



PLANNING SYSTEM

Local planning

Circular	PS 06–008
Issued	03 April 2006
Related	

Standard Instrument (Local Environmental Plans) Order 2006

This circular provides an overview of the Standard Instrument (Local Environmental Plans) Order 2006 and its implications for preparing local environmental plans.

Introduction

The Standard Instrument (Local Environmental Plans) Order was gazetted on 31 March 2006. The Order prescribes a standard form and content of a principal local environmental plan (LEP) for the purposes of section 33A of the *Environmental Planning and Assessment Act 1979* (the Act).

The standard instrument is part of a package of local planning reforms, which include:

- changes to the Act in 2005 aimed at reducing the number of plans and improving consistency in planning instruments
- gazettal of revised ministerial directions under section 117 of the Act
- introduction of an LEP Review Panel to provide early advice from the Department on the preparation of new LEPs and reduce the overall number of LEP amendments
- Environmental Planning and Assessment Amendment Bill 2006, which proposes further reforms aimed at improving local planning in NSW.

This Circular provides an overview of the key operational aspects of the standard instrument. Further guidance on the preparation of LEPs using the standard instrument will also be provided in practice notes issued from time-to-time by the Department.

When does the standard instrument take effect?

The standard instrument is not in itself an environmental planning instrument (EPI) under the Act. The provisions set out in the standard instrument will only have the legal force of an EPI once they are adopted as part of a council's gazetted LEP.

The standard instrument will therefore come into effect incrementally. The implementation will include the following stages.

From 31 March 2006

Following the date of gazettal, draft principal LEPs will be required to be prepared in accordance with the standard instrument and incorporate the relevant mandatory provisions before they can be publicly exhibited or recommended for gazettal.

However, the standard instrument will not be a matter for consideration under section 79C(1)(a)(ii) of the Act until such time as a council publicly exhibits a draft LEP for its area that adopts the relevant standard instrument provisions.

When a council exhibits a draft principal LEP prepared in accordance with the standard instrument

When a draft principal LEP that has been prepared in accordance with the standard instrument is placed on public exhibition under section 66 of the EP&A Act, the draft LEP (including the relevant provisions of the standard instrument) will become a matter for consideration under section 79C(1)(a)(ii) of the Act.

The public exhibition of a draft LEP under section 66 of the Act must include:

- a copy of the standard instrument
- a statement that the standard instrument substantially governs the content and operation of the draft LEP, and that any submissions made on the draft LEP should have regard to this fact.

When a new principal LEP prepared in accordance with the standard instrument is gazetted

The standard instrument provisions will only commence their full legal effect on development once a new principal LEP prepared in accordance with the standard instrument has been gazetted for the local government area.

Councils will take between two and five years to prepare a new principal LEP for their area which accords with the standard instrument.

Effect of the standard instrument

The standard instrument provides a ‘template’ which councils will use as the basis for preparing a new LEP for their local area within the next five years, using standard:

- zones (including standard zone objectives and mandated permitted and prohibited uses)
- definitions
- clauses
- format.

Councils can:

- prepare additional local provisions that address local planning issues and which reflect the outcomes of local and regional strategies
- add local objectives to the core zone objectives
- add additional permitted or prohibited land uses for each zone in the land use table
- decide whether or not to include optional provisions in their LEP
- specify what will be permitted as exempt and complying development
- insert local criteria or standards into certain mandatory clauses
- prepare maps that specify the lot sizes, building heights and floor space ratios appropriate for their local area
- define terms within a local provision in certain circumstances
- suggest new definitions to the Department of Planning that could be suitable for inclusion in the standard dictionary for all councils to use.

Councils can not:

- add new zones or create sub-zones
- prohibit uses that are mandated as permissible in a zone
- permit uses that are mandated as prohibited in a zone
- add local provisions that are inconsistent with the mandatory provisions
- change the standard dictionary by altering or adding to the standard definitions
- change the standard clause numbering
- change the format
- change the wording of the provisions.

