

15 December 2021

This Frequently Asked Questions (FAQs) has been prepared by the Department of Planning, Industry and Environment (the Department) to explain the new Local Plan Making Guideline (2021) and respond to the changes made to the Local Environmental Plan (LEP) making process as outlined in the new guideline.

This FAQ can be used as a resource to assist in understanding new elements of the LEP making process and is supplementary to the new *Local Environmental Plan Making Guideline (2021)*.

The LEP Making Guideline is available at <https://planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/Strategic-Planning-Toolkit>

Planning Reform Action Plan

The new LEP Making Guideline is the outcome of extensive consultation with councils, industry, Department staff and agencies. It seeks to both better explain the LEP making process but also include adjustments to the process to ensure this is more efficient. The guideline has been prepared to support the delivery of an improved planning system by the Planning Reform Action Plan - <https://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Planning-Reform-Action-Plan>

What is the Planning Reform Action Plan?

The Planning Reform Action Plan is a program of initiatives to unlock productivity in NSW via improvements to the NSW planning system.

This includes initiatives to support the reduction of planning proposal assessment timeframes and streamline processes.

Why do we need planning reform?

The response to COVID-19 has demonstrated the planning system has a major role to play in keeping investment in NSW, attracting new investment and ensuring industries, such as construction and property, can continue to employ many people across our State as well as supporting the social recovery from COVID with protection of our environment, social and affordable housing, quality design and great public spaces.

The NSW Planning Reform Action Plan outlines long term structural reform of the planning system to help unlock productivity of NSW and leave a legacy of great places for our community. It will turn our recent momentum through initiatives like the Planning System Acceleration Program and Planning Delivery Unit into business-as-usual. The Action Plan addresses the need for reform, as well as the challenges and opportunities presented by COVID-19, which recognises the critical role the planning system can play in the state's economic and social recovery.

What changes are being made to the LEP making process as part of the Planning Reform Action Plan?

The following key initiatives aim to streamline and strengthen the assessment of planning proposals and reduce planning proposal assessment timeframes by 33%:

- New LEP Making Guideline
- Alterations to the rezoning review process

- Implementation of benchmark timeframes for each stage of the LEP making process
- Early engagement with agencies, authorities and council to assist in preparing planning proposals in support of LEP amendments
- Updated planning circulars and practice notes

How will changes to the LEP making process take place?

As the detail of reform initiatives is developed, new practices and requirements will be progressively developed and implemented and the need for transitional measures will be considered.

New initiatives will be developed in consultation with key stakeholders throughout the planning reform process.

What has been achieved so far?

The Department has been undertaking incremental operational improvements under the Planning Reform Action Plan to improve the LEP making process.

Significant reform achieved so far includes:

- Updates to the NSW Planning Portal to improve notifications, tracking, and active management of planning proposals
- Revised Ministerial delegations to ensure appropriate delegation to Department staff
- Achieved and exceeded the year one FY20/21 planning proposal assessment reduction target of 542 days by 97 days. Tracking to meet the FY21/22 target.
- Improvements to map only LEP amendments.
- Revised Ministerial delegations to assist in broadening decision making
- Applying a 'risk based approach' to planning assessment and decision making
- Internal process changes to standardise and make procedures more efficient.

For more on what's been achieved so far, visit the Department's planning reforms webpage at <https://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms>

New LEP Making Guideline

What is the LEP Making Guideline?

From 15 December 2021 the new LEP Making Guideline comes into effect and replaces:

- *Local Environment Plans: A guide to preparing local environmental plans (2018)*; and
- *Planning Proposals: A guide to preparing planning proposals (2018)*.

