Local Environmental Plans

A guide to preparing local environmental plans
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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.

A guide to preparing local environmental plans
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1 Introduction

This guideline provides guidance and information on the process for making local environmental plans (LEPs) under Part 3 of the Environmental Planning & Assessment Act, 1979 (the Act).

The process as set out in the Act enables the preparation and assessment of proposed LEPs to be tailored to their complexity and likely impact. Early consideration of assessment requirements through the issuing of a Gateway determination and the incremental preparation of supporting documents ensures effort is invested at appropriate stages of the process and community consultation is informed and meaningful.

Any person proposing an amendment to an existing LEP should initially discuss the matter with the relevant council. Councils are able to provide advice on the matters that should be included in a planning proposal and any other specific procedural matters that must be completed by a proponent when preparing a planning proposal to support an amendment to a LEP. If further advice is required, the initial point of contact with the Department of Planning and Environment (the Department) should be via its regional offices.

This guideline also details the procedures for Rezoning Reviews and Gateway Reviews. A proponent can request a Rezoning Review when a council fails to support the preparation of a planning proposal and / or submit the proposal for a Gateway determination within a reasonable timeframe, or when a council resolves not to support a planning proposal.

A review of a Gateway determination can be requested by either a proponent or a relevant planning authority. The request to review the Gateway determination may be based on the conditions imposed by the Gateway, the decision (ie. whether or not to proceed) or the requirement to resubmit the planning proposal to the Gateway for further consideration.

To streamline the plan making process, plan making powers have been delegated to councils for routine matters (eg reclassifications that do not require the Governor’s approval, minor map amendments and strategy consistent rezonings) and other matters that the Gateway determines are of local planning significance. Councils will be issued with an authorisation to finalise and make the plan at the time a Gateway determination is issued. Procedures and general guidance on how to progress a delegated plan are also included in this guide.

This guide should also be read in conjunction with ‘A guide to preparing planning proposals’. That guide provides more detailed advice about what is required in a planning proposal document, which is a pre-cursor to a LEP. It also sets out specific requirements that the Secretary has issued in accordance with s55(3) of the Act concerning the matters that must be addressed when preparing planning proposals.
2 What is a local environmental plan?

A LEP is a legal instrument that zones land, imposes standards to control development, or implements a state or local policy outcome. A LEP may also be used to reserve land for open space, as well as protecting trees and vegetation and items and areas of cultural heritage significance. The purpose of a LEP is to achieve the objects of the Act. It is a means to implement strategies, giving legal effect to where and under what circumstances places should be developed or particular environmental controls imposed. A LEP generally comprises a written document and accompanying maps.

A LEP applies to a particular area, generally the whole or part of a local government area (LGA). A LEP applying to the whole of a LGA 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. LEP maps must also conform to the ‘Standard Technical Requirements for Spatial Datasets and Maps’. The Standard Instrument and standard technical requirements for spatial datasets and maps provide consistency in the appearance of LEPs and assist users interpreting planning controls across different LGAs. Complying with the standard technical requirements will also assist in the provision of an e-mapping platform and enable all LEP maps to be made available online after the plan is made.
3 Who can initiate and make a LEP?

The Minister for Planning (or delegate) for all land outside of the Greater Sydney Region or the Greater Sydney Commission (GSC) (or delegate) for all land within the Greater Sydney Region can make a LEP following a process set out in the Act and described in section 5 of this guideline [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 5.5.9 of these guidelines [EP&A Act s. 73A].

A LEP can be initiated by either the council for the LGA to which the LEP is to apply or by an authority appointed by the Minister or GSC [EP&A Act ss. 54-55].

Whether it is a council that has initiated a LEP or an authority appointed by the Minister or GSC, the body responsible for carrying out the process is known as the relevant planning authority (RPA). For council initiated LEPs the RPA will generally be the council. Where the Minister or GSC has initiated the process, the Minister or GSC will direct the Secretary or some other person or body prescribed by the regulations, such as a Planning Panel, to be the RPA.

Circumstances when Minister (or GSC) can initiate a LEP

The Minister (for all land outside of the Greater Sydney Region) or the GSC (for all land within the Greater Sydney Region) may direct that the Secretary of the Department of Planning and Environment (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed instrument in the following cases [EP&A Act s. 54(2)]:

- the proposed instrument relates to a matter that, in the opinion of the Minister or GSC, is of state or regional environmental planning significance or of environmental planning significance to a district within the meaning of Part 3B
- the proposed instrument makes provision that, in the opinion of the Minister, is consequential on:
  - the approval of the concept plan for a project under Part 3A
  - the making of another environmental planning or other instrument
  - changes made to a standard instrument under section 33A
- the Planning Assessment Commission or a Planning Panel has recommended to the Minister or GSC that the proposed instrument should be submitted for a determination under section 56 (Gateway determination) or that the proposed instrument should be made
- a recommendation has been provided under section 15 (b) by the Secretary of the Department of Planning and Environment that the proposed instrument should be submitted for a determination under section 56 or that the proposed instrument should be made
- the council for the local government area concerned has, in the opinion of the Minister or GSC, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner
- the proposed instrument is to apply to an area that is not within a local government area.

Further information and guidance regarding the matters the Minister (or GSC) 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’s website at www.planning.nsw.gov.au.
4 What is the process for preparing a LEP?

The plan making process normally involves the following key components:

- the preparation of a planning proposal
- the issuing of a Gateway determination
- community and other consultation on the planning proposal (as required)
- finalising the planning proposal
- drafting of the LEP (legal instrument)
- making the plan
- notifying the LEP on the NSW Government Legislation website.

Two administrative review mechanisms exist within the plan making process – ‘Rezoning Review’ and ‘Gateway Review’. These review mechanisms allow councils, relevant planning authorities and proponents to seek a review of decisions in relation to proposed amendments to LEPs.

To increase the involvement of councils in the plan making process and streamline the processing and making of draft LEPs, certain plan making powers are delegated to councils.

A flowchart detailing the LEP plan making process is provided at Attachment 1.

4.1 Delegation of plan making functions to local councils

Local plan making functions are now largely carried out by councils. Types of proposed instruments that are routinely delegated to councils to make include:\(^1\):

- mapping corrections
- LEPs which will result in a relaxation of a development standard on a site to promote development including potential increases to FSR and height of building controls and, reduced minimum lot sizes
- Section 73A matters e.g. amending references to documents/agencies, minor errors and anomalies
- reclassification proposals where the Governor’s approval is not required in relation to the removal of covenants, trusts etc relating to the land
- heritage LEPs related to specific items (whether adding or removing an item from a Heritage Schedule) supported by an Office of Environment and Heritage endorsed local strategy or where the Office of Environment and Heritage provides preliminary support to the proposal
- spot rezonings consistent with a Regional Strategy or a local strategy endorsed by the Secretary
- spot rezonings that will result in an upzoning of land in existing areas zoned for residential, business, and industrial purposes, and
- any other matter that the Gateway determines is a matter of local planning significance.

Other types of LEPs not identified above may be delegated to councils if the Gateway agrees that the matter is of local significance.

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\(^1\) Matters that will be routinely delegated to a Council under administration are confirmed on the Department’s website

Proposed instruments which would ‘down zone’ a parcel of land (ie reduce a site’s development potential) or which propose to introduce more restrictive development standards or controls will be considered on a case-by-case basis.

A planning proposal which relates to a ‘suspension of covenants clause’ under section 28 of the Act or that discharges interests in public land under section 30 of the Local Government Act 1993 will not be delegated to councils. These types of plans require the Minister or GSC to make a recommendation directly to the Governor who must approve the provisions before the plan can be made.

The following plan making functions of the Act will be delegated to councils:

- the decision whether to make or decide not to make a plan [EP&A Act s. 59(2)].
- deferring a matter from a plan [EP&A Act s. 59(3)].
- the ability to identify which matters must be considered and which stages of the plan making process must be carried out again prior to resubmission [EP&A Act s. 59(4)] if the council determines not to proceed with a proposal or if a matter is deferred from the LEP.

Plan making delegation operates in respect of a draft LEP on receipt by council of a written authorisation to exercise delegation (the authorisation). The authorisation is issued to councils as part of the Gateway determination. When submitting a planning proposal, councils are required to identify whether they will, or will not be seeking an authorisation to make the plan for each planning proposal.

Section 23 of the Act allows the Minister and the Secretary to delegate functions to a council and/or an officer or employee of a council. Similarly, Section 11 of the Greater Sydney Commission Act 2015 saves existing Ministerial delegations and also allows the GSC to delegate plan making functions to certain bodies. A council is to formally accept the delegation before the Department will issue an authorisation in respect of any individual draft LEP.

If a council chooses to accept the delegation, it may sub-delegate the function to an officer within council (usually the General Manager or planning director) who will exercise the delegation. If a council chooses to sub-delegate the function, the council should advise the Department at the same time it accepts the delegation. When submitting a planning proposal to the Gateway a council should advise the Department whether the council or an officer will be exercising the delegated function.

An authorisation for a RPA to exercise plan making delegation may be withdrawn by the Minister, GSC or delegate. This may occur, for example, if:

- the planning proposal is not being processed consistent with the Gateway determination;
- there are inconsistencies with Section 117 Directions that have not been adequately addressed; or
- there is an unresolved objection from a public agency that has been consulted in accordance with the Gateway determination.
5 The stages in the plan making process

5.1 Rezoning Reviews

The Rezoning Review mechanism allows proponents to make a request that an independent body review a request for a planning proposal prior to a Gateway determination being issued.

Rezoning Reviews are determined by Planning Panels\(^2\) or the Planning Assessment Commission (the Commission).

Attachment 2 sets out the steps in the Rezoning Review process undertaken by Planning Panels and the Commission. Those steps are explained further below.

Proponents will not be able to rely on a submission made during the exhibition of a council’s comprehensive LEP to form the basis of a request under the Rezoning Review mechanism. A proponent must lodge a request to prepare a planning proposal with a council before a review request can be made. For more information, see the Department’s publication ‘A guide to preparing planning proposals’.

