



PLANNING SYSTEM

Local planning

Circular	PS 06-005
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Related	PS 05-005 19 Aug 05; letter 23 Dec 05

Local environmental plan review panel

This Circular explains the role of the Department's new LEP Review Panel. It provides advice on new procedures, including the information the Director-General requires from council in notifying the Department (under section 54(4) of the *Environmental Planning and Assessment Act 1979*) of council's decision to prepare a draft local environmental plan. The new procedures come into effect on 22 February 2006.

Introduction

The Department of Planning has established a panel review process to streamline the local environmental plan (LEP) making system. The panel will review notifications from councils under section 54(4) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The panel may also reconvene at later stages of the LEP preparation process, e.g. to review a draft plan at section 68(4) stage to ensure that it is consistent with any advice previously given at section 54 stage.

The new process comes into effect on Wednesday 22 February 2006 and applies to both new LEP proposals and those that are currently in the system.

This is the next step in the reform of the NSW planning system that is delivering a more modern, effective and easy-to-use system.

Why the need for an LEP Review Panel?

Under section 54 of the EP&A Act, a council may decide to prepare a draft LEP in respect of the whole or any part of the land within its area.

Section 54(4) provides that a council shall inform the Director-General of a decision to prepare a draft LEP, including the land to which it is intended to apply.

Clause 9 of the EP&A Regulation sets out how a council is to notify the Director-General of a resolution to prepare a draft LEP.

The notice, to be given as soon as practicable after the relevant council resolution, is to contain:

- the terms of the council's resolution

- sufficient information about the proposed LEP for the Director-General to determine the:
 - the effect of the proposed plan in relation to matters of State or regional significance
 - adequacy of council's proposed consultation procedures
 - adequacy of any environmental study to be prepared.

The objectives of establishing a departmental LEP Review Panel are to:

- move to a more thorough upfront assessment of LEP proposals as soon as the Department is notified of a council's decision to prepare a draft LEP
- strengthen the strategic and policy consideration of LEP proposals
- provide a consistent framework across councils and the Department to evaluate the context and justification for an LEP and the outcomes it is intended to produce
- reduce the number of draft LEPs in the system.

This Circular provides an overview of the key operational aspects of the LEP Review Panel. Attached to this Circular is a pro-forma evaluation criteria sheet to be forwarded to the Department at section 54(4) stage. It provides a checklist of matters to be considered for particular categories of LEPs.

Attention is also drawn to Circular PS05-005 of the 19 August 2005, which sets out the requirements for reporting to the Minister under section 69, and the Director-General's letter of 23 December 2005 concerning the need to improve the quality of information provided with section 69 reports.

Revocation of delegations

Councils are advised that the Instrument of Delegation (dated 14 February 1997), which delegated the Director-General's functions under section 65(1) and section 69 of the EP&A Act will be revoked on 22 February 2006. A new Instrument of Delegation has been issued, which takes effect on 22 February 2006.

An important difference with this new system of delegation is that it only operates in respect to an individual draft LEP on receipt by council of a 'Written Authorisation to Exercise Delegation' signed by the Director-General of the Department. Exercise of functions under the Instrument of Delegation is subject to any terms and conditions specified in the Written Authorisation.

There are no specific saving and transitional provisions for the old delegations in respect to draft LEPs that are already in the system, i.e. where a section 54 notification has already been received but the LEP has not yet been made. However, those draft LEPs will still be able to proceed under the new delegations, subject to the council receiving a 'Written Authorisation to Exercise Delegation' in respect to those draft LEPs.

In relation to any steps that have been taken under the old delegations prior to the commencement of the new delegations on 22 February 2006, those steps will not need to be done again, i.e. they will have been validly undertaken under the old delegations, assuming they were undertaken in compliance with the terms of the 1997 Delegation.

The following are examples of the arrangements to apply to those draft LEPs already in the system.

Example 1—Where section 54 notification has been given but section 65 certificate has not been issued

- Where council has notified the Director-General under section 54 prior to 22 February 2006, but has not yet issued a section 65 certificate, the council would have to receive a 'Written Authorisation to Exercise Delegation' authorising the use of this power before a section 65 certificate can be issued.
- It would be up to councils to notify the Department that this is the stage it is up to with respect to its draft LEP, and to request that the Written Authorisation be issued confirming its powers of delegation with respect to future stages in the LEP-making process.