Given effect under Division 3.4 of the EP&A Act the LEP Making Guideline outlines the practical steps to amend or create a new LEP. Different to the previous guidelines it aims to:

- help streamline the LEP making process to reduce delays, while ensuring that strategic led and quality place-based planning outcomes are achieved
- explain in more detail each of the steps to efficiently progress and obtain appropriate amendments to an LEP or prepare a new LEP
- ensure that planning proposals provide adequate information to explain the proposal and its likely impacts against government legislation, strategic plans, council policies and other relevant guidelines
- explain the roles and responsibilities of each stakeholder in the making of an LEP
- outline best practice and encourage genuine consultation and collaboration, particularly in the initial stages of a planning proposal to confirm expectations
- apply benchmark timeframes based on planning proposal categories to ensure a quicker and more efficient process
- provide recommendations for appropriate community engagement and participation throughout the LEP making process

Which projects need to have regard to the LEP Making Guideline?

All planning proposals must be prepared having regard to the LEP Making Guideline.

All key stakeholders in the LEP making process, including council, proponents, the community, independent planning panels, and the Department should review the guideline and ensure key actions and directions are undertaken in accordance with the new Guideline.

As a transitional measure, all existing planning proposals in the NSW Planning Portal system post-Gateway stage on **15 December 2021** will not be categorised or held to new benchmark timeframes. Any proposal in the NSW Planning Portal prior to Gateway determination may be applied to the categories and benchmark timeframes.

Additionally, only planning proposals lodged on the NSW Planning Portal system for council or the relevant PPA assessment on or after **15 December 2021**, will be subject to the changes in the rezoning review process as outlined in the new LEP Making Guideline.

Where can I find guidance on the Department's accepted approach and content of planning proposals?

Section 2 of the LEP Making Guideline details the form, structure and requirements to prepare and submit a planning proposal.

All planning proposals should be submitted via the Planning Portal at <https://www.planningportal.nsw.gov.au/ppr>

What are the key differences between new planning proposal categories?

Basic – relates to minor LEP amendments generally for administrative, housekeeping, and minor matters of local significance

Standard – relates to site-specific LEP amendments seeking a change in planning controls that are consistent with the existing strategic planning framework and reclassification proposals

Complex – relates more extensive LEP amendments that may also not be wholly consistent with the existing strategic planning framework and/or are types of LEP amendments not defined as Basic or Standard types of proposals

Principal LEP – these comprise comprehensive LEP amendments progressed by council and/or a proposal that seeks to implement multiple housekeeping amendments

How are the different categories of planning proposals further defined?

Page 14 – Planning Proposal Categories of the LEP Making Guideline provides definitions and criteria for basic, standard, complex and principal LEP planning proposals.

Are the planning proposal categories assigned in the NSW Planning Portal?

The NSW Planning Portal will continue to classify proposals by type, such as reclassifications, spot rezoning, etc. Councils and proponents will need to elect which planning proposal category should apply and this should be identified in the planning proposal.

To assist refer **Table 1** for a guide on how current LEP types may relate to the new planning proposal categories. It should be noted that this is a guide only and any assignment of category should have regard to the full criteria in the LEP Making Guideline.