Step 1 – Proponent seeks review

If a proponent (eg. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument\(^3\), it may ask for a Rezoning Review if:

a) the council has notified the proponent that the request to prepare a planning proposal is not supported; or

b) the council has failed to indicate its support 90 days after the proponent submitted a request, accompanied by the required information\(^4\) or has failed to submit a planning proposal for a Gateway determination within a reasonable time after the council has indicated its support.

Councils currently process requests to prepare planning proposals in a number of different ways. In general terms, the 90 day assessment period may commence in a number of ways including:

- when council formally acknowledges the proponent has lodged sufficient information to support their request; or
- when council accepts a fee for the assessment of the initial request to prepare a planning proposal; or
- when council accepts a fee (staged or lump sum) to progress the planning proposal; or
- when a request has been lodged in accordance with an existing council policy.

The Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires councils to notify a proponent when the council decides not to prepare a planning proposal. The proponent then has 42 days\(^5\) from notification to request a review of the council’s decision.

\(^2\) Planning Panel is a Joint Regional Planning Panel or a Sydney Planning Panel.

\(^3\) A proposed instrument may be a rezoning proposal to change a land use zone, or a proposal to change the development standards, land use table, local provisions or additional permitted uses (ie. Schedule 1) in LEPs.

\(^4\) ‘A guide to preparing planning proposals’ sets out what information a proponent may provide when requesting council to prepare a planning proposal. Information requirements will depend on the complexity of the planning proposal. Section 55 of the Act sets out what information a planning proposal is to include when submitted for a Gateway determination.

\(^5\) Periods will be extended over the Christmas and New Year periods.
Where a council has not made a determination after 90 days, the proponent may request a review any time after the 90 days has lapsed. There is an expectation that a planning proposal would be submitted for a Gateway determination no more than 42 days after Council has determined to support a proponents rezoning request. A proponent should contact the Department’s regional office to discuss the opportunity for seeking a Rezoning Review if there are significant delays between council making a determination and submitting a planning proposal for a Gateway determination.

A proponent may request a review by writing to the Department and providing the following:

- a completed application form;
- a copy of the proponent’s request for the council to prepare and submit a planning proposal for Gateway determination, including all supporting material and information that was submitted to Council (Note: A planning proposal request which has been amended after Council has resolved to not support the matter is not eligible for a Rezoning Review. The revised planning proposal request would need to be submitted to Council as a new planning proposal request);
- all correspondence from the council in relation to the proposed instrument, including (if relevant) a copy of the council’s advice detailing why the council did not proceed with preparing a planning proposal;
- all correspondence from other Government agencies, if available, about the proposed instrument;
- proponent’s justification to the Strategic and Site Specific Merit tests (Refer to Step 2), to confirm why a review is warranted;
- disclosure of reportable political donations under section 147 of the Act, if relevant; and
- administration and assessment fee.

The Department will forward Rezoning Review requests to the relevant Planning Panel or Commission within 3 business days of receipt.

The council will be notified upon receipt of an application and requested to provide any comments, additional information and confirmation that the proposal which has been submitted to the Planning Panel or Commission is consistent with what was considered by the council.

The council will have 21 days to provide its response to the Planning Panel or Commission.

Step 2 – Assessment by Planning Panel or Commission

The Planning Panel or Commission will undertake an assessment to determine whether the proposal:

a) has strategic merit as it is:
   - Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or
   - consistent with a relevant local strategy that has been endorsed by the Department; or

6 The relevant administration and assessment fee is confirmed on the Department’s website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning
• responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls.

There will be a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old, unless the proposal can clearly justify that it meets the Strategic Merit Test.

**Note:** A draft regional plan outside of the Greater Sydney Region, draft district plan within the Greater Sydney Region or draft corridor/precinct plan that has been released for public comment by the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment does not form the basis for the Strategic Merit Test where the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment announces that there is to be another exhibition of, or it is not proposed to finalise, that draft regional, district or corridor/precinct plan.

b) having met the strategic merit test, has site-specific merit, having regard to:

- the natural environment (including known significant environmental values, resources or hazards)
- the existing uses, approved uses and likely future uses of land in the vicinity of the land subject to a proposal
- the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Proposals that do not reasonably meet the assessment criteria above will not be able to proceed to the Gateway.

The Planning Panel or Commission may meet with the Department, council and proponent to clarify any issues before completing its review.

The Planning Panel or Commission will determine whether the proposal has merit and should be submitted for a determination under section 56 of the Act (Gateway determination).

Communication of this determination will be made to the proponent and the council within 90 days of the Department receiving the initial Rezoning Review request.

**Step 3 – Appointment of relevant planning authority**

If the Planning Panel or Commission determines that a proposal should proceed to the Gateway, it will concurrently notify the relevant council and ask if it will accept the role of relevant RPA to take the proposal to the Gateway and then finalise the proposal.

Councils will have 42 days to accept the role RPA otherwise an alternative RPA will be appointed. Where a Council accepts the role of RPA it will then have 42 days to submit a planning proposal to the Department for a Gateway determination.

**Step 4 – Planning proposal submitted to Department for gateway determination.**

Once the RPA is appointed the planning proposal is to be submitted to the Department for a Gateway determination in the normal manner.

In instances where a RPA is appointed, other than the Council, the proponent will need to pay a fee\(^7\), plus additional charges to cover costs on a proposal-specific basis.

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\(^7\) The relevant fee is confirmed on the Department’s website [www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning](http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning)
The Department will monitor progress of Rezoning Review requests and ensure that documents (review requests, Planning Panel or Commission reports and decisions) are published on the web within 3 business days of the completion of each step.

5.2 The planning proposal

A planning proposal is a document that explains the intended effect of the proposed LEP and provides the justification for making it [EP&A Act s. 55(1)].

A guide to preparing planning proposals provides detailed advice on the preparation of a planning proposal. As detailed in that guide, the planning proposal can be prepared by the RPA, or by a proponent for the proposed LEP and should initially contain enough information for the Gateway to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan-making process.

The level of detail required in a planning proposal should be proportionate to the complexity of the proposed amendment. The planning proposal should contain enough information to identify relevant environmental, social, economic and other site specific considerations.

The scope of any key issues should be identified in the initial planning proposal that is submitted for a Gateway determination, while the actual information/investigation may be undertaken after a Gateway determination is issued and included in the planning proposal, where appropriate.

When preparing and considering a planning proposal councils should consider whether they will be seeking an Authorisation to make the plan under delegation.

Section 55(2) of the Act outlines that a planning proposal must include the following components:

- Part 1 – A statement of the objectives and intended outcomes of the proposed instrument
- Part 2 – An explanation of the provisions that are to be included in the proposed instrument
- Part 3 – The justification for those objectives, outcomes and the process for their implementation
- Part 4 – Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies
- Part 5 – Details of the community consultation that is to be undertaken on the planning proposal.

Section 55(3) of the Act allows the Secretary to issue requirements with respect to the preparation of a planning proposal. The Secretary’s requirements include:

- specific matters that must be addressed in the justification (Part 3) of the planning proposal
- a project timeline to detail the anticipated timeframe for the plan making process for each planning proposal.

The project timeline forms Part 6 of a planning proposal.

Parts 1 and 2 – Objectives and intended outcomes and explanation of provisions

It is important that the first two 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.
Part 3 – Justification

For the purpose of preparing the justification (the third part of the planning proposal), the Secretary has issued requirements about the specific matters that must be addressed in planning proposals (other than those which solely intend to classify or reclassify public land – see section 5.5.4).

When preparing the justification:

- it is important that the level of justification for each planning proposal is proportionate to the impact the planning proposal will have. This is particularly the case for planning proposals that may be inconsistent with the local and/or regional strategic planning framework
- a response to each of the Secretary’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 should be briefly explained
- 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. These detailed investigations, studies, or material will be prepared by the proponent or the RPA following the initial Gateway determination. The Gateway determination will confirm the expected level of information required to form part of the exhibition material.

Part 4 – Mapping

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. The maps 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)]. The Department’s ‘Standard Technical Requirements for Spatial Datasets and Maps’ provide guidance regarding Standard Instrument LEP mapping requirements. Where appropriate, planning proposals should also include aerial photographs, figures, and graphic information to identify the subject site and explain the current zones and development standards that apply to the land and intended outcome of the planning proposal.

Part 5 – Community consultation

A planning proposal must also outline the proposed community consultation that will be undertaken in relation to the proposal. Consultation includes public exhibition (typically 14 or 28 days) as well as details relating to any agencies that will be consulted. In the case of a large or complex planning proposal it may also be appropriate to include details of a community consultation strategy in the planning proposal. If any pre-lodgement consultation has been undertaken with agencies, an overview of the outcomes of this consultation including any agreements that may have been reached (e.g. scope of a technical study, agreement that an offset agreement is needed) should also be provided.

Part 6 – Project timeline

The Secretary has determined that a planning proposal must include a project timeline. The timeline is to clearly articulate the principal steps associated with finalising the plan together with anticipated start and completion dates. The timeline will be used by the Department and others to manage workloads associated with finalising the plan, especially where the plan is to be delegated to council to complete. The project timeline must clearly identify:

- anticipated commencement date (date of Gateway determination)
• anticipated timeframe for the completion of required studies
• timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)
• commencement and completion dates for public exhibition period
• dates for public hearing (if required)
• timeframe for consideration of submissions
• timeframe for the consideration of a proposal post exhibition
• anticipated date RPA will make the plan (if delegated), and
• anticipated date RPA will forward to the Department for notification (if delegated) or for finalisation (if not delegated).

A primary goal of the plan making process is to facilitate the technical process to produce LEPs once the strategic decision of the issue of a Gateway determination has been taken. To meet this goal the Minister or GSC may consider taking action to finalise the LEP if the timeframes approved for the completion of the planning proposal are significantly or unreasonably delayed.

