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## PLANNING SYSTEM

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### Local planning

<b>Circular</b>	PS 07-020
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<b>Related</b>	

# Standard instrument for principal LEPs amendment

The purpose of this circular is to advise councils of an amendment to the standard instrument for principal local environmental plans that was gazetted on 14 December 2007.

## Introduction

The Standard Instrument (Local Environmental Plans) Amendment Order 2007 (the 'amending Order') was gazetted on 14 December 2007. This is the second amendment to the standard instrument and reflects feedback received from councils working on new comprehensive local environmental plans (LEPs) over the last 12 months.

The amending Order will commence on 1 January 2008.

## Summary of changes

The key changes in the amending Order are outlined in the attached document. They include:

- Amending some mandatory zone objectives and permitted and prohibited uses, particularly with respect to business zones and retail and office uses.
- Making changes to certain compulsory and optional clauses including development standards, subdivision and heritage conservation provisions.
- Including additional mandatory provisions relating to architectural roof features, fire alarms and exempt and complying development. The existing exempt and complying development provisions in State Environmental Planning Policy (SEPP) No. 4 covering filming, tents and marquees used for filming, rainwater tanks and satellite TV dishes are now included in the standard instrument.
- Placing numerical requirements for certain permissible uses formerly contained in definitions (e.g. relating to maximum floor space, number of guests) into a specific clause.

- Amending a number of existing definitions and including additional definitions particularly with respect to housing and infrastructure related uses.
- Providing transitional arrangements for the application of this and future amending Orders to pending development applications, project applications and draft LEPs at section 64 stage.
- Renumbering the standard instrument using a decimal numbering system. This will allow future new standard clauses to ordinarily be added at the end of each Part as 2.8, 2.9 etc, rather than 15AA, 15AB, 15AC etc.
- Making other minor amendments, statute law revisions and consequential amendments.

## Commencement

The amending Order commences on 1 January 2008. The Order contains transitional provisions that provide flexibility with respect to the certification of certain draft LEPs that have been submitted to the Department under section 64 of the *Environmental Planning and Assessment Act 1979* (the Act) based on the previous version of the standard instrument.

## Application to draft LEPs recently submitted to the Department under section 64 of the Act

- The amending Order may, but need not, be taken into account by the Director-General when issuing a section 65 certificate for a draft LEP that is formally submitted under section 64 of the Act before 1 January 2008.
- The Department will contact councils that have recently submitted draft LEPs at section 64 stage to discuss the timing for incorporating the changes.

### **Application to draft LEPs certified for exhibition in accordance with the previous version of the standard instrument**

- The amending Order does not directly alter a draft LEP adopting the standard instrument that is on public exhibition under section 66 of the Act.
- A draft LEP on exhibition must however be accompanied by a copy of any applicable standard instrument as required by section 66 of the Act. A draft LEP on exhibition on or after 1 January 2008 will therefore need to be accompanied by a copy of the standard instrument that incorporates the changes contained in the amending Order.
- A draft LEP certified in accordance with the previous (2006) version that goes on exhibition after 1 January 2008 should be accompanied by explanatory material noting the updating of the instrument and the nature of the changes that will result. The Department can provide advice on this material.
- All draft LEPs, including those certified for exhibition in accordance with the previous (2006) version of the standard instrument must be in accordance with the version of the standard instrument then current when the plan is submitted to the Department under section 68 of the Act.

### **Application to future draft LEPs**

- All future draft LEPs will need to be in accordance with the 2008 version of the standard instrument when they are formally submitted to the Department under section 64.

### **Further information**

A copy of the amending Order is available on the NSW Parliamentary Counsel's office website: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) under 'Browse A-Z As Made'. An updated version of the standard instrument, incorporating the changes set out in the amending Order, will be available on the legislation website under 'Browse A-Z In Force' when the Order commences.

A Rich Text Format (MS Word compatible) version of the standard instrument will be published on the Department of Planning website at [www.planning.nsw.gov.au/planningsystem/local.asp](http://www.planning.nsw.gov.au/planningsystem/local.asp). Updated versions of LEP practice notes will also be available on the Department of Planning website in the near future.

