



Planning circular

PLANNING SYSTEM

Local Planning

Circular	PS 21-012
Issued	2 December 2021
Related	Replaces PS 06-008

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 3.20 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This Circular provides an overview of the key operational aspects of the standard instrument.

Effect of the standard instrument

The standard instrument provides a 'template' which councils have used as the basis for preparing the LEP for their local area, using standard:

- zones (including standard zone objectives and mandated permitted and prohibited uses);
- definitions;
- clauses; and
- 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, floor space ratios and additional permitted uses appropriate for their local area;
- define terms within a local provision in certain circumstances; and
- suggest new definitions to the Department of Planning, Industry and Environment (the Department) that could be suitable for inclusion in the standard dictionary for all councils to use.

Councils cannot:

- add new 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; or
- 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, section 9.1 directions, metropolitan or regional strategies and other relevant policy guidance).

Mandatory provisions

The standard instrument identifies mandatory provisions for inclusion in 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. Examples include definitions, zones, zone objectives, administrative clauses (such as 'name of plan' and 'consent authority') and common planning provisions 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 4.1 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 3.20(2)(c) of the EP&A 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;
- local environmental or hazard 'overlays' that apply in addition to zones;
- defining local design objectives or neighbourhood character; and
- 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 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.

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 not applicable' 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.

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 than that within the standard instrument.

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 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.

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 a list of 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 published 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. 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. 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 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 identified in Direction 5 of the Order.

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 set the land use tables to 'open' by:

- specifically listing any uses that may be undertaken without consent as 'permitted without consent';
- specifically listing land uses that will always be inappropriate in the zone (no matter how well designed) as 'prohibited'; and
- allowing all other (unnamed) uses as 'permissible with consent'.

This minimises 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

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; and
- identifying the relevant public authority (with the authority's consent) for the acquisition of land that is reserved for public purposes.

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 1.7) to minimise the number of maps that may need to be produced.

Technical requirements for LEP maps have been set by the Secretary of the Department in accordance with Schedule 3, section 3 (3) of the EP&A Act and are outlined in [*Standard Technical Requirements for Spatial Datasets and Maps \(Version 2. - dated August 2017\)*](#). This is also described in planning circular *PS 21-011 Requirements for councils to provide certain planning documents and data via the NSW Planning Portal*.

LEP maps are made available on the NSW Planning Portal.

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. Notes used in the standard instrument will be replicated in councils' published 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' published LEPs
- 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 3.20(4) of the Act).

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

New provisions may 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.

Further information

Planning circular PS 21-011 Requirements for councils to provide certain planning documents and data via the NSW Planning Portal.

For further information please contact Service NSW on 13 77 88.

Department of Planning, Industry and Environment circulars are available at:

planning.nsw.gov.au/circulars

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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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