



Ref. no	PN 08-002
Issued	7 March 2008
Revised	

Zoning for infrastructure in LEPs

The purpose of this practice note is to provide guidance to councils on zoning public infrastructure land in standard local environmental plans.

Introduction

State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP) was introduced to facilitate the delivery of infrastructure across NSW by improving regulatory certainty and efficiency.

The Infrastructure SEPP, which came into effect on 1 January 2008, has specific planning provisions and development controls for 25 types (sectors) of infrastructure:

- air transport facilities
- correctional centres
- educational establishments
- electricity generating works
- electricity transmission and distribution
- emergency services facilities
- flood mitigation and bushfire hazard reduction
- forestry activities
- gas transmission and distribution
- health services facilities
- housing and group homes
- parks and other public reserves
- port, wharf and boating facilities
- public administration buildings
- rail infrastructure facilities
- research stations
- road and traffic facilities
- sewerage systems
- soil conservation works
- stormwater management systems
- telecommunications networks
- travelling stock reserves
- waste or resource management facilities
- water supply systems
- waterway or foreshore management activities.

Zoning public infrastructure

To complement the provisions of the Infrastructure SEPP, this practice note provides advice on zoning public infrastructure land when a council is preparing a standard local environmental plan (LEP).

A number of approaches have previously been taken in zoning infrastructure land in LEPs. These zoning methods often restricted new infrastructure developments, redevelopment of sites for alternative uses or disposal of surplus public land.

The new zoning approach advocated here provides greater flexibility and adaptive management of government land. It moves away from zoning public infrastructure land as 'special use' or 'special purpose' zones, which previously limited the ability of infrastructure providers to respond to changing demographic trends and provide the public with infrastructure and services outside existing locations.

Six principles for zoning infrastructure

The following principles should be followed when zoning infrastructure land in new LEPs.

1. Where the infrastructure type is permitted on all land in the Infrastructure SEPP:
 - future infrastructure may be placed in any zone
 - existing 'special use' zones should be rezoned the same as the adjacent zone
 - roads must be zoned.
2. Where the infrastructure type is only permitted in certain prescribed zones in the Infrastructure SEPP:
 - provide for future infrastructure in prescribed zones rather than special use zones
 - existing 'special use' zones should be rezoned the same as the adjacent land (if a prescribed zone).

- rezone land SP2 Infrastructure, if there is no adjacent prescribed zone.
3. If currently zoned ‘special use’, the following infrastructure land should remain zoned for a ‘special purpose’:
 - special purposes such as cemeteries, waste disposal or landfill sites (rezone as SP1 Special Activities)
 - large complexes or strategic sites (rezone as SP2 Infrastructure).
 4. Where land is to be zoned SP1 Special Activities or SP2 Infrastructure:
 - include flexible zone boundary provisions
 - use generic land use map annotations.
 5. Where surplus public land is currently zoned ‘special use’:
 - the land should be rezoned as a compatible land use, or
 - the land should be rezoned consistent with a valid site compatibility certificate.
 6. When preparing an LEP, avoid duplicating provisions in the Infrastructure SEPP to manage impacts on infrastructure corridors.

Matters to consider upfront

Prior to zoning infrastructure land in new LEPs, the following steps should first be taken:

- Identify whether the **infrastructure type** is covered in the Infrastructure SEPP, including whether the SEPP provisions are associated with public or private infrastructure.
- Identify whether the infrastructure is **currently operating** or is no longer used; whether the land is intended for other future infrastructure purposes or whether the land is now considered to be **surplus public land**.
- Check the Infrastructure SEPP to identify prescribed zones where the particular infrastructure types are permitted.
- Follow the principles for zoning infrastructure land in this practice note.

Zoning principles explained

The infrastructure zoning principles are explained here. The principles are intended to support a zoning regime which provides greater flexibility and adaptive management of public infrastructure land. Councils should also take these zoning principles into account when zoning land for private infrastructure or services.

Principle 1—Zoning for infrastructure that is permitted on all land

The Infrastructure SEPP identifies several types of infrastructure activities undertaken by public authorities that are permissible in all LEP zones, irrespective of the LEP zoning.

This includes:

- roads or railway lines
- utility distribution networks such as electricity lines, or gas, water and sewage pipelines
- certain environmental management works (e.g. bushfire management, flood mitigation, waterway and foreshore works and soil conservation works).

Principle 1.1—Providing for future infrastructure

‘Special use’ or ‘special purpose’ zones are not required in LEPs to permit infrastructure that is already permitted on all land. It is not necessary to include these infrastructure types as permitted uses in the LEP zoning table—they are automatically permitted through the Infrastructure SEPP.

It is important to note however that zoning provisions may be required in the LEP zoning table to allow **private** infrastructure as a permitted use in a zone (as the Infrastructure SEPP only applies to certain private infrastructure types).

Principle 1.2—Rezoning existing ‘special use’ zones

Land currently zoned ‘special use’ for these types of infrastructure or services (e.g. roads, railway lines, pipelines etc), should be zoned the same as the adjacent land.