Example 2—Where section 65 has already been issued by council

- Where council has issued a section 65 certificate under the old delegations prior to 22 February 2006, it may be able to prepare a section 69 report under the new delegations but only on receipt of a 'Written Authorisation to Exercise Delegation'. In this example, the trigger for the written authorisation to be issued will be receipt by the Department of the council's draft LEP at the section 68(4) stage.

In the case of the examples outlined above, it will be at the Director-General's discretion whether the council should be granted the power to use the new delegations for the remaining stages in the LEP-making process. The LEP Review Panel may be asked to make recommendations to the Director-General in this regard.

What is the role of the LEP Review Panel?

The role of the panel is to:

in respect to all draft LEPs:

- provide advice to councils about proposed draft LEPs
 - provide advice to the Director-General and/or Minister for Planning about proposed draft LEPs
 - review section 54(4) notifications against the relevant set of evaluation criteria
- and, in respect to certain draft LEPs:
- review draft LEPs submitted at the section 64 stage to determine whether a section 65 certificate should be issued (optional)
 - review draft LEPs when submitted to the Department at section 68(4) stage (optional)
 - review section 69 reports to the Minister (optional).

Refer to Attachment 1 for an outline of the above.

What types of LEPs are subject to review by the Panel?

All LEPs will be subject to review by the panel at section 54 notification stage. Six categories of LEP have been identified, as follows, and each draft LEP will need to fall within at least one of these categories:

1. **Spot Rezoning LEPs**—Usually involving a change of zoning for a single site or additional permitted uses and/or development controls that relate to the development of that site.
2. **Reclassification LEPs**—LEPs to reclassify council land from community to operational uses under the Local Government Act.

3. **Precinct LEPs**—Involving part of a local government area (LGA), e.g. the city centre, and includes a review of general and specific planning policy and provisions.
4. **Policy LEPs**—Involving a change in general and specific planning policy and provisions across the LGA or part of it, e.g. adding prohibited uses to a number of zones, changing development standards, introducing heritage items, introducing provisions inconsistent with SEPPs, Ministerial directions or other policies.
5. **Comprehensive LEPs**—LGA wide LEPs.
6. **Surplus Government Land LEPs**—Involving the rezoning of surplus State and local government sites.

A set of pro-forma evaluation criteria for each LEP category has been developed. The panel will be guided by these criteria for each category of LEP.

Councils are requested to avoid, where possible, resolving to prepare spot rezonings and other amendments to existing plans. A compelling reason must be provided demonstrating the need to prepare such a plan. Spot rezoning LEPs should be comprehensively justified.

In particular, the proposed plan must be considered in the context of State and regional policy direction, as well as the site context in terms of compatibility with neighbouring uses and the potential to create an undesirable precedent in terms of other rezoning requests.

Examples of changes to existing plans by way of spot rezonings that the Department would be unlikely to support include:

- The rezoning of existing industrial land for medium–high density residential development where analysis indicates a shortage of industrial land or a need to supply additional industrial land within the next 25 years in the local government area; where there would be an impact on the viability of existing businesses in the industrial area; where there is the potential for cumulative loss of industrial land; and, where there is the potential for land use conflict from new residential development.
- The rezoning of a site for residential uses ahead of other lands that are identified in a strategic urban settlement strategy.
- The rezoning of a pocket of open space to residential/other land uses without full justification.
- The rezoning of rural land to industrial purposes inconsistent with a section 117 Direction.
- A proposed plan that is inconsistent with the Metropolitan Strategy or a draft regional or sub-regional strategy.
- A land rezoning or change in development controls in isolation and in the absence of a

context and where such a rezoning would be more appropriately included in the preparation of a comprehensive LEP.

- The reclassification of sites from community to operational land to reflect existing uses and/or potential uses, which is essentially a housekeeping exercise that can be undertaken as part of the preparation of a comprehensive LEP.
- The introduction of new heritage conservation areas in close proximity to major public transport nodes without compelling justification.
- The introduction of additional uses to specific zones or to specific sites with no broader economic/employment imperative.
- The introduction of alternate clauses for variation of development standards (SEPP 1).

Who is on the LEP Review Panel?

