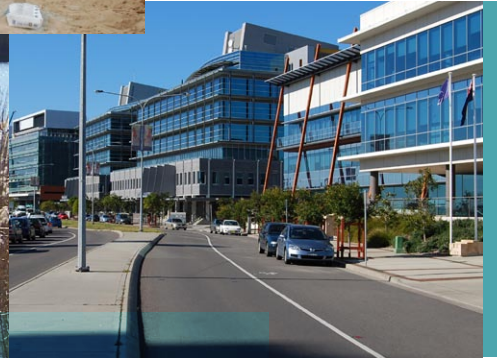




A guide to preparing local environmental plans



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It should be noted that the Guidelines may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the Guidelines and the statutory requirements applying to plan making under the *Environmental Planning and Assessment Act 1979*.

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1. Introduction

These Guidelines are intended to provide guidance and information on the process for making local environmental plans (LEPs) under Part 3 of the *Environmental Planning & Assessment Act, 1979* (the EP&A Act). They also set out specific requirements the Director-General has issued in accordance with s. 55(3) of the EP&A Act concerning the matters that must be addressed in the justification of planning proposals.

The process set out in the EP&A Act has been designed with the goal of enabling the preparation and assessment of proposed local environmental plans to be tailored to their likely impact. Early and thorough consideration of assessment requirements through the issuing of gateway determinations and the incremental preparation of supporting documents ensures effort is invested at appropriate stages of the process and community consultation is informed and meaningful.

Further advice and assistance regarding the preparation of LEPs is available from the Regional Offices of the Department of Planning. Throughout these guidelines reference is made to various functions exercised by the Minister or the Director-General. The first point of contact, however, should always be the local Regional Office. In fact, any person or body proposing to commence the preparation of a LEP is strongly encouraged to contact their Regional Office in the first instance for further information and guidance.

2. What is a local environmental plan?

A LEP is a legal instrument that imposes standards to control development. LEPs are also used to reserve land for open space, schools, transport or other public purposes as well as control advertising and protect trees and vegetation. The purpose of a LEP is to achieve the objects of the EP&A Act. They are a means to implement strategies. A LEP generally comprises a written document and accompanying maps. [EP&A Act s. 24 and 26]

LEPs apply to a particular area, generally the whole, or part of, a local government area. A LEP applying to a particular area is referred to as the **principal LEP**. The process for making a principal LEP and for amending a principal LEP is the same. That is, in order to amend a principal LEP, it is necessary to make another LEP. For convenience, a LEP being made to amend a principal LEP is referred to as an **amending LEP**.

Most LEPs remain in force until they are amended or repealed by an amending LEP. This is important to provide certainty in the planning system. Where appropriate it is possible to specify that a LEP will have effect only for a specified period, or in specified circumstances. The occasions when this is appropriate, however, will be limited. [EP&A Act s. 26(3A)]

All principal LEPs must be made in a standard form prescribed in the Standard Instrument (Local Environmental Plans) Order 2006. Maps which accompany LEPs, such as zoning maps and the like, must also conform with the *Standard technical requirements for LEP maps* (Department of Planning, 2009). The Standard Instrument and standard technical requirements for LEP maps provide consistency in the appearance of LEPs and assist users interpreting planning controls across different local government areas.

Figure 1 – Objects of the EP&A Act

The objects of the *Environmental Planning & Assessment Act, 1979* are:

- a) to encourage:
 - i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - iii) the protection, provision and co-ordination of communication and utility services,
 - iv) the provision of land for public purposes,
 - v) the provision and co-ordination of community services and facilities, and
 - vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - vii) ecologically sustainable development, and
 - viii) the provision and maintenance of affordable housing, and
- b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- c) to provide increased opportunity for public involvement and participation in environmental planning and assessment. [Act s. 5]

3. Who can initiate and make a LEP?

Only the Minister for Planning (or delegate) can make a LEP following a process set out in the EP&A Act and described in section 4 of these guidelines. [the EP&A Act s. 53]

In some limited circumstances, however, the process can be dispensed with. These circumstances relate only to amending LEPs and are described later in section 4.8 of these guidelines. [EP&A Act s. 73A]

A LEP can be initiated by either the council for the local government area to which the LEP is to apply, or, the Minister. [EP&A Act ss. 54-55]

Whether it is a council that has initiated a LEP or the Minister, the body responsible for carrying out the process is known as the relevant planning authority (RPA). For council initiated LEPs, the RPA will be the council. Where the Minister has initiated the process, the Minister will appoint the Director-General, or some other person or body prescribed by the regulations, including a Joint Regional Planning Panel, to be the RPA.