5.3 The Gateway determination

Once the document is prepared, it must be forwarded to the Minister or GSC by the RPA for Gateway consideration.

A Gateway determination is issued by the Minister, GSC or delegate. It specifies whether a planning proposal is to proceed and, if so, in what circumstances [EP&A Act s.56]. The Gateway determination will also include an Authorisation for the delegation of plan making functions to council where it has been requested or where the matters are determined to be of local planning significance by the Gateway.

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 resources are committed to carrying out investigative research, preparatory work and consultation with agencies and the community. It enables planning proposals that lack strategic planning merit to be stopped early in the process before time and resources are committed.

Once a planning proposal is forwarded to the Minister, GSC or delegate by the RPA for a Gateway determination, it is entered into the Department’s online register of planning proposals where the progress of the proposed LEP is monitored, based on the submitted project timeline. It is then assessed by the Department’s regional team. The Department’s regional team will make a recommendation to the Minister, GSC or delegate regarding the progression of the planning proposal. The regional team may refer the planning proposal and its recommendation to the LEP Review Panel if it is considered that the proposal is contentious or not suitable for progression. The LEP Review Panel will consider the planning proposal and the recommendation of the Department’s regional office before providing its own recommendation to the Minister, GSC or delegate.

The Minister, GSC or delegate will consider any recommendation of the Department’s regional office and LEP Review Panel, where relevant, and decide whether to give a Gateway determination to allow the proposal to proceed. The Gateway determination will indicate the following [EP&A Act s.56(2)]:

• whether the planning proposal should proceed (with or without variation)
• whether any studies are required and if necessary the scope of these additional studies
• 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 authorities

- whether a public hearing is to be held into the matter by the Commission or other specified person or body

- the times within which the various stages of the process for making of the proposed LEP are to be completed, and

- whether the function of making the LEP is to be exercised by the Minister, GSC or delegated to the RPA.

Not all planning proposals that have received a Gateway determination will be finalised. Examples for when a planning proposal would not be suitable for finalisation include:

- the planning proposal is not consistent with the requirements of the Gateway determination; or

- the planning proposal cannot demonstrate consistency with relevant Section 117 Directions or the Secretary has not agreed that any inconsistencies are justified, or minor in nature; or

- the proposed change of planning controls is not supported following consideration of studies, agency input or consultation; or

- the planning proposal has been withdrawn.

5.4 **Review of Gateway determination**

A proponent or a council, when it is the relevant planning authority for a proposal, may request the Minister, GSC or delegate alter a Gateway determination in certain circumstances.

**Attachment 3** sets out the steps in the Gateway review process.

Separate to the formal Gateway review process outlined below, a council, as the relevant planning authority, may at any time request that the Gateway determination be reconsidered and re-issued. Councils should contact the Department’s regional team to discuss any concerns about the Gateway determination before deciding to request a formal review. For some routine matters, a Gateway determination may be altered at any time without the need for a formal review.

**Step 1 – Proponent or council seeks review**

A council, when it is the relevant planning authority, or proponent may request the Minister, GSC or delegate alter a Gateway determination when a Gateway determination is made that:

a) the planning proposal should not proceed

b) the planning proposal should be resubmitted to the Gateway, or

c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

These post-Gateway reviews apply only if the original Gateway determination was made by a delegate of the Minister or GSC. If the Gateway determination is either to not proceed or to resubmit the planning proposal, the relevant planning authority or proponent has 42 days from being notified by the Department to request a review.
If the Gateway determination is to proceed with the planning proposal but imposes conditions that the council or proponent considers inappropriate, the council or proponent has 14 days from being notified by the Department to indicate their intent to request a review. The council or proponent then has 42 days to formally apply for a Gateway review. The initial 14 day period is intended to prevent any unnecessary delay in proceeding to community consultation on the planning proposal.

The council or proponent requesting a Gateway review must provide the Department with the following within the 42 days:

- a completed application form
- a copy of the planning proposal and supporting information as submitted to the Gateway
- justification for why an alteration of the Gateway determination is warranted, including, where relevant, responses to issues raised by the original Gateway decision maker, and
- if relevant, disclosure of reportable political donations under section 147 of the Act

Step 2 – Department prepares preliminary report

The Department will check whether the request is eligible for review and is accompanied by all the required information. The Department will contact the council or proponent to obtain further details if required. If the Gateway review is proponent-initiated, the Department will notify the council of the proponent’s request and the council will have 21 days to provide a response.

The Department will prepare a report outlining the planning proposal, the reason(s) why the review request has been made, the reasons why the original Gateway determination was made, and the views of the council (if the review was proponent-initiated).

Step 3 – Planning Panel or Commission advice

The Department’s report and accompanying information will be forwarded to the Planning Panel or Commission for its advice.

The reviews will be provided to the Commission where they relate to land within the Greater Sydney Region or if the planning proposal was subject to a pre Gateway review that was considered by a Planning Panel. In all other cases these reviews will be provided to the relevant Planning Panel.

The Planning Panel or Commission will review the planning proposal, giving consideration to the council or proponent’s submission and the reasons given for the original determination in the Department’s report.

The Planning Panel or Commission will then determine whether or not the original Gateway determination should be altered and whether the planning proposal should proceed to public consultation.

Step 4 – Ministerial determination

The Minister, GSC or delegate will make the final decision with respect to the proposal giving consideration to:

- Gateway delegate’s reasons for its original Gateway determination
- submissions from the council or proponent including why the Gateway determination should be altered
- views of the council (when the review has been initiated by the proponent)
- the Commission’s advice in relation to the planning proposal, and
other matters not considered by the original decision maker including strategic planning considerations (e.g., emerging state or regional policies relevant to the planning proposal).

The Minister, GSC or delegate may alter the Gateway determination and decide the planning proposal should proceed (in accordance with any revised conditions) at which point the council and proponent (if relevant) will be notified by the Department of the altered determination and post-Gateway consultation on the planning proposal can commence.

Alternatively, if the Minister, GSC or delegate considers that the planning proposal should not proceed past the Gateway, the council and proponent (if relevant) will be notified by the Department.

Following a Gateway review where the Minister, GSC or delegate alters the determination, the necessary processes and work to progress a planning proposal after a Gateway determination has been issued commence. This includes undertaking community consultation on the planning proposal.

The Department will monitor the progress of the Gateway review and will ensure that documents (review requests, Department, Planning Panel, and Commission reports and determinations) are published on the web within 3 business days of the completion of each step.

5.5 Finalising the planning proposal

The statutory process for making a plan following the issuing of a Gateway determination is the same regardless of whether the matter is delegated to council to finalise or whether the plan will be made by the Minister or GSC. The principal difference between the two processes is who has responsibility for undertaking the various statutory steps in the plan making process.

Attachment 6 provides an overview of the steps involved with the plan making process for delegated and non-delegated matters. If, at Gateway, the plan making power of the Act is delegated to the RPA, then the RPA takes responsibility for all remaining steps in the plan making process. This includes both:

- requesting that the legal instrument (the LEP) is drafted by Parliamentary Counsel’s Office (PCO), and
- the actual making of the LEP once an Opinion has been issued by PCO that the plan can be legally made.

Further advice about key aspects of the plan making process is provided in the sections below.

When a planning proposal is delegated to a RPA to finalise and make, the Department’s primary function will be administrative in nature. The Department will continue to provide support and advice to a RPA throughout the course of the process if requested to do so.

5.5.1 Secretary’s approval before community consultation

If required, the Secretary (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 Secretary’s approval may be withheld. If the Secretary’s approval is withheld, the RPA must obtain approval before any community consultation takes place.

A planning proposal should be a concise document which justifies the proposal’s merit. 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 Act provides that the Secretary (or delegate) can approve such a
summary if satisfied that it provides sufficient details for community consultation. The RPA should indicate in section 5 of the planning proposal (details of the community consultation that is to be undertaken) that it intends seeking the Secretary’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 Secretary prior to commencing 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)].

5.5.2 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.

<table>
<thead>
<tr>
<th>Planning proposal type</th>
<th>Exhibition period</th>
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<tbody>
<tr>
<td>Low impact proposals*</td>
<td>14 days</td>
</tr>
<tr>
<td>All other planning proposals (including any proposal to reclassify land)</td>
<td>28 days</td>
</tr>
</tbody>
</table>

* A ‘low’ impact planning proposal is 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
– consistent with the strategic planning framework
– presents no issues with regard to infrastructure servicing
– not a principal LEP
– does not reclassify public land.

Public exhibition of the planning proposal is generally undertaken in the following manner:

- notification in a newspaper that circulates in the area affected by the planning proposal
- notification on the website of the RPA
- notification in writing to affected and adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them.

The RPA can undertake additional consultation if this is deemed appropriate or necessary. This may include, but is not limited to broad consultation by letter, open days or public forum.

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
- indicate the last date for submissions
- confirm whether delegation for making the LEP has been issued to the RPA.

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 Gateway determination
• the Gateway determination
• any information or technical information 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)].

Many RPAs have adopted policies for the exhibition of planning proposals and broader community consultation activities. If a RPA is recommending that consultation in addition to that recommended in this guideline is undertaken, an overview of that additional consultation should be provided in the planning proposal for consideration by the Gateway.

The plan making process does not require community consultation to be undertaken prior to a proponent lodging a request with a RPA to prepare a planning proposal. The principal place for community consultation for planning proposals is after a Gateway determination is issued and all relevant studies and reports have been completed. This ensures the community has clear and evidence based information available to assist the community to make informed comment on the proposal.

Depending on the nature of the proposal, a RPA may consider that it is appropriate to seek the general views of the community to assist in further defining the intent of the planning proposal prior to submitting it to Gateway. Alternatively, a proponent may consider it best practice to undertake pre-lodgement consultation if the proposal relates to a significant or large site. If this approach is adopted, the consultation will form part of the initial 90 day period between Council receiving a planning proposal request and indicating its support to prepare a planning proposal.

The initial planning proposal request and should relate primarily to the underlying proposed amendment to the LEP. Issues associated with the potential future development of the site should be given secondary consideration and may not be suitable for pre-lodgement consultation.

