



Note	PN 07-001
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Related	

Standard instrument for LEPs – frequently asked questions (1)

The purpose of this practice note is to provide councils with an overview of responses given by the Department to commonly asked questions regarding the implementation of the standard instrument for LEPs. It should be noted that this practice note does not contain legal advice.

Land uses

Mixed use development

Q: Does 'mixed use development' have to be listed in Item 3 (permitted with consent) for every zone if more than one use is to be permissible on one allotment/in one building? (Mixed use development is defined as a building or place containing two or more different land uses.)

A: No. In any zone, a combination of permissible uses can be permitted on a site without listing mixed use development as a permissible use. Mixed use development should only be stated as a permissible use in a land use table when describing the circumstance or limitation imposed on when a permitted use is allowed in a zone, eg 'Office premises (but only as part of a mixed use development)'.

Dual occupancy

Q: How can attached and detached dual occupancies be described within a LEP?

A: The following may be used:

- Dual occupancy (attached)
- Dual occupancy (detached).

Separate definitions are not necessary to explain what 'attached' or 'detached' means.

Shop top housing

Q: How can large scale retail development (eg. supermarkets) be prevented in zones where shop top housing is a mandated use?

A: Shop top housing will only be permitted above whatever type of retail development is permitted in a zone (or over an existing retail use). For instance, in the zones where shop top housing is a mandated use, neighbourhood shops are also permitted, therefore shop top housing can occur above neighbourhood shops.

To remove any doubt, other forms of retail premises can be listed under Item 4 in the zoning table as prohibited development (see Figure 1 below).

The Department will consider whether a revision to the definition of shop top housing is necessary to emphasise that shop top housing refers only to the housing component.

Figure 1.

Zone R4 High Density Residential

1. *Objectives of zone*
To provide for the housing needs of the community within a high density residential environment.
To provide a variety of housing types within a high density residential environment.
To enable other land uses which provide facilities or services to meet the day-to-day needs of residents.
2. *Permitted without consent*
Exempt development; Roads.
3. *Permitted with consent*
Business premises; Child care centres; Community facilities; Neighbourhood shops; Places of public worship; Residential flat buildings; Shop top housing.
4. *Prohibited*
Retail premises (except neighbourhood shops); Any other development not otherwise specified in items 2 or 3.

Neighbourhood shops

Q: Will large scale retail uses be allowed in residential areas through the definition of 'neighbourhood shop'?

A: Neighbourhood shop is a narrowly defined form of retail premises, covering the sale of 'foodstuffs, personal care products, and other small daily convenience goods' for the 'day-to-day needs of people who live or work in the local area'. Other types of retail premises that provide for weekly shopping needs or cater for a wider retail catchment would generally not be covered.

The example shown in Figure 1 demonstrates how other retail types may be prohibited in the R3 zone.

Multi-dwelling housing

Q: Can residential flat buildings be specifically excluded from the definition of multi-dwelling housing?

A: The Department will consider this when the Standard Instrument is next amended. Residential flat buildings can be prohibited in zones where multi-dwelling housing is permitted, eg R3 Medium Density Residential.

Semi-detached housing

Q: How is semi-detached housing defined?

A: There is no current definition in the Standard Instrument that covers two dwellings that are attached, but on separate lots of land. Consideration is being given to including such a definition in the next amendment to the Standard Instrument.

Q: Can a definition of duplex be inserted as a local provision?

A: No. Councils cannot create a definition where a land use is covered by an existing defined term, including group terms. A 'duplex' on a single lot of land is a dual occupancy (attached). See discussion below on definitions for more information.

Land use matrix

Q: Can a land use matrix be used in a LEP?

A: No. Land use matrices will not be permitted in official draft or gazetted LEPs. The Land Use Table versus Matrix question was put out to consultation in September 2005 and the clear majority of respondents (including the majority of councils) voted in favour of the former.

Councils can prepare a land use matrix based on the gazetted LEP to use with their communities. Some councils are developing e-planning systems with a similar functionality, however these will not form part of the statutory LEP.

Zones

R5 Large Lot Residential zone and RU4 Rural Small Holdings zone

Q: What is the difference between these zones?

A: The zones are distinguished by the primary intended future use of the land—residential versus primary production.

The objective of the R5 Large Lot Residential zone is to provide residential housing in a rural setting. This zone should be used where it is intended that the future use of the land will be principally for residential purposes, and the primary amenity expectation for the land is to be residential. A range of different minimum subdivision lot sizes may be set for land within this zone on the Lot Size Map.