Figure 2 – Circumstances when Minister can initiate a LEP

The Minister may direct that the Director-General (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed local environmental plan in the following cases: [Act s. 54(2)]

- Matters that, in the opinion of the Minister, are of State or regional environmental planning significance;
- Where the local environmental plan will make a provision that, in the opinion of the Minister, is consequential on:
 - the approval of the concept plan for a project under Part 3A of the Act;
 - the making of another environmental planning or other instrument; or
 - changes made to a standard instrument under section 33A of the Act;
- Where the Planning Assessment Commission or a joint regional planning panel has recommended to the Minister that the proposed local environmental plan should be made;
- Where the council for the local government area concerned has, in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed local environmental plan or has not carried out those obligations in a satisfactory manner; and
- Where the proposed local environmental plan is to apply to an area that is not within a local government area.

Further information and guidance regarding the matters the Minister will consider when deciding how to deal with a request to initiate a LEP, and how to make such requests, is described in LEP Practice Note PN 09-004 available on the Department of Planning web-site.

4. What is the process for preparing a LEP?

4.1 The Planning Proposal

The first step in creating a new LEP is the preparation of a planning proposal. A planning proposal is a document that explains the intended effect of the proposed LEP and the justification for making it. [EP&A Act s. 55(1)]

A planning proposal must include the matters set out as follows in Figure 3.

Figure 3 – Matters to be addressed in a planning proposal – including Director-General's requirements for the justification of all planning proposals (other than those that solely reclassify public land).

1. A statement of the objectives or intended outcomes of the proposed local environmental plan. [Act s. 55(2)(a)]
2. An explanation of the provisions that are to be included in the proposed local environmental plan. [Act s. 55(2)(b)]
3. Justification for those objectives, outcomes and provisions and the process for their implementation. [Act s. 55(2)(c)]
 - A. Need for the planning proposal.
 1. Is the planning proposal a result of any strategic study or report?
 2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?
 3. Is there a net community benefit?
 - B. Relationship to strategic planning framework.
 1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?
 2. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?
 3. Is the planning proposal consistent with applicable state environmental planning policies?
 4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?
 - C. Environmental, social and economic impact.
 1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?
 2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?
 3. How has the planning proposal adequately addressed any social and economic effects?
 - D. State and Commonwealth interests.
 1. Is there adequate public infrastructure for the planning proposal?
 2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal? (Note: The views of State and Commonwealth Public Authorities will not be known until after the initial gateway determination. This section of the planning proposal is completed following consultation with those public authorities identified in the gateway determination.)
4. Details of the community consultation that is to be undertaken on the planning proposal. [Act s. 55(2)(e)]

It is important that the first 2 parts of the planning proposal, the objectives and outcomes, and the explanation of provisions, are expressed clearly. They will ultimately provide the basis for the drafting of the legal instrument (the LEP) and must accurately convey the intended effect of the planning proposal for the purpose of community consultation.

If the proposed LEP is to include maps (such as maps for proposed land use zones, heritage areas, flood prone land and the like), they must also be included with the planning proposal. At the initial stage of the process they do not need to be in the final form as set out in the *Standard technical requirements for preparing LEP maps (Department of Planning 2009)*, although they do need to contain sufficient information to explain the substantive effect of the proposed LEP. This means that the maps must clearly and accurately identify the land affected by the planning proposal and the relationship of that land to neighbouring properties. [EP&A Act s. 55(2)(d)]

For the purpose of preparing the justification (the third part of the planning proposal), the Director-General has issued requirements as to the specific matters that must be addressed in all planning proposals (other than those which solely intend to classify or reclassify public land – see section 4.9). [EP&A Act s. 55(3)] These are set out, A through D, in Figure 3.

When preparing the justification:

- It is important that the level of justification for each individual planning proposal is proportionate to the impact the planning proposal will have. This is particularly the case for planning proposals that are inconsistent with the local and/or regional strategic planning framework;
- A response to each of the Director-General of Planning's criteria will not always be necessary depending on the nature and the scale of the planning proposal. If a matter is not considered relevant, the reasons why must be briefly explained; and
- It is appropriate in the early stages of preparing a planning proposal to identify issues that will require detailed investigation if the planning proposal is to proceed, and to acknowledge that those detailed specialist studies will be carried out following the initial gateway determination. The gateway determination will confirm the studies to be undertaken and whether it will be necessary to re-submit the planning proposal for a further gateway determination once they are completed, or whether, subject to the Director-General of Planning approving the form of the now updated planning proposal, it would be appropriate to proceed directly to community consultation.