As noted in ‘A guide to preparing planning proposals’, a planning proposal relates to a change in a LEP control. While a variation to a control may be pursued to secure a particular development outcome for a site, that outcome will itself be subject to a separate assessment via the Development Application process. The principal focus of any pre-lodgement consultation should therefore be to seek the community’s views on whether the proposed alternate zone or development standard is an appropriate outcome for that particular site. Matters associated with the design of a potential building, a subdivision layout, or other detailed matters are more appropriately addressed via the development assessment process and the public exhibition of any subsequent Development Application.

5.5.3 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)]. Where the planning proposal is to reclassify community land, the RPA is obliged by the Local Government Act 1993 to hold a public hearing.

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
- give notice 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.

5.5.4 Classification and reclassification of public land

In the case of proposed LEPs which are being prepared solely to classify or reclassify public land, the Secretary 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)]:

For planning proposals that have been delegated, the council will be responsible for providing instructions to PCO to obtain the draft legal instrument. A central email address has been provided at the PCO for councils to forward their drafting instructions and requests to.

That email address is:
parliamentary.counsel@pco.nsw.gov.au

Secretary’s requirements for planning proposals reclassifying land:

a) Is the planning proposal the result of a 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 should be provided.

d) The concurrence of the landowner, where the land is not owned by the relevant planning authority.

5.5.5 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 PCO upon receipt of instructions from the Department or from a RPA if the plan making process has been delegated to the RPA.

Where the Department is still responsible for drafting the LEP instrument it 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 and 2 of the planning proposal.

Further information and details about the legal drafting process for delegated LEPs is provided at www.legislation.nsw.gov.au/lg_delegations_information.pdf
Council is to include the following details with the instructions to the Department’s relevant regional office, for non-delegated planning proposals, or to PCO and the Department’s relevant regional office, for delegated planning proposals:

- the planning proposal
- a copy of the Gateway determination and any subsequent determinations given with respect to the planning proposal
- details of exhibition (if applicable) and a report detailing how issues raised in any submissions made during exhibition have been addressed by council
- variations to the planning proposal after the Gateway determination was given and justification for these amendments
- details relating to the planning proposal’s consistency with relevant Section 117 Directions, including where the Secretary has agreed that any inconsistencies are justified, or minor in nature
- any other relevant background or explanatory information that may assist the PCO with its drafting of the instrument eg council policy forming the basis of the amendment, council report(s) detailing the background and rationale for the draft LEP, any correspondence between the council and the Department which provides background to the approach adopted in the draft LEP, and
- completed template detailing dates for key steps of the process.
- draft maps and GIS data (where relevant) consistent with the Standard Technical Requirements for Spatial Datasets and Maps should be provided to the Department via the Planning Portal, at the same time as instructions are provided to PCO. No mapping should be sent from the RPA to PCO. The Department will review and forward all maps to PCO.


Communications between PCO and the council may be subject to legal professional privilege and must be maintained in the strictest confidence. This privilege also extends to drafts of the instrument and drafting notes provided by PCO to the council. Councils should contact the Department and PCO before publishing these preliminary drafts on their websites or otherwise making them available to third parties, in order to avoid this privilege being waived. Legal professional privilege is also relevant in considering whether to disclose government information under the Government Information (Public Access) Act 2009.

PCO will produce a draft instrument (the LEP) and following any discussions with the RPA about the content of the instrument PCO will issue an Opinion that the draft instrument can be legally made. A LEP cannot be signed unless such an opinion has been issued.

### 5.5.6 Varying a proposal

An early dialogue between the Department 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 evolve, as a consequence of more detailed studies and investigations in the period following the initial Gateway determination and leading up to community consultation.

The Act provides that if a RPA varies its proposal following the initial Gateway determination, it must inform the Minister, GSC or delegate, 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 Act (Part 1 of the planning proposal), or the explanation of the provisions that are to be included in the proposed LEP required by s. 55(2)(b) (Part 2 of 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 Act are not regarded as variations to the proposals and therefore do not require the revised planning proposal to be forwarded to the Minister, GSC or delegate.

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

5.5.7 Benchmark timeframes for preparing LEPs

LEPs take different forms and degrees of complexity. It is important that the state planning system responds to changing circumstances and emerging opportunities and that planning proposals are given proper consideration within a reasonable timeframe.

Benchmark timeframes have been set for the following types of LEPs where they are consistent with the state’s strategic planning framework:

- administrative changes and errors 3 months
- minor spot rezoning 6 months
- major land release and urban renewal 12-18 months
- principal LEPs 24 months.

Delegating plan making to local councils is intended to fast track the delivery of LEPs.

The progress of LEPs from the initial submission of a planning proposal through to the finalisation of a LEP can also be monitored on the Department’s LEP Tracking System which can be accessed via www.leptracking.planning.nsw.gov.au/. The Tracking System provides details of all planning proposals that have been lodged with the Department and their status.

5.5.8 Tracking and reporting on the plan making process

The process for tracking the status of a planning proposal and draft LEP through the plan making stages continues to be the Department’s LEP Tracking System. The community will continue to be able to log onto the tracking system to check the status of a plan.

To ensure that information on the status of delegated LEPs is current, councils are required to advise the relevant regional office in writing when each stage of the plan making process (ie dates for exhibition, date reported to council etc) is completed. This will enable the Department to update the data in the tracking system which will then be available for the public to review via the publicly available site.

Councils will be provided with a template at the same time as the Authorisation is issued. The template (see Attachment 5) lists the key dates that council will be required to report on in relation to each LEP. Councils must provide a copy of the completed template with its request that the plan be notified.

No additional reporting on the progress of LEPs will be required from councils.

If any issues related to the plan making process are identified at any stage and council is uncertain how to proceed, council should consult with the relevant regional team of the Department.
The Department will continue to monitor the progress of LEPs against the timeframes identified in the original Gateway determination notice. Council is still accountable to the timeframe requirements identified in the Gateway determination. Where council cannot demonstrate a commitment to completing the LEP within a satisfactory timeframe, consideration will be given to discontinuing the planning proposal in accordance with section 56(7) of the Act or appointing an alternative RPA under section 54(2) of the Act.

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

In the following circumstances, the Minister, GSC or delegate may dispense with all or part of the plan-making process described within this section, including community consultation, in the making of an amending LEP but not the processes set out in section 5.5.5 of this guide:

- 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 [EP&A Act s. 73A(1)(a) and (b)], or

- if in the opinion of the Minister or GSC, 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’s dispensation of all or part of the process must, in the first instance, write to the Secretary setting out the reasons why in the context of the criteria described above (sections 33A(8A) or 73A as applicable). The Minister, GSC or delegate will advise which, if any, parts of the process can be dispensed with when the initial Gateway determination is issued.

5.5.10 Additional assistance

The Department will continue to provide assistance to any council that requests it at any stage of the plan making process. This assistance may include:

- preparation of and assistance with supporting LEP maps

- liaison with agencies where an objection or issue is raised during exhibition or as a result of consultation required under the Gateway determination

- advice on appropriate matters for inclusion in draft LEP provisions, and

- discussions with PCO on drafting matters.

Councils should initially contact the relevant regional office for this assistance.
6 Attachments

Attachment 1 – LEP plan making process

Proponent suggests amendment to existing LEP

Proponent formally requests council to consider the proposed amendment

Council agrees to support amendment

Planning proposal prepared and submitted to Department (s. 55)

Gateway determination issued (s. 56(2))

Proponent or council seeks review of Gateway determination conditions including decision to not proceed

Plan making process not delegated to council

Planning proposal exhibited, reviewed, drafted and made (s. 57, 58, 59)

Plan notified and comes into effect

Plan making delegated to council – procedures for making delegated plans, including requirements for exhibition and drafting apply (s. 57, 58, 59)

Rezoning Review process triggered at request of proponent
Attachment 2 – Rezoning review process

**Step 1**
- Proponent may request a review by writing to the Department
- Department notifies council and requests comments and additional information and confirmation that proposal is consistent with original submission
- Planning Panel/the Commission Secretariat forwards request to relevant regional panel/the Commission
- Planning Panel/the Commission Secretariat uploads application to public tracking system

**Step 2**
- Planning Panel/the Commission assesses strategic merit against strengthened Strategic Merit Test
- For proposals with strategic merit Planning Panel/the Commission undertakes Site Specific Merit Test
- Planning Panel/the Commission meets with council, proponent and department as required

**Step 3**
- Planning Panel/the Commission determines that the proposal has merit and should be submitted to Gateway

**Step 4**
- Planning Panel/the Commission notifies council and asks if it will accept role of relevant planning authority
- If council does not accept the role of RPA, alternate RPA appointed
- Planning Proposal submitted to Department for Gateway determination

Proponent and council notified proposal is not proceeding due to lack of merit
Attachment 3 – Gateway determination review process

**Step 1**
- Gateway determination that the planning proposal should not proceed
  - RPA or proponent may request a review within 42 days applying to the Department
- Gateway determination that the planning proposal should be resubmitted
  - RPA or proponent may request a review by first indicating its intention within 14 days and then formally applying to the Department within 42 days
- Gateway determination imposes requirements the council or proponent thinks should be reconsidered
  - Department checks eligibility and information provided

**Step 2**
- For eligible and complete requests council is given notice (for proponent initiated reviews), the Department completes report and forwards with the planning proposal to the Planning Panel/Commission

**Step 3**
- Planning Panel/Commission reviews the proposal, having regard to the original Gateway determination, the Department report and RPA’s advice
  - Planning Panel/Commission advises whether the Gateway determination should be altered

**Step 4**
- Minister/GSC* determines whether to alter the Gateway decision, having regard to the Planning Panel/Commission’s advice
  - Minister/GSC forwards decision to the council for further action
  - Gateway Review process for planning proposal commences