Applying the adjacent zone type to public infrastructure land follows a basic planning principle of aligning land uses. It is established practice to refer to the zoning of adjoining land when seeking to establish an appropriate zoning for land. In many cases the infrastructure land would have been zoned the same as the adjoining land if it had not been used instead for an infrastructure purpose.

This approach avoids the need for spot rezonings when the infrastructure use ceases or is downsized in the future. It is preferable that the land use zone be the same as the adjacent zoning, so that future uses are compatible with existing surrounding uses.

Principle 1.3—Roads must be zoned

Currently in some LEPs, roads are unzoned. In future, all land is to be zoned in LEPs, including roads.

Roads should be zoned the same as the adjacent land use zone. Where there is more than one adjacent zone, or the road forms a boundary between zones, the whole of the road should be zoned the same (i.e. the zone boundary should not run down the middle of the road).

An assessment should be made on a case by case basis to determine the appropriate zoning for an unzoned road.

Principle 2 – Zoning for infrastructure that is permitted only in prescribed zones

'Prescribed zone' is a reference to the standard zones in the Standard Instrument (Local Environmental Plans) Order 2006 (the Standard Instrument) which have been nominated as the zones where certain types of infrastructure are permitted under the Infrastructure SEPP.

Each of the 25 types of infrastructure in the SEPP has a list of prescribed zones where the infrastructure activity may be undertaken.

Principle 2.1—Providing for future infrastructure in prescribed zones

In most circumstances, 'special use' or 'special purpose' zones will not be required in LEPs to cater for current or proposed infrastructure.

Most types of infrastructure development are permitted under the Infrastructure SEPP in a range of suitable 'prescribed zones'. It is therefore not necessary to include these infrastructure types as permitted uses in the LEP zoning table—they are automatically permitted through the Infrastructure SEPP.

As an example, when zoning a new land release area, it is unnecessary to set aside land to be zoned 'special use' for a new public school. Public schools are automatically permitted within residential and commercial zones under the Infrastructure SEPP.

It is important to note however that zoning provisions may be required in the LEP zoning table to allow private infrastructure as a permitted use in a zone (as the Infrastructure SEPP only applies to certain private infrastructure types).

Principle 2.2—Rezoning existing 'special use' zones to adjacent prescribed zones

Most existing infrastructure land currently zoned 'special use' should be rezoned in the LEP according to what the adjacent zone is, if that zone is a 'prescribed zone' which permits that type of infrastructure.

Where infrastructure adjoins multiple zones (that are prescribed zones), the following rules apply:

- all the land should be zoned the same (i.e. the zone boundary should not run down the middle of the site), unless there is an exceptional circumstance (e.g. large sites with multiple infrastructure uses), and
- adopt a zone that is **compatible with surrounding land uses**, having regard to:
 - existing adjacent land uses and preferred future uses
 - regional strategy priorities
 - availability of services and infrastructure to support new land uses
 - environmental impacts and risks.

An assessment will need to be made on a case-by-case basis to consider the appropriateness of the various adjacent zone types.

Principle 2.3—Rezoning existing 'special use' zones when there are no adjacent prescribed zones

Most existing infrastructure lands should be zoned according to what the adjacent land use zone is, if that adjacent zone is a prescribed zone for that infrastructure type.

If however none of the adjacent zones are 'prescribed zones' for that particular infrastructure type under the Infrastructure SEPP, then the site should be zoned SP2 Infrastructure.

All public infrastructure listed under the SEPP are permitted in SP1 Special Activities and SP2 Infrastructure zones. Regardless of what the surrounding land use zones are, if an existing facility is zoned SP2 Infrastructure it can continue to operate under the provisions of the SEPP.

As an example, an existing hospital may be located on land adjacent to an R2 Low Density Residential zone. As R2 is not a prescribed zone for hospitals under the Infrastructure SEPP, it is not possible to apply Principle 2.2 when rezoning the site. The hospital land should be zoned SP2 Infrastructure to ensure that the existing use remains permissible. (Note: In this case, if the site is to be redeveloped or becomes surplus public land, a rezoning would then be required.)

Principle 3—Certain special purpose zones should remain as special purpose zones

Principle 3.1—Where the land use is unlikely to change, land may be zoned 'special activities'

Infrastructure land that is unlikely to be used for a different purpose in the future should be zoned 'special activities'.

This includes land uses such as:

- cemeteries
- waste disposal or landfill sites.

These lands should be zoned SP1 Special Activities.

Principle 3.2—Large precinct sites should remain in special purpose zones

For complex infrastructure sites covering large areas, or sites of strategic importance, it may be preferable to maintain a special purpose zoning.

These sites may be zoned SP1 Special Activities or SP2 Infrastructure. Examples include major port or airports land covering large precincts.

Principle 4—Rules for using SP1 and SP2 zones

Principle 4.1—Maintain flexible zone boundaries

Where a council adopts an SP1 or SP2 zoning for infrastructure land in an LEP, then clause 5.3 of the Standard Instrument ('Flexible zone boundaries') must be adopted.

Clause 5.3 provides flexibility where the investigation of a site reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone. This clause applies to the land within the distance from the boundary nominated in the LEP.