The planning proposal can be prepared by the RPA, or by a proponent for the proposed LEP. In either event, the RPA is ultimately responsible for the planning proposal and must be satisfied with it such that it is prepared to forward it to the Minister for the next step in the process, being the gateway determination. [EP&A Act s. 56(1)]

More general guidance regarding the preparation of planning proposals can be found in *A guide to preparing a planning proposal (Department of Planning July 2009)*.

4.2 The Gateway Determination

A gateway determination is issued by the Minister for Planning (or delegate) and specifies whether a planning proposal is to proceed and, if so, in what circumstances. [EP&A Act s. 56].

The purpose of the gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal. The gateway determination is a checkpoint for planning proposals before significant resources are committed to carrying out technical studies and investigations. It enables planning proposals that are not credible to be stopped early in the process before resources are committed to fruitless studies and investigations, and before State and Commonwealth Public Authorities are asked to commit their own resources to carrying out assessments.

Once a planning proposal is forwarded to the Minister for Planning (or delegate) by the RPA for the gateway determination, it is entered into the Department's on-line register of planning proposals where progress of the proposed LEP is monitored. It is then assessed by the Department of Planning. The planning proposal and the recommendation of the Department of Planning will be forwarded to the LEP Review Panel. The LEP Review Panel will consider the planning proposal and the recommendation of the Department of Planning before providing their own recommended gateway determination to the Minister for Planning (or delegate).

The Minister for Planning (or delegate) will consider the recommendation of the LEP Review Panel. The gateway determination will indicate the following: [EP&A Act s.56(2)]

- whether the planning proposal should proceed (with or without variation);
- whether the planning proposal should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal);
- the community consultation required before consideration is given to the making of the proposed instrument (the community consultation requirements);
- any consultation required with State or Commonwealth Public Authorities;
- whether a public hearing is to be held into the matter by the Planning Assessment Commission or other specified person or body;
- the times within which the various stages of the procedure for the making of the proposed LEP are to be completed;
- whether the function of making the LEP is to be exercised by the Minister for Planning or delegated to the RPA.

4.3 Consultation with State or Commonwealth public authorities

The gateway determination will identify any consultation required with State or Commonwealth Public Authorities. This will include:

- consultation required under section 34A of the EP&A Act where the RPA is of the opinion that critical habitat or threatened species populations, ecological communities or their habitats will or may be adversely affected by the planning proposal;
- consultation required in accordance with a Ministerial Direction under section 117 of the EP&A Act; and
- consultation that is required because in the opinion of the Minister (or delegate), a State or Commonwealth public authority will or may be adversely affected by the proposed LEP.

The RPA is responsible for forwarding to the State and Commonwealth Public Authorities identified in the gateway determination, a copy of the planning proposal and any supporting studies or information relevant to that public authority, including any additional studies or information required by the gateway determination, or reasonably requested by the public authority. A copy of the gateway determination(s) should also be forwarded to public authorities with the planning proposal.

Following the consultation with State and Commonwealth Public Authorities, the RPA must update the planning proposal in order to complete the section outlining the views of the public authorities consulted on the proposal (section D2 of the planning proposal).

As a consequence of the consultation with public authorities, the RPA may also vary its proposals. If the RPA does vary its proposals, it must forward a copy of the revised planning proposal to the Minister for Planning. If the RPA varies its proposals the Minister for Planning (or delegate) will advise whether a revised gateway determination will be issued as a consequence of the variations, including whether further community consultation must be undertaken. [EP&A Act s. 56(7)]

Updating the planning proposal in order to complete the section outlining the views of State and Commonwealth Public Authorities consulted on the proposal does not in itself constitute a variation to the proposal. Further explanation can be found in section 4.8 of the Guide 'Varying a proposal'.

4.4 Director-General's approval before community consultation

The Director-General of Planning (or delegate) must approve the form of planning proposals, as revised to comply with the gateway determination, before community consultation is undertaken. [EP&A Act s. 57(2)]

Wherever possible this approval will be granted at the same time as issuing the gateway determination. In instances where it is likely the planning proposal will need to be revised as a consequence of the gateway determination, or subsequent consultation with public authorities, the Director General of Planning's approval may be withheld. If the Director General of Planning's approval is withheld, the RPA must obtain approval before any community consultation takes place.