All local provisions prepared by councils must be consistent with the relevant core zone objectives and mandated land uses, other mandatory provisions, and relevant State or regional planning guidance (including SEPPs, REPs, section 117 directions, metropolitan or regional strategies and other relevant policy guidance).

A certificate cannot be issued under section 65 of the Act for the exhibition of a draft LEP unless the Director-General is satisfied that the draft LEP has been prepared in accordance with the standard instrument.

Similarly, a Director-General’s report on a draft LEP cannot be provided to the Minister for Planning under section 69 of the Act unless the Director-General is satisfied that the draft LEP has been prepared in accordance with the standard instrument. If a draft LEP does not accord with the standard instrument, section 68 (9) of the Act allows:

- the council and the Director-General to agree to the council making changes to the LEP and resubmitting it, or
- the Director-General to return the draft plan to the council to make the necessary changes to ensure that it does accord with the standard instrument.

New principal LEPs will include a statement that the applicable mandatory provisions of the standard instrument are adopted.

Mandatory provisions

The standard instrument identifies mandatory provisions for inclusion in new principal LEPs. These are either compulsory, (including compulsory [if applicable]), or optional.

Compulsory provisions

Compulsory provisions are those which must be included in all principal LEPs. These are generally administrative matters that are common to all LEPs or planning matters that are relevant to all councils in NSW. In many cases these provisions are already included in many existing LEPs, although not necessarily with consistent wording. Examples include definitions, zones, zone objectives, administrative clauses (such as ‘name of plan’ and ‘consent authority’) and common planning issues such as exempt and complying development and subdivision.

Compulsory [if applicable] provisions

Compulsory [if applicable] provisions are clauses that are compulsory where specified conditions exist. These generally relate to the environmental or other attributes of the local government area (e.g. ‘compulsory if the LEP covers land within the coastal zone’), or where certain other provisions are included in the LEP (e.g. ‘compulsory if clause 19 is adopted and land to which plan applies includes land zoned RU1, RU2, RU4 or RU6’).

Councils must include the relevant Compulsory [if applicable] provision if the condition specified in parentheses applies.

Optional provisions

Optional provisions are a type of mandatory provision which councils can choose whether or not to use, but which cannot be altered. Councils cannot include local provisions in their LEP (or similar provisions in their development control plan [DCP]) that could be addressed using the optional provisions in the standard instrument.

Examples include clauses on height of buildings, floor space ratio and minimum subdivision lot size. If a council wishes to make provision for these issues in its local area it must do so by adopting the relevant optional clause in its LEP and filling in the relevant local content where applicable (e.g. specifying numerical standards for building height).

Non-mandatory provisions

The standard instrument does not currently contain any non-mandatory provisions under section 33A 2(c) of the Act.

Local provisions

Local provisions refer to any LEP content (e.g. clauses, objectives, additional permitted or prohibited land uses) that is not part of the standard instrument. Local provisions may be prepared by councils to address matters that are relevant to their local area and which are not covered by provisions in the standard instrument.

Local provisions may not deal with planning matters that are addressed by mandatory provisions (whether compulsory or optional) in the standard instrument. The inclusion of local provisions should be justified, e.g. in the context of a local or regional strategy. Matters that might be covered by local provisions include:

- issues that are the subject of State or regional planning guidance requiring councils to develop tailored provisions that are appropriate to their local area, e.g. developing flood planning provisions using the NSW Government's Floodplain Development Manual
- local environmental or hazard 'overlays' that apply in addition to zones
- defining local design objectives or neighbourhood character
- other provisions that reflect the outcomes of local strategic planning and consultation.

All local provisions must be consistent with relevant State or regional planning guidance and the mandatory provisions in the standard instrument.

Format

The standard instrument provides a consistent format for all new principal LEPs in NSW. Provisions common to each LEP will be located in the same place in all principal LEPs, making it easier to find provisions. The format is designed so that mandatory provisions can be updated simultaneously and consistently in all LEPs. Consideration may be given to further refinements to the format of the standard instrument as part of a future review.