For further information about the implementation of the standard instrument please contact the relevant regional office of the Department.

Note: This and other Department of Planning circulars are published on the web at [www.planning.nsw.gov.au/planningsystem/practicenotes](http://www.planning.nsw.gov.au/planningsystem/practicenotes)

### **Authorised by:**

Sam Haddad  
Director-General

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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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## Attachment

### Summary of key changes

The Standard Instrument (Local Environmental Plans) Amendment Order 2007 makes several changes to the Standard Instrument Local Environmental Plans Order 2006 (the 'standard instrument') to reflect feedback from councils working on comprehensive LEPs.

The amendments include changes to the format of the instrument, zone objectives and mandatory uses, some standard clauses, exempt and complying development provisions and new and amended definitions.

The following is a summary of the key changes in the amending Order.

### Changes to zones and land uses

- '*Attached housing*' is a new definition and is included as a mandatory permissible use with consent in the R1 General Residential and the R3 Medium Density Residential zones. The definition covers attached dwellings on individual lots. Appropriate densities may be set using the Lot Size Map and related local provisions.
- '*Semi detached dwellings*' is a new definition and is included as a mandatory permissible use with consent in the R1 General Residential zone.
- '*Home occupations*' are now permissible without consent in zones where dwellings houses are a mandatory use. This reflects section 117 Direction 3.3.
- '*Business premises*' is included as a mandatory permissible use with consent in zones B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B6 Enterprise Corridor. This definition covers banks, hairdressers, dry cleaners, internet facilities and the like.
- '*Office premises*' are removed as a mandatory permitted use in the B5 Business Development and B6 Enterprise Corridor zones.
- '*Retail premises*' are removed as a mandatory permitted use in the B5 Business Development and B6 Enterprise Corridor zones.
- '*Multi-dwelling housing*' is no longer a mandated permitted use within the B4 Mixed Use or B6 Enterprise Corridor zone. In zone B4 Mixed Use this is replaced by 'Shop top housing', to provide for residential uses in the zone while ensuring that stand-alone housing does not dominate.

### Changes to standard clauses in the previous version of the standard instrument

- Clause 15 *Subdivision* is amended to clarify that minor subdivision under this clause cannot create lots smaller than the minimum size shown on the Lot Size Map.
- Clause 16 *Exempt development* is amended to allow exempt development to be carried out on land on which there is a local heritage item. Any categories of exempt development (e.g. some external alterations) that are not appropriate for heritage items can be excluded by inserting an appropriate standard in schedule 2 for that type of development.
- Clause 17 *Complying development* is amended to enable standard conditions for complying development to be set out in schedule 3.
- Clause 18 *Environmentally sensitive areas excluded* is amended to provide more opportunities for exempt and complying development in coastal areas. The previous prohibition relating to land within 100m of the mean high water mark of the sea, a bay, an estuary, or a coastal lake (part of the previous definition of '*sensitive coastal location*') is removed, as this applied to many urban areas along the NSW coast. The restriction on exempt and complying is retained for land within 100m of SEPP 14 and RAMSAR wetlands, littoral rainforests, world heritage sites, aquatic reserves and marine parks.
- Clause 19 *Minimum subdivision lot size*, clause 21 *Height of buildings* and clause 22 *Floor space ratio* (FSR) are reformatted to allow objectives to be set out in the clauses.
- Clause 22 *Floor space ratio* is amended to allow both a table and a map to be used to show multiple FSRs applying within a zone (e.g. differential FSRs for different land uses, or for different site areas).
- Clause 24 *Exceptions to development standards* is amended to allow development standards within the Coastal Zone to be varied. Development standards arising under the BASIX SEPP are now specifically excluded from the operation of this clause.
- Clause 35 *Heritage conservation* includes a new subclause requiring a consent authority to consider impacts on the heritage significance of a heritage item or heritage conservation area (where applicable) before granting consent.
- A new compulsory clause sets out numerical requirements for certain permissible land uses relating to maximum floor area, total number of guests etc that were previously contained in several land use definitions (e.g. kiosk, bed and breakfast establishment). A floor space limit for neighbourhood shops may also now be set, provided that this is at least 80m<sup>2</sup>. The

new clause operates as a prohibition in the same way as the current definition based controls, however it closes a loophole that could have allowed those previously definition-based standards to be circumvented in certain cases. Clause 24 is amended to prevent these numerical requirements being varied.