Development permitted on the adjoining land would then be permitted on the SP1 or SP2 land if the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.

Principle 4.2—Generic land use map annotations

It is not necessary to specify a preferred land use for an SP1 Special Activities or SP2 Infrastructure zone. However, if a preferred land use is to be specified for a SP1 or SP2 zone, then broad infrastructure categories used in the Infrastructure SEPP should be used rather than specific types of infrastructure. For example, 'educational establishment' should be used rather than 'primary school'.

The following annotations should be used on the Land Zoning Map for land that may be zoned SP1 or SP2 in accordance with this practice note:

Infrastructure categories to be used on land zoning maps *	Examples of infrastructure type
Air transport facility	airports, heliport
Correctional centre	prisons, remand centre, detention centre
Educational establishment	high school, primary school, TAFE, university
Health services facility	hospitals, medical centres
Waste or resource management facility	landfill, waste transfer station, waste depot
Water supply system	dams, reservoirs, water treatment facilities

Note. * See Infrastructure SEPP for a full list.

Principle 5—Zoning surplus public land

Government land that is no longer required to provide services or infrastructure is sometimes classified as 'surplus' public land. The NSW Government has updated planning provisions in regard to 'surplus' public land. Previously, new residential or commercial developments as well as development that could be carried out on nearby land, could be approved on such land under the now repealed SEPP 8.

The Infrastructure SEPP provides a more tailored and local solution for such land, to ensure new land uses are appropriate and compatible with surrounding land. Councils are requested to follow the broad policy direction of the Infrastructure SEPP when preparing new LEPs covering surplus public land, by following the principles outlined below.

Principle 5.1—Zone surplus public land as a compatible land use

Surplus public land should be rezoned to be compatible with surrounding land uses having regard to:

- existing adjacent land uses and preferred future uses
- regional strategy priorities
- availability of services and infrastructure to support new land uses
- environmental impacts and risks.

Principle 5.2—If relevant, adopt the zone in the site compatibility certificate

If a valid **site compatibility certificate** applies to the infrastructure land, then the land should be zoned in the LEP according to the nominated land use in the certificate.

Note. Under the Infrastructure SEPP, additional uses may be undertaken on certain State land if the uses are permitted on adjacent land. To ensure that the additional land uses are appropriate, a site compatibility certificate must first be obtained from the Director-General of the Department of Planning before a development application can be lodged. For more information on site compatibility certificates please see *SEPP (Infrastructure) 2007: Director-General's site compatibility certificate—guideline for applications* on the Department's website at <http://www.planning.nsw.gov.au/planningsystem/infrastructuresepp.asp>.

In some rare instances, it may be more appropriate for a council to consider adopting a different zone type to the adjacent land use nominated in the site compatibility certificate (following consideration of the issues outlined in Principle 5.1 above). Where this is the case, it should be identified by councils in their section 64 and section 68 reports to the Director-General.

Principle 6—Avoid additional provisions in LEPs

The Infrastructure SEPP provides consistent state-wide provisions for considering the impacts of certain types of development on land adjacent to linear infrastructure and vice versa. These considerations include:

- the impact of road or rail noise or vibration on residential and other sensitive development adjacent busy roads and railway lines
- the impact of development with frontage to classified roads (impacts associated with traffic, access, safety)
- the impact of development involving excavation adjacent to classified road or railway line
- the impact on rail safety if a new public railway crossing is required or an old crossing needs to be upgraded
- the impact on safety if adjacent a gas pipeline
- the impact of development within a road easement reserved for future infrastructure purpose.

LEPs should not include provisions that deal with these matters addressed by the Infrastructure SEPP.

Where the Infrastructure SEPP does not deal with a particular type of local infrastructure likely to affect or be affected by an infrastructure development, it may be appropriate to include a local provision to address the issue.

Councils should discuss any proposed local infrastructure provision with the relevant regional office of the Department to determine whether the proposal is consistent with the SEPP and suitable for inclusion in the LEP.

Permissibility of private infrastructure

The Infrastructure SEPP principally focuses on providing for the delivery of infrastructure or services by local and State government authorities.

There are however certain types of infrastructure where the SEPP provisions apply equally to private or public infrastructure, including:

- electricity generating works
- licensed gas pipelines
- health services facilities (e.g. hospitals)
- group homes
- certain port-related development
- sewage treatment plants
- certain telecommunications infrastructure
- waste management and transfer facilities.

Most other private infrastructure remains regulated under local planning rules (e.g. LEPs), including where the infrastructure is permitted and whether development consent is required.

It is recommended that, if a council is zoning private infrastructure land, the above zoning principles be followed rather than automatically reverting to 'special purpose' zoning.

Further information

For more advice on the Infrastructure SEPP, see <http://www.planning.nsw.gov.au/planningsystem/infrastructureseppl.asp>.

For more advice on LEP preparation and the standard instrument, see <http://www.planning.nsw.gov.au/planningsystem/local.asp>.

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

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Important note

This 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 note.

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2008

NSW Department of Planning www.planning.nsw.gov.au
DOP 08_004

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