Where an optional provision is not adopted by the council, or a compulsory [if applicable] provision does not apply, the number or other identifier of the provision shall be shown in the plan with the words 'not adopted' or similar wording.

Definitions

The standard instrument includes a dictionary of standard terms relating to land uses and other matters relevant to the interpretation of LEPs.

The definitions in the standard instrument are mandatory provisions and may not be altered or deleted. Councils cannot add local definitions to the dictionary.

Although the standard dictionary includes 241 terms, only the terms that are actually used in a council's LEP will be reproduced in that council's plan. This will mean that for most councils the dictionary that appears in their LEP will be much shorter.

Councils may propose a new definition for inclusion in the standard instrument where it can be justified that no existing standard definitions are suitable. Requests for new standard definitions will be considered by the Department of Planning and where appropriate, will be added to the standard instrument at the next review. Requests for new terms to be defined should be submitted to the Department as early as possible during the LEP preparation process, e.g. at section 54 notification stage.

Where appropriate, councils might also be permitted to define terms that are used in a local provision, however the definition would be set out within the relevant (local) clause and would only apply for the purposes of interpreting that clause.

Zones

The standard instrument includes 34 zones from which councils can select in preparing their LEPs. Councils do not need to use all the zones. Only those zones which are used in a council's LEP will appear in their gazetted plan.

Each zone has one or more core objectives for development in the zone. Core objectives may be supplemented where appropriate with local objectives prepared by the council, provided that these are consistent with the standard objectives and mandated land uses.

Councils cannot add new zones or create sub-zones. Where appropriate, LEPs may, in addition, set out ‘overlay’ controls as local provisions. Such provisions would consist of a map and associated heads of consideration for development) that apply in addition to the zoning of the land. They may apply to land that has particular environmental, hazard or design constraints (e.g. flood prone land, wildlife corridors, catchments) and which may be in different zones. Any local overlay provisions will apply in addition to the objectives and land use table for zones, and may not alter the mandated permissible or prohibited uses. Any overlay type provisions must be consistent with any relevant State or regional policy guidance.

Permitted and prohibited development

The gazetted standard instrument adopts a land use table format for identifying permitted and prohibited land uses, as this was preferred over a land use matrix by the majority of respondents to the exhibition of the draft standard instrument in late 2005.

Councils may choose to prepare a land use matrix for information purposes where they believe that this will aid understanding of their LEP, however this will not form part of the gazetted legal instrument.

The land use table in the standard instrument specifies certain mandated uses that are permitted or prohibited in certain zones. In addition to the mandated uses for each zone, councils will need to determine whether to permit (with or without consent) or prohibit the other land uses which are defined in the dictionary.

In supplementing the mandated land uses for each zone, councils should seek to maximise the range of appropriate uses that are permissible with or without consent. For most zones the preferred approach will be to:

- specifically list any uses that may be undertaken without consent as ‘permitted without consent’
- specifically list land uses that will always be inappropriate in the zone (no matter how well designed) as ‘prohibited’
- allow all other (unnamed) uses as ‘permissible with consent’.

This will minimise the need to undertake spot rezonings or other ad hoc LEP amendments to permit additional acceptable uses that were not envisaged during the initial LEP preparation. An exception to this would be the environmental protection and recreation zones, where it is generally appropriate to list only the permitted uses, and for remaining development to be prohibited.

Councils must give effect to any relevant strategies, plans, policies or directions when determining permitted and prohibited land uses.

Clauses

The standard instrument sets out 36 standard clauses as mandatory provisions. Councils must include all compulsory clauses, and must also include all compulsory [if applicable] clauses where the conditions specified in parentheses apply. The standard instrument also includes a number of optional clauses, which councils may choose whether or not to include.

Some clauses allow or require councils to provide specific local details such as:

- preparing maps to show the land to which development standards, e.g. minimum lot size and building height apply
- setting out the objectives for development standards clauses and inserting the numerical standards for minimum lot size, building height, floor space ratio etc. that are to apply
- identifying additional areas where exempt and complying development cannot be carried out, if desired
- identifying the relevant public authority (with the authority’s consent) for the acquisition of land that is reserved for public purposes.