The panel comprises senior departmental officers. The Local Government and Shires Associations will also be invited to nominate a representative to sit on the panel. The panel will deal with both metropolitan and non-metropolitan LEPs, and it is envisaged that it will meet on a weekly basis.

The panel may organise a tele-conference with relevant council officers to assist it in its considerations.

What will the council have to do?

In notifying the Director-General under section 54(4) of the EP&A Act of a decision to prepare a draft LEP, a council will need to complete the pro-forma evaluation sheet for the relevant category of LEP.

The evaluation sheet, advice in accordance with the EP&A Regulation and any supporting information will need to be referred to the relevant regional office of the Department.

How will the LEP Review Panel consider section 54 notifications?

The panel will be guided by the evaluation criteria pro-forma and supporting documentation provided with the section 54(4) notification.

The panel will consider whether section 65 and section 69 functions are to be delegated to councils and what conditions should apply to the exercise of that delegation. Consideration of the delegation of functions will be assessed on a case-by-case basis. Options may include:

- no delegation
- delegation subject to conditions, or
- full delegation.

After considering all the information presented to it, the council will be provided with written notification of the panels' deliberations and whether the proposed LEP can proceed under a 'Written Authorisation to Exercise Delegation' issued by the Director-General (including

specification of the conditions on which the delegation can be exercised).

The panel will also consider and make recommendations on whether a council should be directed pursuant to section 74(2)(b) of the EP&A Act to prepare and have regard to an environmental study prior to preparing its draft LEP, any specifications under section 57(2) of the Act as to the form, content and preparation of the study and/or any other general issues to be considered when preparing the draft LEP.

Councils will need to obtain the Department's advice before proceeding with further stages of the LEP-preparation process.

Panel decisions will be recorded and forwarded after each meeting to the Director-General.

What further role would the LEP Review Panel have in the process?

For draft LEPs where section 65(1) and/or section 69 functions have been delegated to the council pursuant to the Written Authorisation, the panel may reconvene to review the draft plan submitted under section 68(4) of the EP&A Act prior to preparation of the section 69 report.

For draft LEPs where no delegation has been provided, the panel may reconvene at section 64 stage and again at section 68(4) stage.

Will the LEP Review Panel process apply retrospectively?

Any draft LEPs where a section 54 notification has been received by the Department prior to 22 February 2006, will be subject to the new process.

If council has already forwarded a section 54(4) notification that has not been acted upon by the Department, the Department will review the notification against the pro-forma evaluation criteria and may contact the council to seek additional information if required.

Further information

Any further inquiries can be directed to the Department of Planning regional office nearest to you.

Authorised by:

Sam Haddad
Director General

Important note

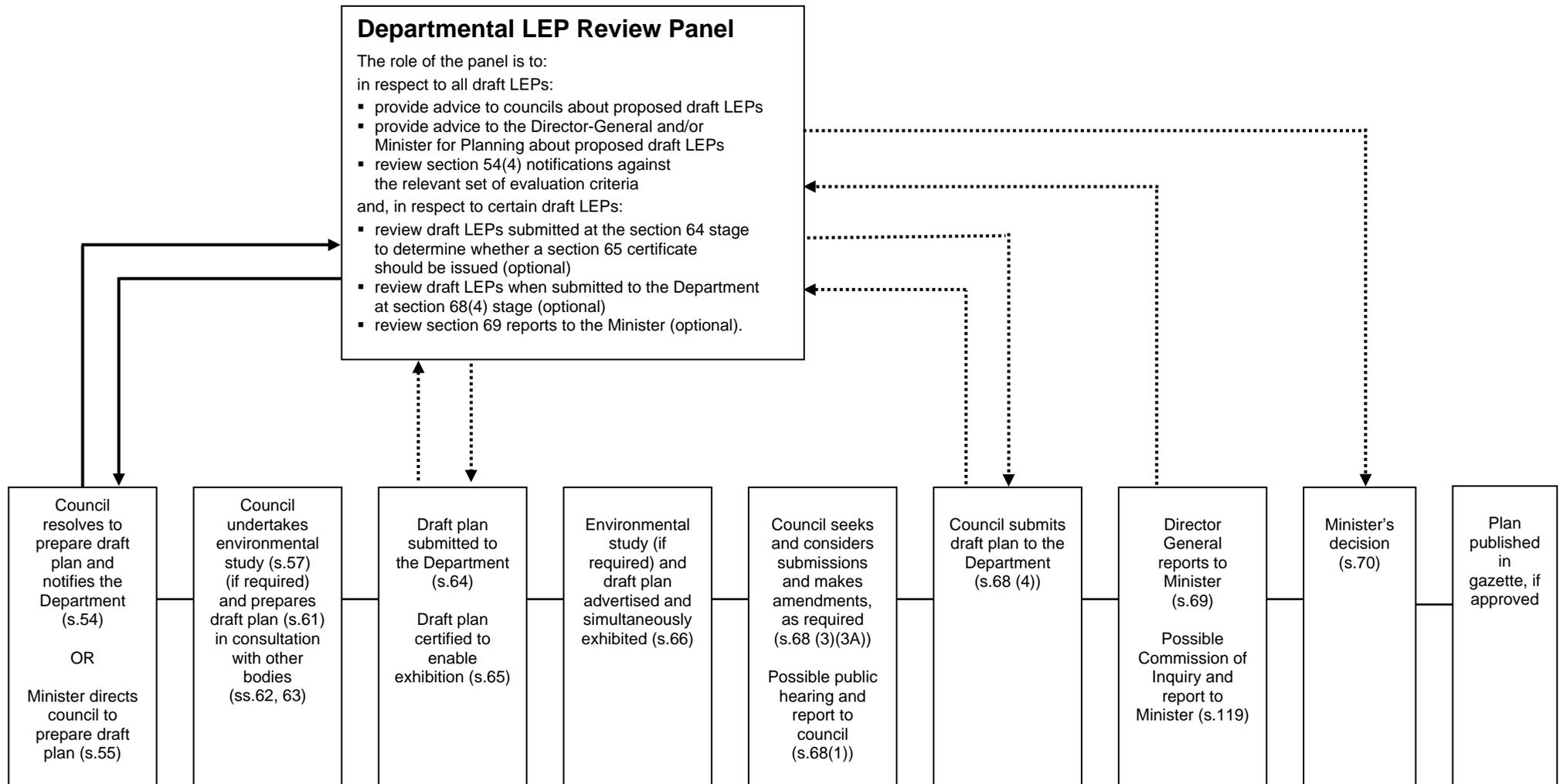
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Attachment 1

Local Environmental Plan Process





Instructions to Users

When notifying the Director-General under section 54(4) of the EP&A Act of a decision to prepare a draft local environmental plan, a council will need to complete the 'Section 54(4) Notification Advice' cover sheet and relevant 'LEP Pro-forma Evaluation Criteria' sheet depending on the category of LEP that is the subject of the section 54(4) notification.

Section 54(4) Notification Advice Cover Sheet

LOCAL GOVERNMENT AREA:

NAME OF DRAFT LEP:

ADDRESS OF LAND (if applicable):

MAPS (if applicable):

- Location map showing the land affected by the proposed draft plan in the context of the LGA (tagged 'location map')
- **Existing zoning** map showing the existing zoning of the site and surrounding land and **proposed zoning** change for the site/s (tagged 'comparative existing/proposed zoning')

PHOTOS and other visual material (if applicable):

- Aerial photos of land affected by the proposed draft plan
- Photos or plans showing relationship of land to which the plan will apply and surrounding land uses

PURPOSE OF LEP:

- Describe the **current** zoning / controls and **changes** proposed by the draft plan. For complex plans, a table or maps to explain changes should be attached
- Explain **why** it has been resolved to prepare the draft plan, i.e. what is triggering the need for the plan
- Provide compelling reasons, clearly stating the reasons for the proposed changes
- Details of any environmental study to be prepared
- Details of consultation procedures to be adopted in preparation of the plan

JUSTIFICATION FOR LEP:

This should cover matters such as:

1. Policy and strategic context
 - Consistency with State policy / council strategy
 - Public interest reasons for preparing the draft plan
 - Reference to studies and reports
2. Location context
 - Compatibility with surrounding zoning and land use patterns
3. Implications of not proceeding at that time

EVALUATION AGAINST CRITERIA:

- Provide evaluation against criteria in the relevant pro-forma as applicable to the LEP category