A planning proposal should be a **concise** document that is supported, if necessary, by technical studies and investigations. Nevertheless, if there are circumstances in which it is appropriate to summarise the detailed provisions of a planning proposal for the purpose of community consultation, the EP&A Act provides that the Director General of Planning (or delegate) can approve such a summary if satisfied that it provides sufficient details for community consultation. The RPA should indicate in section 4 of the planning proposal (details of the community consultation that is to be undertaken) that it intends seeking the Director General of Planning's approval to issue a summary of the planning proposal for the purpose of community consultation. A copy of the summary must be submitted for the approval of the Director General of Planning prior to undertaking community consultation. Even in circumstances where a summary is issued for community consultation, the complete planning proposal and supporting studies should also be available for interested members of the public to inspect. [EP&A Act s. 57(2)]

4.5 Community consultation

The gateway determination will specify the community consultation that must be undertaken on the planning proposal. The consultation will be tailored to specific proposals generally as follows:

<i>planning proposal type</i>	<i>exhibition period</i>
Low impact planning proposals*	14 days
All other planning proposals	28 days

* 'Low impact planning proposal' means a planning proposal that, in the opinion of the person making the gateway determination: is consistent with the pattern of surrounding land use zones and/or land uses; is consistent with the strategic planning framework; presents no issues with regard to infrastructure servicing; is not a principal LEP; and does not reclassify public land.

Community consultation is commenced by giving notice of the public exhibition of the planning proposal:

- in a newspaper that circulates in the area affected by the planning proposal;
- on the web-site of the RPA; and
- in writing to adjoining landowners, unless the person making the gateway determination agrees that the number of landowners makes it impractical for the planning authority to notify them.

The written notice must:

- Give a brief description of the objectives or intended outcomes of the planning proposal;
- Indicate the land affected by the planning proposal;
- State where and when the planning proposal can be inspected;
- Give the name and address of the RPA for the receipt of submissions; and
- Indicate the last date for submissions.

During the exhibition period, the following material must be made available for inspection:

- The planning proposal, in the form approved for community consultation by the Director General of Planning;
- The gateway determination; and
- Any studies relied upon by the planning proposal.

The community consultation is complete only when the RPA has considered any submissions made concerning the proposed LEP and the report of any public hearing into the proposed LEP. [EP&A Act s. 57(8)]

4.6 Public hearings

The RPA can decide to conduct a public hearing into any issue associated with a planning proposal. [EP&A Act s. 57(6)]

A person making a submission during the public exhibition of a planning proposal can also request that the RPA conducts a public hearing into the issues raised in their submission. If the RPA considers that the issues raised in the submission are of such significance they should be the subject of a hearing, the RPA must arrange a public hearing. [EP&A Act s. 57(5)]

Where a RPA decides to conduct a public hearing, or is required to conduct a public hearing in the case of LEPs that propose to reclassify public land from “community” to “operational” under the *Local Government Act 1993*, it must give notice of the arrangements for the public hearing in a local newspaper; and in a letter to each of the persons who requested a public hearing when making a submission, at least 21 days before the date of the hearing. Notice of the public hearing must not be given before the conclusion of the public exhibition of the planning proposal to ensure each person making a submission and requesting a public hearing is given the requisite 21 days notice.

4.7 RPA considers submissions

At the conclusion of the public exhibition period the RPA must consider any submission made in respect of the planning proposal.

The RPA may, at any time, vary its proposals as a consequence of its consideration of submissions made during public exhibition, or for any other reason. [EP&A Act s. 58(1)] The RPA can also request the Minister for Planning at this, or any other time, to discontinue the planning proposal. The Minister for Planning, however, is not obliged to discontinue the planning proposal. [EP&A Act s. 58(4)]

If the RPA does vary its proposals, it must forward a copy of the revised planning proposal to the Minister for Planning. Further community consultation is not required, unless directed in a revised gateway determination. [EP&A Act s. 58(2) and (3)] The Department of Planning will advise the RPA whether a revised gateway determination is to be issued.

Otherwise, the next step towards implementing the planning proposal is legal drafting of the LEP.

4.8 Varying a proposal

An early dialogue between the Department of Planning and the RPA regarding the assessment requirements for a planning proposal is an important feature of the process of preparing a LEP. It is important, therefore, that planning proposals can be built upon, or embellished, as a consequence of more detailed studies and investigations in the period following the initial gateway determination and leading up to community consultation.

The EP&A Act provides that if a RPA varies its proposals following the initial gateway determination, it must inform the Minister for Planning, who may issue a revised gateway determination, depending on the nature of the variations.

A RPA is taken to have varied its proposals when it changes the “statement of the objectives or intended outcomes of the proposed LEP” required by s. 55(2)(a) of the EP&A Act (the first element in the planning proposal), or the “explanation of the provisions that are to be included in the proposed LEP” required by s. 55(2)(b) (the second element in the planning proposal).