The RU4 Rural Small Holdings would ordinarily be applied to land that is in existing small rural holdings where it is intended that the land will continue to be used for primary production purposes. The amenity expectation for land within this zone will be for agriculture and other primary industry uses. Different minimum subdivision lot sizes might be identified on the Lot Size Map for different areas of land within this zone.

Q: How does R5 Large Lot Residential relate to the application of SEPP (Senior Living)? Will seniors housing will be able to be built on land adjoining R5 land?

A: State Environmental Planning Policy (Seniors Living) is currently under review. One of the outcomes of the review will be to establish whether the SEPP should apply to R5 Large Lot Residential zones.

Intensive agriculture

Q: Which rural zone should be used for land where intensive plant or animal agriculture is intended to be carried out?

A: Intensive plant and animal agriculture can be accommodated within the RU1 Primary Production zone or RU4 Rural Small Holdings zone. Different minimum subdivision requirements may be shown for land within the rural zones in accordance with clause 19 and the Lot Size Map.

Residential zones

Q: How can excessive occurrence of a particular use be managed in a zone, eg residential flat buildings in zone R1 General Residential?

A: Development standards such as floor space ratio (FSR) and height can be used to influence the density and built form of particular types of development within a zone. A range of different FSRs and building heights for land within a zone can be set on the Floor Space Ratio and Height of Buildings maps, which will influence the location and form of development within zones such as R1 General Residential.

Other development controls (eg heads of consideration, other development standards) can be used to influence the location and form of particular uses, supplemented by detailed streetscape and other controls in a council's development control plan (DCP).

B5 Business Development zone and B6 Enterprise Corridor zone

Q: How can the B5 and B6 zones be applied so as to not impact on the viability of existing centres, eg by allowing major retail premises and office premises in out-of-centre locations?

A: It is not intended that retail hierarchies should be undermined by out-of-centre convenience retailing in the B5 and B6 zones. The Department is currently assessing how the Standard Instrument can be modified to allow more flexibility in these business zones.

RE1 Public Recreation zone

Q: How should land that is currently zoned 'Future Open Space' or 'Regional Open Space' be zoned under the Standard Instrument?

A: All land which is to be used for public open space or recreation purposes is to be zoned RE1 Public Recreation. No distinction is necessary on the Land Zoning Map as to whether the land is already in public ownership or is to be acquired. The acquisition authority for land zoned RE1 that is yet to be acquired will be identified on the Land Reservation Acquisition Map and in the table in clause 25.

Waterway zones

Q: Can zone W2 Recreational Waterways apply to land that is above mean high water mark and currently occupied by marinas and boating related activities?

A: The Waterway zones are generally intended for application to the waterway's channel and banks and not for land based development associated with the waterway. One of the terrestrial zones should be used, eg RE2 Private Recreation or IN4 Working Waterfront.

Q: What is the difference between the W3 Working Waterway and IN4 Working Waterfront zones?

A: The W3 Working Waterways zone is used for zoning the areas of water. All land and waterways covered by a LEP should generally be zoned.

The IN4 Working Waterfront is to be used for land adjoining the waterfront where maritime industries, small ports, boating facilities etc are to be provided. For larger ports, the SP2 Infrastructure zone should be considered.

Q: Should small creeks etc be zoned one of the Waterway zones?

A: No. Small and intermittent waterways should generally be zoned according to the surrounding zone.

Q: How should waterways in National Parks be zoned?

A: Waterways within a National Park should be zoned E1 National Parks and Nature Reserves.

Environmental overlays

Q: Can environmental sub-zones be used? How can multiple natural resources values be managed?

A: The Standard Instrument does not allow for sub-zones to be created. Where land has particular environmental qualities that need to be addressed through zoning controls, an appropriate zone is to be selected from the eight Standard Instrument zones that specifically provide for environmental protection as part of their core objectives, ie RU2, RE1, RE2, E1, E2, E3, E4 or W1. The choice of zone should reflect the primary intended use of the land.

Planning overlays are the appropriate mechanism for managing multiple natural resources values requiring different planning responses. Overlays may be prepared as a local provision where appropriate. For example a 'water supply area' overlay could identify land within a water supply catchment on a map (which may include land in several different zones), and set out detailed additional considerations or standards that must be applied before consent can be granted to a development application. (See LEP Practice Note PN 06-002 and Planning Circular PS 06-008 for further information on the use of planning overlays.)

Land reserved for public purposes

Q: How should land which is to be acquired for a public purpose be zoned?