Table 1. LEP amendment to planning proposal category guide

Current LEP Amendment Type in the Planning Portal	Potential Category
<p>Housekeeping: relates to an amendment(s) with the intent of correcting minor errors or inconsistencies within the LEP. This may include; spelling, mapping boundary or labelling, or administrative errors which do not alter planning controls or principal development standards of the LEP. Unlike a s3.22, a Housekeeping LEP Amendment requires a planning proposal as it traditionally contains multiple corrections and amendments of larger ordinance than would be submitted in a s3.22.</p>	Basic
<p>S3.22: Section 3.22 of the EP&A Act may be used to prepare an LEP to amend or repeal another LEP to: (a) correct an obvious error in the principal instrument such as a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,1 or (b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature.</p>	Basic
<p>Creation of additional local provisions: identifies land where a variety of planning requirements apply as Part 6 or 7 'Additional Local Provisions', of the relevant NSW environmental planning instrument (EPI). These provisions may relate to addition construction standards (e.g. earthworks, salinity) or suburbs & places (e.g. Cherrywood Village, Orchard Hills).</p>	Standard
<p>Creation of additional permitted uses: sole or primary purpose of creating an 'Additional permitted use' for inclusion of 'Schedule 1 Additional permitted uses' in Councils Local Environmental Plan. The planning proposal identifies lands with additional permitted uses designated beyond those already allowed under a given land use zone as designated by the relevant NSW environmental planning instrument (EPI).</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>	Standard
<p>Reclassification: Classification and re-classification of public land. Classification of public land occurs when it is first acquired by a council and classified as either community or operational. Reclassification of land occurs when its classification is changed from community to operational land, or from operational to community land.</p>	Standard
<p>Spot rezoning: The most common 'site specific' planning proposal type submitted via the NSW Planning Portal, generally referring to a planning proposal whose primary objective is a change in a land use and planning control. While a spot rezoning means a change to the <i>land use zone</i> applicable to a parcel of land; for purposes of the planning portal where the defined types of planning proposals are limited, a spot rezoning is an accepted misnomer that also applies to other planning proposals seeking to amend planning controls such as height of building or floor space ratio.</p>	Standard
<p>Policy: An amendment that has an impact on the existing application of regional/state EPI's or that aims to align with completed strategies/policies within an LGA. For example a proposal that identifies/removes land as being environmentally sensitive (Impacting seniors housing SEPP, codes SEPP etc.), or a proposal that can prohibit a specific land use on land that is identified in a study that supports the prohibition.</p>	Complex
<p>Precinct: Precinct type proposals may relate to numerous parcels of land and often include a neighbourhood, town or city scale projects that cumulate in wholesale changes to zones and/or planning controls.</p>	Complex
<p>Surplus government land rezoning: refers to planning proposals resulting from the acquisition of Crown land. These parcels of land are considered to no longer provide benefit to users or a public purpose and will ultimately require an amendment of a Council's LEP through the changing of planning controls.</p>	Standard
<p>Principal: A proposal that contains substantial amendments to an LEP that have LGA wide policy and land-use implications; examples include wholesale changes to an existing LEP, consolidation of multiple LEPs or the creation of a new Principal LEP (Standard Instrument LEP).</p>	Principal LEP

Can the planning proposal category be changed?

Yes. Council should identify and confirm the planning proposal category when submitting a planning proposal to the Department for Gateway determination. The Department will confirm whether the category selected is suitable during its assessment of the planning proposal and may reassign a different category, if considered appropriate.

How long will a planning proposal and LEP amendment take to be notified and made?

Based on the benchmark timeframes for planning proposals the total time from lodgement of a planning proposal with the PPA (normally Council) to finalisation stage is:

Basic – 46 weeks

Standard – 70 weeks

Complex – 88 weeks

Principal LEP – 88 weeks

This is reflective of the maximum length of time each stage of the LEP making process is expected to take. Active project management by the Department of each planning proposal, ongoing improvements to processes, procedures and systems, and more open and upfront engagement with agencies and key stakeholders may result in more expedient timeframes.

Is Stage 1 – Pre-lodgement a mandatory stage?

Pre-lodgement is not a mandated requirement (nor included in the NSW Planning Portal). However, conducting this earlier engagement in the process is highly recommended for standard and complex planning proposals.

Council is also encouraged to seek earlier pre-lodgement advice from the Department for any significant and/or complex council-initiated planning proposals.

It is noted that a proponent or a council may still formally lodge a planning proposal, despite pre-lodgement and any views expressed by a council, agencies and/or the Department during this stage, or where the pre-lodgement process hasn't been carried out.

What matters should be addressed in a planning proposal?

Section 2 of the LEP Making Guideline outlines the components needed to be addressed in preparing a planning proposal. This includes clear justification of strategic and site-specific merits.

To assist further the new Guideline includes clearer guidance on likely technical documentation that may be needed to underpin a planning proposal – see **Attachment C – Supporting Technical Information** of the LEP Making Guidelines.

This outlines what information and technical studies may be required to support a planning proposal relative to a proposal's complexity. This should be read by councils and the Department in issuing planning proposal requirements during the pre-lodgement stage of a planning proposal.