Changes to the “justification for those objectives, outcomes and provisions and the process for their implementation” required by s. 55(2)(c) of the EP&A Act are not regarded as variations to the proposals and therefore do not require the revised planning proposal to be forwarded to the Minister for Planning.

It should be noted, however, that resubmission of the planning proposal following the completion of studies may be included as a requirement in the gateway determination.

4.9 Circumstances in which it is not necessary to follow this process

In the following circumstances, the Minister for Planning (or delegate) may dispense with all or part of the process described above, including community consultation, in the making of an amending LEP:

- If the purpose of the proposed LEP is to implement the Standard Instrument (Local Environmental Plans) Order 2006 and the Minister is of the opinion that the proposed LEP does not make any substantial changes to the general effect of the existing instrument or instruments; [EP&A Act s. 33A(8A)]
- If the purpose of the proposed LEP is to correct an obvious error in the principal LEP, or address other matters that are of a minor nature; or [EP&A Act s.73A(1)(a) and (b)]
- If in the opinion of the Minister for Planning, the matters dealt with by the amending LEP will not have any significant adverse impact on the environment or adjoining land. [EP&A Act s. 73A(1)(c)]

A RPA wishing to seek the Minister for Planning’s dispensation of all or part of the process must, in the first instance, write to the Director General setting out the reasons why in the context of the criteria described above (sections 33A(8A) or 73A as applicable). The Minister (or delegate) will advise which, if any, parts of the process can be dispensed with.

4.10 Classification and reclassification of public land

In the case of proposed LEPs which are being prepared solely to classify or reclassify public land, the Director General of Planning has issued the following requirements as to the specific matters that must be addressed in the justification for the planning proposal: [EP&A Act s. 55(3)]

Figure 4 – Director-General’s requirements regarding the matters that must be addressed in the justification of all planning proposals to reclassify public land

- A.** Is the planning proposal the result of any strategic study or report?
- B.** Is the planning proposal consistent with the local council’s community plan, or other local strategic plan?
- C.** If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished.
- D.** The concurrence of the landowner, where the land is not owned by the relevant planning authority.

4.11 Legal drafting of the LEP

The LEP is the legal instrument which gives effect to the planning proposal. The drafting of the LEP is undertaken by Parliamentary Counsel upon receipt of instructions from the Department. The Department will issue instructions to Parliamentary Counsel after receiving the finalised planning proposal from the RPA.

The Department of Planning will consult the RPA on the terms of the LEP to ensure it is consistent with the objectives and outcomes and the explanation of provisions set out in parts 1 (the statement of objectives or intended outcomes) and 2 (the explanation of provisions) of the planning proposal. As mentioned earlier, it is important that these 2 elements of the planning proposal are clearly expressed from the outset. Communications between the Parliamentary Counsel and the Department of Planning and the RPA are subject to legal professional privilege and must be maintained in the strictest confidence.

Parliamentary Counsel will produce a draft instrument (the LEP) and an opinion that the draft instrument can be legally made. By this stage, any maps required to accompany the LEP must be prepared strictly in accordance with the *Standard technical requirements for LEP maps* (Department of Planning 2009).

4.12 Making the LEP

At the completion of community consultation and after the legal instrument has been drafted, the Minister for Planning (or delegate) may make a LEP. If the Minister for Planning (or delegate) considers it appropriate, the proposals submitted by the RPA can be varied. The Minister for Planning (or delegate) can also decide not to make a proposed LEP, or to defer the inclusion of a matter in a proposed LEP. [EP&A Act s. 59(2) and (3)]

Once a decision is made to make a LEP, the decision is given effect by publishing the LEP (including maps) on the NSW legislation website.

5. Benchmark timeframes for preparing LEPs

From July 2009, the time taken to prepare LEPs will be monitored and published in subsequent NSW Local Development Performance Monitoring reports. The purpose of collecting and

publishing this information is to ensure there is an ongoing focus on improving the process and timeliness of preparing and making LEPs.

LEPs come in many different forms and in many different degrees of complexity. It is important, nevertheless, that the State planning system responds to changing circumstances and emerging opportunities and that planning proposals are given proper consideration within a reasonable timeframe.

To this end, benchmark timeframes have been set for the following types of LEPs where they are consistent with the State's strategic planning framework:

- Major land release and urban renewal - 6-12 months
- Minor spot rezonings - 3 months

The Department aims to achieve a 50 percent reduction in the time taken to prepare LEPs overall.

Figure 5 – Process to make a local environmental plan