- A new optional clause allows variation of height standards where an architectural roof feature is provided.

### Definitions

A number of new land use definitions have been included, including:

*attached dwelling*  
*exhibition home*  
*exhibition village*  
*farm stay accommodation*  
*highway service centre*  
*industrial retail outlet*  
*intensive plant agriculture*  
*nightclub*  
*road*  
*rural supplies*  
*secondary dwelling*  
*self storage units*  
*semi detached dwelling*  
*shop*  
*storage premises*  
*viticulture*  
*wholesale supplies.*

A number of infrastructure-related definitions have been amended or inserted, including:

*air transport facility*  
*biosolids treatment facility*  
*emergency services facility*  
*health services facility*  
*port facility (formerly 'commercial port facility')*  
*research station*  
*resource recovery facility*  
*sewage treatment plant (formerly 'sewage treatment works')*  
*sewerage system*  
*waste disposal facility (formerly 'waste disposal landfill operation')*  
*waste or resource management facility (formerly 'materials recycling or recovery centre')*  
*waste or resource transfer station*  
*water reticulation system*  
*water recycling facility*  
*water storage facility*  
*water supply system*  
*water treatment facility.*

There are also changes to several existing definitions, including:

Housing related definitions such as '*multi dwelling housing*' and '*dual occupancy*' are amended to clarify that a reference to '*lot*' does not refer to individual lots in a strata plan or community title scheme.

'*Multi dwelling housing*' is amended to specifically exclude residential flat buildings.

'*Sex services premises*', '*home occupation sex services*' and '*home occupation*' are amended to refer to the definition of brothel inserted into the *Environmental Planning and Assessment Act 1979* by the *Brothels Amendment Act 2007*.

The Order also includes changes that align the standard instrument with the forthcoming Infrastructure SEPP. Clauses 26, 29, 30, 31 and 37 of the standard instrument have been deleted as these are to be covered by the SEPP.

Clause 38 *Infrastructure and crown development* has been revised to be consistent with the relevant provisions of the SEPP.

### Exempt and complying development

Clauses 13–19 of SEPP 4 are now included in schedules 2 and 3. Councils will be exempted from these parts of SEPP 4 when they have a new standard LEP in place.

Filming, tents and marquees used for filming, rainwater tanks and satellite TV dishes are therefore required to be included as exempt development.

Schedule 3 now contains a Part 2 where complying development conditions are to be set out.

### Savings provisions

The Order contains savings provisions so that the amendments do not apply to any development application or project application made but not determined before the commencement date. This is necessary because certain standard instrument definitions have already been adopted by reference in the Environmental Planning and Assessment Regulations and certain SEPPs.

In addition, the Director-General may, but is not required to, take into account the amendments made under the Order when issuing a section 65 certificate for a draft LEP that has been submitted to the Department under section 64 before the commencement date.

### Renumbering of provisions

The numbering of the standard instrument is also changed to a decimal system. New standard clauses will now ordinarily be added using sequential numbers (2.8, 2.9 etc.) rather than by a combination of numbers and double letters (15AA, 15AB etc.).

Local provisions added by councils will generally be located in Part 6 of the LEP and numbered 6.1, 6.2 etc. Any local provisions added by a council in Parts 1–5 of a LEP will take the number of the previous clause followed by a single letter, e.g. 2.4A, 2.4B etc.

The decimal numbering applies to clause numbers only and not to subclauses. Subclauses will continue to adopt (1), (a), (i) etc.