A: Land which is reserved for one of the public purposes listed under section 26(1)(c) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and which has not yet been acquired and used for its intended public purpose is to be zoned according to its intended future use, ie:

Public Purpose	Zoning
Open space (including local, and regional, and future)	RE1
National Park	E1
Classified road; Railway; Local road widening; Public place; Public hospital; Public school; Public cemetery	Usually SP2* and the intended public purpose for the land annotated on the Land Zoning Map

Note: * A SP2 zoning will usually be necessary because under section 27 of the EP&A Act and Division 2, Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* the owner initiated acquisition provisions only apply where the land is exclusively set aside for a public purpose (or expressly set aside for a public purpose and also other uses, but those uses do not constitute a 'reasonable use of the land'). The land can be rezoned after it is acquired, if appropriate, to reflect the surrounding zone.

All land reserved for public purposes but not yet acquired is to be identified on the Land Reservation Acquisition Map, which is used to identify the relevant acquiring authority for the land.

Exempt and complying development

Q: Can exempt and complying development be included in DCPs?

A: No. Exempt and complying development controls are to be located in Schedules 2 and 3 in all new LEPs.

Q: Can existing exempt and complying controls be transferred to new LEPs without change?

A: No. The effectiveness of existing exempt and complying development controls in LEPs and DCPs varies widely across NSW. This has impacted on the take-up of exempt and complying development and has flow on effects to the quality of certification where the LEP/DCP requirements are unclear.

Councils should review their existing exempt and complying development provisions and include revised controls in their new draft LEPs. For a small number of councils where exempt and complying provisions are operating efficiently, this may involve minimal changes. However the majority of councils will need to consider improvements to the existing exempt and complying provisions, many of which have been in place for over six years.

Exempt and complying controls:

- Should encompass a broad range of minor development types
- Must not impose blanket exclusions that prevent all types of exempt and complying development being carried on particular land where the issue could be addressed by appropriate standards in Schedules 2 and 3. For example, certain types of exempt and complying development can occur in bushfire prone land provided that appropriate materials are used, and a range of works that do not involve new buildings (eg fencing, changes of use) can be carried out near sewers and easements.
- May only include standards that:
 - Are specific and relevant to the type of development
 - Are measurable and do not involve merit considerations
 - Are set out within the Schedule, and avoid references to external documents (other than specified Australian Standards). Non-specific conditions such as ‘must comply with all relevant standards in any DCP that applies’ should not be included.

Q: Where should standard conditions for complying development be set out?

A: Standard conditions for complying development should be set out in the LEP. At this stage, this should be in a separate Part (eg Part 2) within Schedule 3. Councils should also include an enabling clause following clause 17, eg:

Clause 17A Conditions for complying development

A complying development certificate is subject to the standard conditions for complying development specified in Part 2 of Schedule 3.

It is intended that the Standard Instrument be amended to make specific provision for complying development conditions.

Clauses

Clause 15 Subdivision – consent requirements

Q: What is the difference between clause 15(2)(b) and 15(2)(c)?

A: The same substantive matters are covered in both subclauses, however 2(b) includes additional criteria regarding the requirement for realignments to be ‘minor’, and that there must be no opportunities for additional dwellings. Consideration will be given to merging these subclauses when the standard instrument is next amended.

Q: Can clause 15 be amended to prevent subdivision occurring without consent where the lot created would be less than the minimum size?

A: The ability to subdivide lots to less than the minimum lot size without consent under this clause is being re-examined by the Department in light of comments received from several councils.

Clause 19 Minimum subdivision lot size

Q: Can there be a ‘no subdivision’ area on the Lot Size Map?

A: No. Large minimum subdivision lot sizes (in some cases larger than the existing subdivision pattern) have in the past been used to achieve a planning intent of minimal subdivision (or consolidation), and councils may continue to do this.

Clause 21 Height of buildings

Q: Can Reduced Levels (RLs) be used on the Height of Buildings Map instead of metres?

A: The Department is giving consideration to the request from some councils to amend the Standard Instrument to allow RLs to be used on the Height of Buildings Map in certain locations.

Q: Can storeys be used?

A: The maximum number of storeys in a building (within the specified maximum building height, in metres) can be addressed in a DCP.

Clause 25 Land acquisition in certain zones

Q: What needs to be shown on the Land Reservation Acquisition Map?

A: The Land Reservation Acquisition Map (LRA Map) must identify the particular future public purpose of land that is to be acquired as shown in the second column in the table below. This notation must correspond to the table in clause 25. Note that all references to a map in clause 25 are to the LRA Map.