Standard clauses will save councils time and resources in consultation and drafting their LEPs as they will avoid the need to resolve issues already dealt with in the standard instrument. This will also save time and resources in the exhibition, assessment of submissions and reporting to the Director-General, and the consideration of draft LEPs by the Parliamentary Counsel’s Office.

It is expected that as part of the ongoing review of the standard instrument that new standard clauses may be included to address issues that would benefit from a consistent planning approach across NSW.

Maps

A number of mandatory provisions in the standard instrument (both compulsory and optional) require maps to be prepared. Examples include clauses on minimum lot sizes and land acquisition. Local provisions may also include additional maps, e.g. environmental and hazard ‘overlays’.

Two or more maps may be combined into a single map where appropriate (in accordance with clause 6) to minimise the number of hard copy maps that may need to be produced. Technical requirements for LEP maps are currently being finalised.

Directions and notes

The standard instrument order includes three different types of notations which have different functions:

- notes—which do not have statutory force, but are included for interpretation purposes (e.g. a note in clause 16 identifies the relevant provisions of the Act relating to exempt development). Notes used in the standard

instrument will be replicated in councils' gazetted LEPs

- directions—which relate to the form and content of LEPs. Councils must give effect to any relevant directions when preparing their LEPs. Unlike notes, the directions used in the standard instrument will not be replicated in councils' gazetted LEPs
- bracketed words in italics—which are to be replaced by the appropriate local provision wherever they appear, e.g. inserting the name of the local government area.

What happens when mandatory provisions are amended

When the order is amended to make changes to the mandatory provisions of the standard instrument, then any LEP (or draft plan) that adopts those provisions will be automatically amended to reflect the changes (section 33A (4) of the Act). When this happens existing plans on the NSW legislation website, www.legislation.nsw.gov.au will be updated.

Standard clause numbering in the standard instrument will ensure that any amendment by the Minister will not affect the numbering scheme in council's LEP. The Minister's order that amends the standard instrument may make provision of a savings or transitional nature as a result of the amendment of the standard instrument.

Reviewing and updating the standard instrument

An annual review process will be established to ensure that the standard instrument is regularly reviewed and remains up-to-date and relevant.

New provisions will be added over time in response to planning issues that affect many or all councils in NSW. These may be developed to implement State policies or regional strategies, or may reflect issues identified by councils as they prepare their LEPs. Existing provisions may be amended in response to changes in State policy, or as the result of court cases or issues raised by councils or other stakeholders.

Appropriate savings or transitional provisions may apply where proposed changes may have impacts on the operation of existing LEPs.

How does the standard instrument apply to LEPs that are already underway

All draft principal LEPs are now to be prepared in accordance with the relevant provisions of the standard instrument before the Director-General certifies the draft plan for public exhibition or recommends a draft LEP for gazettal.

However, the savings and transitional provisions, set out in Schedule 6 of the Act, allow for a reasonable approach to be taken where councils are already a long way down-the-track of preparing a new principal LEP.

A draft LEP that is not in accordance with the standard instrument may be permitted to proceed where the Director-General is satisfied that:

- significant council resources have already been expended in the preparation of the draft instrument before the standard instrument was made, or
- the draft instrument makes a necessary amendment of a principal LEP which was made before the standard instrument order, or
- the draft instrument makes a necessary amendment to a LEP which was made under the circumstances referred to in first dot point above.

In all cases the Director General will need to be satisfied that satisfactory arrangements have been made for the making of a replacement instrument in accordance with the standard instrument.

Further information

More information, including the standard instrument for LEPs, is available from the Department's website, www.planning.nsw.gov.au.

Further enquiries can also be directed to the Department of Planning regional office nearest to you.

Authorised by:

Alice Spizzo

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.

Crown copyright 2006
NSW Department of Planning
www.planning.nsw.gov.au
DOP 06_001

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.