Proponent notified the proposal is not eligible for Gateway review

Proponent and RPA notified the proposal will not proceed

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* Reference to Minister/GSC in this diagram is also a reference to the Secretary if the Gateway decision being reviewed was originally made by a delegate of the Minister/GSC that was not the Secretary
## Attachment 4 – Evaluation criteria for the delegation of plan making functions

### Checklist for the review of a request for delegation of plan making functions to councils

<table>
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<th>Local Government Area</th>
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<tr>
<th>Name of draft LEP:</th>
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<th>Address of Land (if applicable):</th>
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<th>Intent of draft LEP:</th>
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<th>Additional Supporting Points/Information:</th>
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### Evaluation criteria for the issuing of an Authorisation

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Council response</th>
<th>Department assessment</th>
</tr>
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<tbody>
<tr>
<td>(NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)</td>
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<tr>
<td>Is the planning proposal consistent with the Standard Instrument Order, 2006?</td>
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<tr>
<td>Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?</td>
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<td>Are appropriate maps included to identify the location of the site and the intent of the amendment?</td>
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<td>Does the planning proposal contain details related to proposed consultation?</td>
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<td>Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Secretary?</td>
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<tr>
<td>Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?</td>
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<tr>
<td>Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?</td>
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<tr>
<td><strong>Minor Mapping Error Amendments</strong></td>
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<tr>
<td>Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?</td>
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<tr>
<td><strong>Heritage LEPs</strong></td>
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<tr>
<td>Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?</td>
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<tr>
<td>Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?</td>
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<tr>
<td>Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?</td>
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<tr>
<td>Reclassifications</td>
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<td>---------------------------------------</td>
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<tr>
<td>Is there an associated spot rezoning with the reclassification?</td>
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<tr>
<td>If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?</td>
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<tr>
<td>Is the planning proposal proposed to rectify an anomaly in a classification?</td>
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<tr>
<td>Will the planning proposal be consistent with an adopted POM or other strategy related to the site?</td>
<td></td>
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<tr>
<td>Has Council confirmed whether there are any trusts, estates, interests, dedications, conditions, restrictions or covenants on the public land and included a copy of the title with the planning proposal?</td>
<td></td>
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<tr>
<td>Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor’s approval?</td>
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<tr>
<td>Has the council identified that it will exhibit the planning proposal in accordance with the Department’s Practice Note regarding classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?</td>
<td></td>
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<tr>
<td>Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?</td>
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<table>
<thead>
<tr>
<th>Spot Rezonings</th>
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<tbody>
<tr>
<td>Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?</td>
</tr>
<tr>
<td>Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?</td>
</tr>
<tr>
<td>Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?</td>
</tr>
<tr>
<td>If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?</td>
</tr>
<tr>
<td>Does the planning proposal create an exception to a mapped development standard?</td>
</tr>
</tbody>
</table>
**Section 73A matters**

Does the proposed instrument

a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?

b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or

c) deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?

(Note – the Minister / GSC (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).

**Notes**

- Where a council responds ‘yes’ or can demonstrate that the matter is ‘not relevant’, in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.

- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Secretary of the Department.

- Matters that will be routinely delegated to a Council under administration are confirmed on the Department’s website [www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/](http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/)
### Attachment 5 – Delegated plan making reporting template

**Reporting Template for Delegated LEP Amendments**

**Notes:**
- Planning proposal number will be provided by the Department following receipt of the planning proposal.
- The Department will fill in the details of Tables 1 and 3.
- RPA is to fill in details for Table 2.
- If the planning proposal is exhibited more than once, the RPA should add additional rows to Table 2 to include this information.
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the Department’s publicly accessible LEP Tracking System is kept up to date.
- A copy of this completed report must be provided to the Department with the RPA’s request to have the LEP notified.

**Table 1 – To be completed by the Department**

<table>
<thead>
<tr>
<th>Stage</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning Proposal Number</td>
<td></td>
</tr>
<tr>
<td>Date Sent to Department under s56</td>
<td></td>
</tr>
<tr>
<td>Date considered at LEP Review Panel (if relevant)</td>
<td></td>
</tr>
<tr>
<td>Gateway determination date</td>
<td></td>
</tr>
</tbody>
</table>

**Table 2 – To be completed by the RPA**

<table>
<thead>
<tr>
<th>Stage</th>
<th>Date/Details</th>
<th>Notified Reg Off</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dates draft LEP exhibited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of public hearing (if held)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date sent to PCO seeking Opinion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date Opinion received</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date Council Resolved to Adopt LEP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date LEP made by GM (or other) under delegation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date sent to Department requesting notification</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 3 – To be completed by the Department**

<table>
<thead>
<tr>
<th>Stage</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification Date and details</td>
<td></td>
</tr>
</tbody>
</table>

**Additional Relevant Information:**
### Attachment 6 – Comparative plan making process

#### Planning proposals

<table>
<thead>
<tr>
<th>Non Delegated Matters</th>
<th>Delegated Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>A planning proposal can be initiated by council or proponent.</td>
<td>A planning proposal can be initiated by council or proponent.</td>
</tr>
<tr>
<td>A planning proposal to be prepared in accordance with the Department’s A guide to preparing planning proposals.</td>
<td>A planning proposal to be prepared in accordance with the Department’s A guide to preparing planning proposals.</td>
</tr>
<tr>
<td>Council to identify that it is not requesting an authorisation to exercise delegation to finalise the Plan.</td>
<td>Council to identify that it seeks authorisation to exercise delegation and provide responses to relevant matters in ‘Evaluation criteria for the issuing of authorisation’ (see Attachment 4).</td>
</tr>
<tr>
<td>Council to identify whether the plan will be made by council or by sub-delegation to relevant officer (usually General Manager or planning director).</td>
<td></td>
</tr>
</tbody>
</table>

#### Assessment of planning proposal

<table>
<thead>
<tr>
<th>Non Delegated Matters</th>
<th>Delegated Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department’s regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.</td>
<td>Department’s regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.</td>
</tr>
<tr>
<td>Assessment report includes review of responses provided by council in ‘Evaluation criteria for the issuing of authorisation’ and a recommendation as to whether council’s request for an authorisation should be supported.</td>
<td></td>
</tr>
</tbody>
</table>
### LEP Review Panel (if relevant)

<table>
<thead>
<tr>
<th>Non Delegated Matters</th>
<th>Delegated Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Planning proposal considered by Department’s independent LEP Review Panel.</td>
<td>• Planning proposal considered by Department’s independent LEP Review Panel.</td>
</tr>
<tr>
<td>• Recommendation made to the Minister, GSC or delegate including conditions for the finalisation of the planning proposal.</td>
<td>• Recommendation made to Gateway including conditions for the finalisation of the planning proposal.</td>
</tr>
</tbody>
</table>

### Gateway Determination

<table>
<thead>
<tr>
<th>Non Delegated Matters</th>
<th>Delegated Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal.</td>
<td>• Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal.</td>
</tr>
<tr>
<td>• Gateway determination notice issued with conditions related to:</td>
<td>• Gateway determination notice issued with conditions related to:</td>
</tr>
<tr>
<td>‒ requirements for community and agency consultation</td>
<td>‒ requirements for community and agency consultation</td>
</tr>
<tr>
<td>‒ whether additional supporting information is to be provided</td>
<td>‒ whether additional supporting information is to be provided</td>
</tr>
<tr>
<td>‒ the timeframe for the completion of the draft LEP</td>
<td>‒ the timeframe for the completion of the draft LEP, and</td>
</tr>
<tr>
<td>‒ any other relevant matters.</td>
<td>‒ any other relevant matters.</td>
</tr>
<tr>
<td>• Once Gateway determination has been given the planning proposal is returned to council.</td>
<td>• If the Gateway agrees with request from council to delegate plan making functions an Authorisation to exercise delegation is issued concurrently with the Gateway determination notice.</td>
</tr>
<tr>
<td></td>
<td>• Once Gateway determination has been given the planning proposal is returned to council.</td>
</tr>
</tbody>
</table>
Delegation means the Department will generally no longer be involved in the plan making process unless:
- the council fails to meet its obligations in progressing the proposal in accordance with the conditions of the Gateway
- the council decides not to process the draft LEP and requests that the Minister / GSC determine the matter no longer proceed.

The Department may still have a role in the finalisation of the Plan where:
- required by the Gateway;
- the agreement of the Secretary regarding S117 Directions is required; or
- the RPA seeks to alter the Gateway, including any extension of timeframes.

Consultation

Non Delegated Matters
- Council is to undertake consultation in accordance with the conditions of the Gateway determination including:
  - 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 Ministerial Direction under section 117 of the Act
  - consultation that is required because in the opinion of the Minister, GSC or delegate, a state or Commonwealth authority will or may be adversely affected by the proposed LEP.
- Public exhibition in accordance with the minimum timeframe established in the Gateway determination.

Delegated Matters
- Council is to undertake consultation in accordance with the conditions of the Gateway determination including:
  - 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 Act
  - consultation that is required because in the opinion of the Minister, GSC or delegate, a state or Commonwealth authority will or may be adversely affected by the proposed LEP.
- Public exhibition in accordance with the minimum timeframe established in the Gateway determination.
Post exhibition review

Non Delegated Matters

- Council is to review the planning proposal following exhibition.
- Council should attempt to resolve any public agency objection.
- Council may, at any time, vary its proposal under section 58(1) of the Act as a consequence of its consideration of any submission or report during consultation, or for any other reason.
- If a planning proposal is revised council is to forward a copy of the revised proposal to the Department under section 58(2) of the Act.
- The Minister, GSC or delegate will consider the revised proposal and determine whether further consultation is required (including re-exhibition) and whether a revised Gateway determination should be issued.
- Changes to the planning proposal after exhibition may be so substantial that the planning proposal may no longer be authorised by the Gateway determination. In these circumstances a new Gateway determination will be required before the LEP is made (Refer to Section 5.5.6 of these Guidelines).
- Consequently councils are encouraged to contact the relevant regional office of the Department for advice where there have been major changes to a planning proposal after exhibition.
- Council is to obtain the agreement of the Department’s Secretary regarding any unresolved S117 Directions.

