C' followed by a number, e.g. C1, C2, C3...

Part 3 should only include listings of archaeological sites. Archaeological sites should be identified by a prefix of 'A' followed by a number, e.g. A1, A2, A3...

Council areas containing numerous Aboriginal items should contact the Department of Planning for further guidance.