LEP Pro-forma Evaluation Criteria

Category 1: Spot Rezoning LEP

1.	<p>Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)?</p> <p><i>Explain:</i></p>	Y/N
2.	<p>Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (s.117) directions?</p> <p><i>Explain:</i></p>	Y/N
3.	<p>Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?</p> <p><i>Explain:</i></p>	Y/N
4.	<p>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</p> <p><i>Explain:</i></p>	Y/N
5.	<p>Will the LEP be compatible/complementary with surrounding land uses?</p> <p><i>Explain:</i></p>	Y/N
6.	<p>Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?</p> <p><i>Explain:</i></p>	Y/N
7.	<p>Will the LEP deal with a deferred matter in an existing LEP?</p> <p><i>Explain:</i></p>	Y/N
8.	<p>Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</p> <p><i>Explain:</i></p>	Y/N

LEP Pro-forma Evaluation Criteria

Category 2: Reclassification (Community & Operational Uses) LEP

1.	Is an associated spot rezoning occurring? <i>Explain:</i>	Y/N
2.	Is the LEP to rectify an anomaly in classification? <i>Explain:</i>	Y/N
3.	Will the LEP accord with the classification of adjoining land? <i>Explain:</i>	Y/N
4.	Will the LEP be consistent with a plan of management (applicable to open space zonings)? <i>Explain:</i>	Y/N/NA
5.	Will the ownership of the land change within five years? <i>Explain:</i>	Y/N
6.	Has a public hearing been held pursuant to the Local Government Act? <i>Explain:</i>	Y/N
7.	Will open space be relinquished? <i>Explain:</i>	Y/N

LEP Pro-forma Evaluation Criteria

Category 3: Precinct LEP

1.	<p>Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)?</p> <p><i>Explain:</i></p>	Y/N
2.	<p>Will the LEP be consistent with agreed centres and sub-regional planning policy for development in the area?</p> <p><i>Explain:</i></p>	Y/N
3.	<p>Is the LEP located in a regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?</p> <p><i>Explain:</i></p>	Y/N
4.	<p>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</p> <p><i>Explain:</i></p>	Y/N
5.	<p>Will the LEP facilitate the provision of public transport?</p> <p><i>Explain:</i></p>	Y/N
6.	<p>Will the LEP implement studies and strategic work consistent with State and regional policies?</p> <p><i>Explain:</i></p>	Y/N

LEP Pro-forma Evaluation Criteria

Category 4: Policy LEP

1.	<p>Will the LEP be consistent with agreed State Government strategic direction or policy for development (eg land release, industrial lands, strategic corridors, development within 800m of a transit node)?</p> <p><i>Explain:</i></p>	Y/N
2.	<p>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</p> <p><i>Explain:</i></p>	Y/N
3.	<p>Will the LEP implement studies and strategic work consistent with State and regional policies?</p> <p><i>Explain:</i></p>	Y/N

LEP Pro-forma Evaluation Criteria

Category 5: Comprehensive LEP

1.	<p>Will the LEP be consistent with and implement the Metropolitan Strategy or other approved regional and/or sub-regional strategies?</p> <p><i>Explain:</i></p>	Y/N
2.	<p>Will the LEP implement the Standard Instrument LEP Order 2006?</p> <p><i>Explain:</i></p>	Y/N
3.	<p>Does the anticipated timeframe for the LEP accord with the Department's advice to council on when a new principal LEP needs to be in place?</p> <p><i>Explain:</i></p>	Y/N
4.	<p>What are the unique or new policies to be contained in the draft LEP?</p> <p><i>Explain:</i></p>	Y/N

LEP Pro-forma Evaluation Criteria

Category 6: Surplus Government Lands (State or Local) LEP

1.	Is the land still in State or local government ownership? <i>Explain:</i>	Y/N
2.	Has the land been declared surplus? <i>Explain:</i>	Y/N
3.	Will the LEP be consistent with and implement approved State and/or regional strategies? <i>Explain:</i>	Y/N
4.	Is the LEP located in a regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy? <i>Explain:</i>	Y/N
5.	Does the LEP (and subsequent development) have the ability to be used as a demonstration project to showcase the Metropolitan Strategy (or other regional strategy) environmental, urban design or sustainability objectives? <i>Explain:</i>	Y/N
6.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands? <i>Explain:</i>	Y/N