Delegated Matters

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- Council should attempt to resolve any public agency objection.
- Council may, at any time, vary its proposal under section 58(1) of the Act as a consequence of its consideration of any submission or report during consultation, or for any other reason.
- If a planning proposal is revised council is to forward a copy of the revised proposal to the Department under section 58(2) of the Act.
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- Changes to the planning proposal after exhibition may be so substantial that the planning proposal may no longer be authorised by the Gateway determination. In these circumstances a new Gateway determination will be required before the LEP is made (Refer to Section 5.5.6 of these Guidelines).
- Consequently councils are encouraged to contact the relevant regional office of the Department where there have been major changes to a planning proposal after exhibition. Councils should seek advice in this instance before finalising the LEP under delegation.
- Council is to obtain the agreement of the Department’s Secretary regarding any unresolved S117 Directions.
### Legal Drafting of the LEP

#### Non Delegated Matters
- Council forwards a copy of the planning proposal and relevant supporting information to the Department requesting that a draft LEP is prepared.
- Council will upload the maps, map cover sheet and GIS data directly to the Department’s Planning Portal site (www.planningportal.nsw.gov.au/planning-tools/online-submission-planning-data). Council should advise the regional offices of the Department once this mapping has been uploaded to the Department’s Planning Portal.
- The Secretary makes arrangements for the drafting of the instrument to PCO under section 59(1) of the Act.
- Once a draft of the instrument has been prepared the Secretary consults with the RPA on the content of the LEP.
- Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.

#### Delegated Matters
- Council requests that a draft instrument be prepared under section 59(1) of the Act by emailing PCO directly at parliamentary.counsel@pco.nsw.gov.au.
- Council will upload the maps, map cover sheet and GIS data directly to the Department’s Planning Portal site (www.planningportal.nsw.gov.au/planning-tools/online-submission-planning-data).
- No maps or mapping/GIS data is to be sent directly to PCO.
- Council is to email a copy of the request to draft the instrument together with confirmation that the plans and mapping data that have been submitted to the Planning Portal to the Department’s regional office for administrative purposes immediately after making its request to PCO.
- The Department will undertake a technical review only of any maps required to implement the LEP to ensure they comply with the mapping technical guidelines and liaise with PCO to finalise maps.
- Council and PCO liaise directly about the content of the draft LEP.
- Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.
Making of the draft LEP

Non Delegated Matters

- Council resolves to adopt the draft LEP and forwards a request to the Department to request that the Minister or GSC make the plan together with all relevant supporting information.

- The Minister or GSC may, under sections 59(2) and (3) of the Act:
  - Make the plan with or without variation
  - Decide to not make the plan
  - Decide to defer a matter from the plan.

- If the Minister or GSC decides not to make a plan or defers a matter under section 59(4) of the Act he may specify whether or not he is prepared to reconsider the plan or deferred matter and if so, which plan making procedures must be complied with before he will do so.

Delegated Matters

- Council resolves to adopt and make the draft LEP.

- Council may, under sections 59(2) and (3) of the Act:
  - Decide to make the plan with or without any variation. In most instances this will be the expected outcome of the plan making process. If council resolves to make the plan it should forward a copy of all relevant documentation, including a copy of council’s assessment report (ie details of community consultation, responses to submissions, Secretary’s agreement to S117 Directions, maps, a copy of the Opinion from PCO, any other relevant material, and the completed delegation reporting template) to the Department together with the plan. The Department will then arrange for the plan to be notified on the NSW Government legislation website
  - Decide to not make the plan in accordance with section 59(2)(b) of the Act. If council proposes to not make the plan, assistance from the relevant regional planning team should be sought prior to council’s resolution to not make the plan. If council resolves to not make the plan its assessment report is to clearly identify the reasons behind this decision including whether the decision to not proceed was based on submissions received during public exhibition, an agency submission, or some other matter that was raised during the plan making process
  - Defer a matter from the plan in accordance with section 59(3) of the Act. If the draft LEP relates to a number of items or sites, or if it addresses a number of housekeeping amendments for example, and one or more of these matters cannot be resolved satisfactorily, council may decided to defer that matter from the final plan prior to the plan being made. If council chooses to defer a matter, it should liaise with the relevant regional team of the Department for assistance especially if the decision is the result of an agency submission. There are technical and legal requirements that are to be met when deferring a matter and the Department will assist council to ensure the matter is properly addressed.

- If council decides not to make a plan or defers a matter under section 59(4) of the Act it may specify whether or not it is prepared to reconsider the plan or deferred matter and if so, which plan making procedures must be complied with before it will do so.

- Council must also notify PCO if the plan is not proceeding or if it will not be made.
A council must not use its delegation under section 59 of the Act where there is an unresolved agency objection to the draft LEP. If there are unresolved objections, council is to contact the relevant regional office of the Department to seek assistance in resolving the matter so that the LEP may proceed under delegation. Where it is not possible to resolve the objection, the delegation may be withdrawn, and the Department may proceed with finalising the plan, or the Minister, GSC or delegate may determine that the planning proposal no longer proceeds.

Notification of the LEP

Non Delegated Matters

- Once the plan is made the Department requests PCO that the plan be notified on the NSW Legislation website.
- The plan comes into force on the day the LEP is published on the legislation website.

Delegated Matters

- Council advises the Department that the plan has been made.
- The council requests the Department to notify the plan. The following documents must be provided for notification with the request by council:
  - signed front page of the LEP – complete with full name of the LEP and PCO’s file reference;
  - complete signed map cover sheet (in the case of changes to maps of instruments containing the standard map clause);
  - the maps that relate to the signed map cover sheet; and
  - the name/position of the delegate who signed the LEP.
- It is anticipated that the LEP will generally be notified on a Friday. However, urgent or delayed notification can be arranged.
- For normal notification on a Friday the request along with all required information should be sent to the Department by 5.00pm on the Tuesday of that week.
- Requests for notification should be sent via email to the relevant regional office of the Department.
- The Department requests PCO that the plan be notified on the NSW Legislation website.
- The plan comes into force on the day the LEP is published on the legislation website.
Planning Proposals

A guide to preparing planning proposals
Disclaimer

These guidelines are provided for general guidance and information only. The guidelines are made available on the understanding that the NSW Department of Planning and Environment (‘Department’) is not providing legal advice. The Department has compiled the guidelines in good faith, exercising all due care and attention.

The guidelines do not affect or replace relevant statutory requirements. Where an inconsistency arises between the provisions of the guidelines and relevant statutory provisions, the statutory requirements prevail.

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents 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. The guidelines are not intended to give rise to any rights, claims, benefits, privileges, liabilities or obligations with respect to matters the subject of the guidelines.

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.

A guide to preparing planning proposals
© State of New South Wales through the NSW Department of Planning and Environment August 2016
23–33 Bridge Street Sydney NSW Australia

www.planning.nsw.gov.au

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1.2 Who can prepare a planning proposal?  
1.3 How much information should be in a planning proposal before a Gateway determination has been issued?  
1.4 When is a pre-lodgement meeting appropriate?  

2 **The parts of a planning proposal**  
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2.3 Part 3 – justification  
2.3.1 Questions to consider when demonstrating the justification  
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4 **Need more information?**  

**Attachment 1 – Information checklist**
1 Introduction

This guideline is issued under s55 (3) of the Environmental Planning and Assessment Act 1979 (the Act) and provides guidance and information on the process for preparing planning proposals.

1.1 What is a planning proposal?

A planning proposal is a document that explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making that plan. It will be used and read by a wide audience including those who are responsible for deciding whether the proposal should proceed, as well as the general community. It must be concise and written in language that is clear and easy to understand. It must also be technically competent and include an accurate assessment of the likely impacts of the proposal. It should be supported by technical information and investigations where necessary.

The preparation of a planning proposal is the first step in preparing a LEP. Throughout the course of preparing the proposed LEP, the planning proposal itself may evolve. This is particularly the case for complex proposals.

The Minister for Planning (the Minister), the Greater Sydney Commission (GSC) or their delegates can issue a Gateway determination. It specifies whether a planning proposal is to proceed and if so, in what circumstances. The purpose of the Gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal. It enables planning proposals that lack strategic planning merit to be stopped early in the process before time and resources are committed.

The Gateway determination will confirm the information (which may include studies) and consultation required before the LEP can be finalised. The Gateway determination will also establish the timeframe in which the required steps are to be carried out. As the necessary information is gathered and consultation undertaken, the planning proposal may need to be updated by including additional documentation. The planning proposal may change over time from when it is initially prepared to the point where a definite proposal has been developed for the site.

This document provides guidance on the matters that should be included in a planning proposal to satisfy the requirements of the Act. This guideline should be read in conjunction with other relevant guidance documents issued by the Department which are available on the Department’s website. Together, these guideline documents explain the plan making process and the role of planning proposals in the process.

1.2 Who can prepare a planning proposal?

The Act does not say who must prepare the information needed for a planning proposal. In practice, the planning proposal document can be prepared by a council, a landowner or developer seeking to change the planning controls relating to a particular site, or by a third party on behalf of a landowner or council.

The planning proposal document, which is submitted for a Gateway determination and after the Gateway determination has been issued, is the responsibility of the relevant planning authority (RPA) however. The RPA is responsible for ensuring that the level of detail in the planning proposal document is sufficient to respond to the statutory requirements of the Act and the requirements set out in this guideline (refer to Section 2 of these guidelines).

In most instances, the RPA will be the council for the local government area to which the planning proposal relates. In exceptional circumstances the RPA may be the Secretary of the Department of Planning and Environment (the Department) or another public body, such as a Planning Panel.
Once the document is prepared, it must be forwarded by the RPA for consideration to the Department of Planning and Environment as delegate to the Minister or GSC. The RPA is responsible for the content of the planning proposal and the quality of the information provided in support of the proposal. The RPA must ensure the information is accurate, current and sufficient for issuing a Gateway determination and subsequently detailed enough for the purposes of consulting with agencies and the general community.