Public purpose	Marked on the LRA Map as	Acquiring authority listed in clause 25
Open space	Local open space (RE1)	Council
	Regional open space (RE1)	The corporation constituted under section 8, EP&A Act
National park	National park (E1)	Department of Environment and Conservation
Classified road	Classified road (SP2)	Roads and Traffic Authority
Local road	Local road (SP2)	Council
Hospital	Public hospital (SP2)	Department of Health
School	Public school (SP2)	Department of Education and Training
Etc...		

The technical requirements for LEP maps will show how the land is to be identified (outline, colours etc) on the LRA Map.

Land that is being acquired by the Council by agreement outside of this regime need not be shown on the LRA Map.

Once land has been acquired and used for its intended public purpose it should no longer be shown on the LRA Map.

Clause 27 Classification and reclassification of public land

Q: Does clause 27 mean that previous classifications or reclassifications of land under the *Local Government Act 1993* will be lost?

A: No. All previous classifications or reclassifications of land will stand. The details are to be recorded in council’s register of land under section 53(2) of the *Local Government Act*. LEPs are not the place to maintain this historical record, and separate stand-alone reclassification LEPs will not be supported.

Q: Does council have to include all previous classifications of land in the new LEP (eg copy the Schedules from its existing LEPs)?

A: No. When a council prepares a new principal LEP in accordance with the Standard Instrument,

only land that is to be newly classified or reclassified should be listed in the LEP schedule.

Clause 34 Preservation of trees or vegetation

Q: Can tree preservation controls under the LEP be applied to clearing that is permitted without consent under the *Native Vegetation Act 2003*?

A: No. After discussions with the Department of Natural Resources, clause 34 was amended in 2006 to prevent LEP tree preservation controls requiring consent for clearing that is permitted without consent under the *Native Vegetation Act 2003*. This is to reduce the duplication of statutory roles under the *Native Vegetation Act 2003* and the *Environmental Planning and Assessment Act 1979*.

Clause 35 Heritage conservation

Q: How should Aboriginal heritage items be shown on the Heritage Map so as to avoid highlighting their exact location?

A: Only the general locations of Aboriginal items should be shown on maps.

State environmental planning policies (SEPPs) and regional environmental plans (REPs)

Q: Should site specific SEPPs and REPs be included in a council’s LEP?

A: Where appropriate, the provisions of certain location specific SEPPs and REPs may be included in new principal LEPs. Councils should talk to the Department’s regional planning team when commencing preparations for their comprehensive LEP with respect to any location specific SEPPs and REPs in their area.

Q: Should Sydney Harbour waterways be zoned under LEPs?

A: No. The Sydney Harbour Catchment REP will continue as a separate environmental planning instrument for zoning the harbour waterways.

Definitions

General matters regarding definitions

Q: What is the Department’s policy regarding new definitions?

A: The key objective is that a particular land use should usually be categorised the same way in every LEP. This will make plans easier to understand for communities, make doing business in NSW simpler, and will facilitate the development of e-planning which relies on consistent language and categorisation.

The key principles are:

- The standard definitions are to be used wherever they apply.
- The common meaning of a term (eg as can be ascertained from consulting the Macquarie

dictionary) is to be used wherever a term is not defined in the Standard Instrument.

- Local provisions may not define new land use terms for use in zoning tables.

Definitions will not be included for any term where the common meaning would suffice.

Refer to LEP Practice Note PN 06–003 on Definitions for detailed guidance on this issue.

Land use terms

Q: Can new land use definitions be added as a local provision?

A: No. The standard definitions must be used wherever a land use would fall within an existing land use definition. This includes where terms are within any of the broad land use groups, eg retail premises, business premises, office premises, industry, agriculture, tourist and visitor accommodation, residential accommodation etc. Only the standard definitions may be used (or a proposal submitted for the Department to amend the Standard Instrument to include an additional term).

A proposal for a new term to be added to the dictionary should clearly explain the planning issue to be addressed and how the proposed new term would relate to the existing defined terms.

Q: Can additional definitions be included for typical types of exempt and complying development such as pergolas, carports etc?

A: Particular types of exempt and complying development such as pergolas and carports can be described within the schedule using common language without the need for additional definitions.

General terms (non-land use)

Q: What does council need to do to justify including a definition within a local provision?

A: Council will need to justify why a clause cannot be written using common language words. If the Department agrees that a definition is warranted, the term would be set out within the local clause and apply only for the purpose of interpreting that clause.

Further information

A copy of this practice note, the standard instrument, and other specific practice notes on using the standard instrument for LEPs are available on the Department's website www.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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