How should local infrastructure contributions be dealt with in planning proposals?

Council should work with proponents to provide advice on existing and any planning local infrastructure needed for a proposal as part of the initial concept proposal at the pre-lodgement stage.

It is the responsibility of the proponent to investigate infrastructure requirements and associated funding for any proponent initiated planning proposal, and council if it is a council initiated planning proposal.

Can council refuse to submit a planning proposal prepared by a proponent for Gateway determination?

Yes. A council may not support a proponent-initiated planning proposal and not submit to the Department for Gateway determination.

In the event council does not indicate support for the proposal or has failed to indicate its support within 90 or 115 calendar days (depending on the planning proposal category), then a proponent has the opportunity to submit a rezoning review application that requests an independent planning panel to evaluate and make a recommendation to the Minister on whether a proposal should progress to Gateway determination.

What if an authority or government agency does not respond to a scoping proposal referral?

Referral to authorities and government agencies at the pre-lodgement stage is encouraged but is not a mandatory process. The Department is currently collaborating with authorities and government agencies and council in finalising this referral process.

Whilst referral and feedback is a desirable outcome at the pre-lodgement stage, there is still an opportunity for referral and feedback at the post-Gateway determination stage in response to any condition of a Gateway determination.

Where do I access information on a planning proposal?

You can review and track the progress of a planning proposal through the NSW Planning Portal: <https://www.planningportal.nsw.gov.au/ppr>.

Approved LEP amendments are notified on the NSW Legislation website. LEPs are generally notified on a Friday.

Why has the timeframe to trigger a rezoning review been extended?

Additional time has been afforded to councils (and any alternative PPA) for more complex planning proposals that may need additional time to consider more substantial changes and impacts.

Additional timeframe to trigger a rezoning review has been extended from 90 to 115 calendar days for planning proposals that are categorised as Complex planning proposals. All other proposals are still afforded the current 90 calendar days.

Why will councils not be afforded the PPA role where a proposal is submitted for rezoning review and council has refused to support the proposal?

This change has been made to reduce process delays and avoid conflict with councils in managing a planning proposal where a council has resolved not to support this proposal, but a planning panel has identified merit for the proposal to proceed to Gateway determination as part of the rezoning review process.

Where a council has not indicated support for a proposal prior to Gateway and this proposal will be reviewed by a panel under a rezoning review, Council may still nominate whether it wishes to retain the PPA role at the time the Department asks for comments on the proposal.

Why will panels now consider and recommend alterations to a planning proposal and/or recommend Gateway conditions?

Evaluation of rezoning review process and feedback received indicated that some planning proposals are independently reviewed two or three times by the panels before receiving support as currently the panels cannot recommend changes to the proposal. Panel members had also indicated that it was challenging when recommended alterations would, in their view, make the proposal suitable to progress.

Consequently, Planning Panels are able recommend changes to proposals and/or Gateway conditions as part of the rezoning review process. These recommendations will be considered when the Department subsequently assesses the proposal for Gateway determination.

What changes have been made to strategic merit?

Strategic merit is now defined under the LEP Making Guideline as each proposal is expected to align with the NSW strategic planning framework.

The assessment criteria for addressing strategic merit has been amended to more closely align with terminology in the EP&A Act and to provide more specific examples of when a planning proposal may respond to a change in circumstances that have not been recognised by the existing planning framework.

How does the new Guideline relate to the New Approach to Rezoning Discussion Paper?

The new LEP Making Guideline implements operational and process changes to the LEP making process under the EP&A Act, and is approved under s3.33 of the EP&A Act.

The New Approach to Rezoning Discussion Paper has been developed to explore options to reframe the rezoning and LEP making process to improve the planning proposal system and establish an appeals pathway for planning proposals.

The New Approach to Rezoning Discussion Paper is available for comment until 28 February 2022 at www.planningportal.nsw.gov.au/rezoning-new-approach

Who can I contact for more information?

For more information, email the Local Strategies and Plan Making team at lspm@planning.nsw.gov.au.

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