A guide to preparing local environmental plans provides an overview of the plan making process.

1.3 How much information should be in a planning proposal before a Gateway determination has been issued?

A planning proposal must demonstrate the strategic merit of the proposed LEP amendment.

A planning proposal which is submitted for a Gateway determination must provide enough information to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan making process. The level of detail required in a planning proposal should be proportionate to the complexity of the proposed amendment.

A planning proposal relates only to a LEP amendment. It is not a development application nor does it consider specific detailed matters that should form part of a development application.

The planning proposal should contain enough information to identify relevant environmental, social, economic and other site specific considerations. The scope for investigating any key issues should be identified in the initial planning proposal that is submitted for a Gateway determination. This would include listing what additional studies the RPA considers necessary to justify the suitability of the proposed LEP amendment. The actual information/investigation may be undertaken after a Gateway determination has been issued and if required by the Gateway determination.

An ‘Information Checklist’ has been developed to assist both proponents and councils to identify and agree on the range of key issues for the proposed LEP amendment. A copy of the checklist is provided as Attachment 1.

Evidence of any pre-lodgement discussions, negotiations and agreement between the parties on the key issues and scope of work to be completed should be provided in the planning proposal that is submitted for a Gateway determination.

1.4 When is a pre-lodgement meeting appropriate?

It is recommended that a proponent seek a pre-lodgement meeting with a RPA prior to preparing and submitting a planning proposal. This will be critical where the matter is complex with many factors to be considered. A pre-lodgement meeting will assist the RPA and the proponent to reach agreement on the key issues and information necessary to justify further consideration of the proposed change to land use or development controls. It will also ensure that a proponent does not commit time and resources undertaking unnecessary studies or preparing information that does not address the main areas of concern with appropriate detail.

The ‘Information Checklist’ provided at Attachment 1 forms a suggested framework for discussion at a pre-lodgement meeting. The checklist may also be a useful starting point where a council does not have a similar guide or where a proponent is preparing a planning proposal for the first time. It is worth noting that in some cases the nature of a planning proposal will be such that its merits may be able to be demonstrated without the need to prepare any supporting strategic studies after a Gateway determination has been issued.
2 The parts of a planning proposal

Section 55 (2) of the Act outlines that a planning proposal must include the following components:

- **Part 1** – A statement of the objectives and intended outcomes of the proposed instrument
- **Part 2** – An explanation of the provisions that are to be included in the proposed instrument
- **Part 3** – The justification for those objectives, outcomes and the process for their implementation
- **Part 4** – Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies
- **Part 5** – Details of the community consultation that is to be undertaken on the planning proposal.

Section 55(3) of the Act allows the Secretary to issue requirements with respect to the preparation of a planning proposal. The Secretary’s requirements include:

- Specific matters that must be addressed in the justification (Part 3) of the planning proposal
- A project timeline to detail the anticipated timeframe for the plan making process for each planning proposal.

The project timeline forms **Part 6** of a planning proposal.
2.1! Part 1 – objectives or intended outcomes

Part 1 of the planning proposal should be a short, concise statement setting out the objectives or intended outcomes of the planning proposal. It is a statement of what is planned to be achieved, not how it is to be achieved. It should be written in such a way that it can be easily understood by the general community.

The objectives or intended outcomes (in conjunction with Part 2 – the Explanation of Provisions), constitute the actual ‘proposal’ and will be the basis for drafting the legal instrument (the LEP). The objectives and intended outcomes need to be specific enough to accurately reflect the desired outcome of the proposal yet flexible enough to allow for alternative ways of achieving the desired result to be considered.

It is not necessary to identify the mechanism by which the outcomes will be achieved in the objectives of the planning proposal. For instance, in Example 1 the actual zone(s) which are proposed for a site are not needed to be stated in the objectives. The zone(s) may change as a result of consultation with agencies and public exhibition and a number of alternative zones may be suitable for achieving the desired outcome.

Example 1

To amend the Smithville Local Environmental Plan 2009 to enable the redevelopment of the former Acme Factory site at 3 Smith Road, Smithville, for high-density housing, except for a corridor of public open space along the river frontage.

Example 2 outlines the objectives and intended outcomes of a planning proposal which seeks to introduce a new LEP provision.

Example 2

To amend the Smithville Local Environmental Plan 2009 to ensure potential impacts from urban stormwater are minimised.

As indicated in both examples, the details of the planning proposal are specific enough to clearly identify the intent of the proposal, yet flexible enough to enable the RPA to determine the most appropriate zones or development standards to achieve the desired outcome at a later stage of the process.

2.2! Part 2 – explanation of provisions

The explanation of provisions is a more detailed statement of how the objectives or intended outcomes are to be achieved by means of amending an existing LEP.

The explanation of provisions should be drafted using plain English descriptions, to ensure the community understands what amendments are being proposed. This will also assist the legal drafting of the Amending LEP, at this stage of the process.

It would be appropriate for the explanation of provisions to identify what zones or development standards are being proposed. In some cases, the actual zones or standards may not be known until all of the necessary studies have been completed after a Gateway determination has been issued.

In the context of Example 1, the explanation of provisions might be:
Example 3

The proposed outcome will be achieved by:

- Amending the Smithville LEP 2009 Land Zoning Map on the former Acme Factory site at 3 Smith Road, Smithville in accordance with the proposed zoning map shown at attachment 1; and
- Amending the Smithville LEP 2009 Height of Building Map in accordance with the proposed height map, shown at attachment 2, which indicates a maximum permissible height of 22 metres onsite; and
- Amending the Smithville LEP 2009 Floor Space Ratio Map in accordance with the proposed floor space ratio map, shown at attachment 3, which indicates a maximum permissible floor space ratio of 2.5:1 on the site.

Example 4

The proposed outcome will be achieved by including a new local provisions that:

1. confirms the objectives of the clause, which is to minimise the impacts of urban stormwater.
2. confirms that the clause only applies to land in residential, business and industrial zones.
3. includes heads of consideration for:
   - encouraging designs which maximise use of water permeable surfaces on the land and have regard to the soil characteristics affecting on-site infiltration of water, and
   - encouraging on-site stormwater retention as an alternative water supply, and
   - avoiding significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters,
   - minimising and mitigating any potential impacts.
2.3! Part 3 – justification

The justification sets out the case for making the proposed LEP. Changes to an existing LEP can include changes to the current zones and/or development standards and controls. They can affect a single allotment of land, a whole zone, or the entire LGA.

The overarching principles that guide the preparation of planning proposals are:

- the level of justification should be proportionate to the impact the planning proposal will have
- it is not necessary to address a question (see Section 2.3(a)) if it is not considered relevant to the planning proposal. In such cases the reason why it is not relevant should be briefly explained, and
- the level of justification should be sufficient to allow a Gateway determination to be made with the confidence that the LEP can be finalised within the time-frame proposed.
It is not expected that a council or proponent will provide comprehensive information to support a request for Gateway determination. As a minimum, a planning proposal before a Gateway determination has been issued must identify relevant environmental, social, economic and other site specific considerations. The planning proposal document may identify the need for investigations and an approach for addressing the issues.

The level of information that may be reasonable to justify a planning proposal at the Gateway determination stage is outlined in the following examples:

**Explanatory Note**

Where vegetation management is an issue for a large site to be rezed, it would be sufficient for the planning proposal to be submitted to the Gateway to identify the issue and indicate what environmental studies may be necessary to assess and analyse the value and location of the vegetation and how the matter(s) could be addressed.

**Explanatory Note**

Overshadowing and amenity impacts may be potential issues associated with increasing the height and floor space ratio controls on a site. It would not be reasonable to require a proponent to provide detailed architectural design drawings of a proposed development as part of the planning proposal. The planning proposal should provide sufficient justification explaining why it is proposed to increase the development potential of the site by amending these development standards in that location.

The planning proposal could include block / massing diagrams at Gateway review stage to identify the proposed building massing. The RPA may also nominate that a detailed visual impact assessment is necessary after a Gateway determination has been issued to confirm the suitability for increasing the height and floor space ratio controls.

**Figure 3.** Showing proposed increase in the permitted built form massing
The Minister, GSC or delegate will review the planning proposal and confirm in the Gateway determination what information (which may include studies) and consultation is required before the LEP can be finalised. This may include additional information or work than what has been identified under the planning proposal.

As the necessary information is gathered and consultation has been undertaken, the planning proposal would be updated to include additional justification.

### 2.3.1 Questions to consider when demonstrating the justification

#### Section A – Need for the planning proposal

**Q1. Is the planning proposal a result of any strategic study or report?**

The answer to this question helps explain the context of the planning proposal. If the planning proposal implements the outcomes of a strategic study or report of some kind, the nature of the study and its key findings should be briefly explained to justify the proposal. A copy of the study or report (or relevant parts) should be submitted with the planning proposal and ultimately form part of the public exhibition material.

**Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Imposing or changing the controls on development is one means of giving effect to policy. But others may be equally effective and implemented quicker.

Even when changing development controls is an appropriate means of giving effect to policy, there is still a range of options regarding how and when the new controls should be introduced. For example, it may be more suitable to amend a land use table or rezone a site rather than including site specific provisions to enable a new land use.

The planning proposal should demonstrate that alternative approaches to achieving the intended outcomes of the proposal have been considered. It should be evident from this assessment that the proposed approach is the best, most efficient and most time effective approach to delivering the desired outcome.

#### Section B – Relationship to strategic planning framework.

**Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?**

Regional, sub-regional and district plans and strategies have been prepared for many parts of NSW. These plans or strategies include outcomes and specific actions for a range of different matters relevant to that region, sub-region or district. In all cases the plans and strategies include specific housing and employment targets and identify regionally important natural resources, transport networks and social infrastructure.
When preparing a planning proposal for an area covered by a plan or strategy, the relationship between the planning proposal and the applicable plan or strategy must be considered in the context of those outcomes and actions including housing and employment targets. Where an outcome or action is directly relevant to the planning proposal it should be briefly described and the reasons why the proposal is either consistent or inconsistent with the outcome or action should be set out.

**Explanatory Note**

Mapping may be provided to confirm that a proposal is consistent with an outcome or action under a regional plan.

Some regional strategies and plans include Sustainability Criteria that provide a framework to consider planning proposals that are not consistent with the strategy but may nonetheless have merit. This may include a proposal for rezoning a site immediately adjoining – but not included in – a future urban investigation area under the relevant strategy. Where this Criteria apply, the planning proposal should demonstrate that the rezoning can meet the Sustainability Criteria or identify the studies necessary to confirm that it can meet this Criteria.

Assessment Criteria have been established to assist proponents or a RPA justify a planning proposal. These criteria form the basis of the strategic merit and site-specific merit assessment for the rezoning review process. As a minimum, the justification component of a planning proposal should address the following Assessment Criteria where no Sustainability Criteria applies to the land.

**Assessment Criteria**

a) Does the proposal have strategic merit? Is it:
• Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or
• Consistent with a relevant local council strategy that has been endorsed by the Department; or
• Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.

There will be a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old, unless the proposal can clearly justify that it meets the Strategic Merit Test.

**Note:** A draft regional plan outside of the Greater Sydney Region, draft district plan within the Greater Sydney Region or draft corridor/precinct plan that has been released for public comment by the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment does not form the basis for the Strategic Merit Test where the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment announces that there is to be another exhibition of, or it is not proposed to finalise, that draft regional, district or corridor/precinct plan.

b) Does the proposal have site-specific merit, having regard to the following:
   • the natural environment (including known significant environmental values, resources or hazards) and
   • the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and
   • the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Q4. Is the planning proposal consistent with a council’s local strategy or other local strategic plan?

Where a local strategic plan has been prepared for the LGA and endorsed by the Secretary, relevant matters must be identified and the relationship of the planning proposal to those matters should be discussed.

As is the case with strategic studies and reports, the status of council’s plan is important. Is it still in draft form? Has it been adopted by the council? Has it been endorsed by the Secretary? A planning proposal that is explicitly consistent with an endorsed local strategy has a good chance of being supported.

Local strategies or local strategic plans also provide the opportunity to justify or detail how environmental issues (such as those set out in section 117 Directions) can be addressed.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

State Environmental Planning Policies (SEPPs) relevant to the planning proposal must be identified and the relationship of the planning proposal with those SEPPs must be discussed. In some instances it may be necessary to provide some preliminary advice in relation to how the proposal can satisfy the requirements of the SEPP. For example, a Stage 1 contamination report may be necessary under the provisions of SEPP 55 – Remediation of Land. A proponent and / or RPA should identify whether it is considered necessary to undertake this study after a Gateway determination is issued, to demonstrate that the purpose of the planning proposal can be achieved.
Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Section 117 of the Act enables the Minister to issue directions regarding the content of LEPs to the extent that the content must achieve or give effect to particular principles, aims, objectives or policies set out in those directions.

There is a range of section 117 Directions (Local Planning Directions) requiring certain matters to be addressed if they are affected by a proposed LEP. The directions can be found on the Department’s website at www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/Policy-Directions-for-Plan-Making. Each planning proposal must identify which, if any, section 117 Directions are relevant to the proposal, and whether the proposal is consistent with the direction. Where the planning proposal is inconsistent with any of the relevant directions, those inconsistencies must be specifically explained and justified in the planning proposal.

Additional information may be required after a Gateway determination has been issued, to demonstrate consistency with a direction or enable the Secretary to agree to an unresolved inconsistency.

A RPA will need to ensure that any unresolved inconsistency with a direction is addressed and agreed to by the Secretary prior to the LEP being made.

Certain directions require consultation to take place with particular government agencies to demonstrate consistency with the direction’s desired outcome. If such a direction is relevant to the planning proposal, this should be identified in the planning proposal in the first instance. Formal consultation with that government

Explanatory Note

Mapping may be provided under an initial planning proposal to identify if a SEPP is relevant to the proposal.

Figure 5. Confirming that the provisions of State Environmental Planning Policy 26 – Littoral Rainforests do not apply to a site.
agency should not take place until the initial Gateway determination is issued, confirming the public authorities to be consulted.

Section C – Environmental, social and economic impact

Q7. 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?

A planning proposal that is submitted for a Gateway determination should identify if the land subject to the proposal has the potential to contain critical habitat or threatened species, populations or ecological communities, or their habitats.

Explanatory Note

Mapping may be provided under an initial planning proposal to identify known vegetation communities that are located within or near the site.

Figure 6. Identifying known native vegetation communities surrounding a site.

If it is likely that the land may contain critical habitat or threatened species, populations or ecological communities, or their habitats the proposal should identify what studies are necessary to confirm the presence of these species or habitats and their significance. An assessment of its significance and/or consultation should not take place until after, and if required by, the Gateway determination.

If suitable, it may be necessary to carry out an assessment of significance in accordance with section 5A of the Act and the ‘Threatened Species Assessment Guidelines’ after a Gateway determination is issued. These Guidelines can be found at www.environment.nsw.gov.au/resources/threatenedspecies/tsaguide07393.pdf

The assessment of significance will determine whether there is 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.
Notwithstanding the significance of the impact, any adverse impact will trigger the requirement under section 34A of the Act for the RPA to consult on the planning proposal with the relevant government agency.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The aim of the strategic planning framework is to provide comprehensive guidance regarding the matters that will shape the growth of NSW. It is possible other likely environmental effects unique to a particular planning proposal may not be already addressed in the strategic planning framework. These matters may be identified in informal guidelines, codes or policies produced by different public authorities including local councils. These may include natural hazards such as flooding, land slip, bushfire hazard and the like.

It is important these are identified in the planning proposal. It is necessary to prepare information or undertake investigations to address an identified matter, the scope of these should be identified in the initial planning proposal while the actual information/investigation may be undertaken following the initial Gateway determination.

**Explanatory Note**

Imagery may be provided under an initial planning proposal to confirm if the land is mapped as being subject to natural hazards

![Image](https://example.com/image.png)

*Figure 8.* Identifying if a site is located near mapped bushfire threat.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The response to this question will include effects on items or places of European or Aboriginal cultural heritage not already addressed elsewhere. It may also include an estimate jobs or home growth, impacts on existing
social infrastructure such as schools and hospitals and impacts on existing retail centres which may result if the planning proposal proceeds.

In the instance where a planning proposal is to proceed, the Gateway needs to be satisfied that the level of information available leads to the conclusion that the LEP can be completed within a reasonable timeframe and that identified potential impacts can be addressed.

As with other potential impacts, the initial planning proposal should identify the scope of issues to be addressed. The Gateway determination will confirm the scope of matters to be addressed.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

Typically, this question applies to planning proposals that:

- result in residential subdivisions in excess of 150 lots
- substantial urban renewal
- infill development
- development that will result in additional demand on infrastructure (such as public transport, roads, utilities, waste management and recycling services, essential services such as health, education and emergency services).

Where applicable, the justification for the planning proposal should address whether existing infrastructure is adequate to serve or meet the needs of the proposal. Any justification should address how any predicted shortfall in infrastructure provision could be met. It is not necessary for a proponent or RPA to identify exactly what infrastructure may be needed at the initial stage. The planning proposal should identify that there may be an expected shortfall in service provision, that studies may be required to identify the extent of that shortfall, potential mechanisms to address any shortfall and which agencies are to be consulted as part of that process.

For planning proposals likely to place additional demands on public infrastructure, this section will be developed following Gateway determination and consultation with the public authorities responsible for the provision of that infrastructure. The Gateway determination would confirm the additional studies required and which public authorities to be consulted.

To maximise opportunities associated with the Government’s unprecedented investment in infrastructure, strategic planning reviews are being undertaken for a number of centres and growth areas across the Sydney Metropolitan Area.

As part of these strategic reviews, land use and infrastructure plans are being prepared and Special Infrastructure Contribution plans are being investigated. This will ensure infrastructure such as additional public transport, health care, road upgrades, new schools and parks will be coordinated to support the community’s needs at the same pace as the delivery of new homes and jobs over time.


Until these strategic reviews are completed, and as an interim measure, all planning proposals within these areas should acknowledge that a satisfactory arrangements provision for contributions to designated State public infrastructure may be required in the final instrument.
Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

One of the aims of the plan making process is to reduce the number of unnecessary referrals to government agencies. The planning proposal should nominate the state and Commonwealth agencies to be consulted and outline the particular land use issues or site conditions which have triggered the need for the referral. The proposed agency consultation will be confirmed with the Gateway determination.

The preliminary views of any state or Commonwealth agency obtained by a proponent in relation to a proposal prior to its submission to a RPA should be included in this section. This should include agreement about the scope of any additional information/investigations that may be required by that agency subsequent to the issuing of a Gateway determination. Evidence of this pre-lodgement consultation and any agreement in relation to the progression of the planning proposal should be provided with the planning proposal.

This information will also be a relevant consideration in the assessment of whether a proposed instrument qualifies for a Rezoning Review.

2.4 Part 4 – mapping

Planning proposals should be supported by relevant and accurate mapping where appropriate. The mapping should be clear and accurately identify, at an appropriate scale, relevant aspects of the proposal including:

- the land subject to the planning proposal
- current land use zone/s applying to the land
- current development standards relating to the land (i.e. FSR, building height, minimum lot size)
- the proposed alternative zone, if a change in zone is proposed
- a map illustrating the extent of the proposed revised development standard, if a change to a development standard is proposed
- relevant maps or figures illustrating the intent of the planning proposal including:
  - extent of a proposed heritage conservation area
  - location of a specific heritage item
  - proposed extent of an environmental conservation area
  - area to which a local provision will apply.

Additional material such as aerial photographs clearly identifying the site should also be included where appropriate.

Mapping should be prepared at an appropriate scale showing the subject site and immediate area surrounding the site.

It is encouraged that mapping should be consistent with the requirements of the Department’s Standard Technical Requirements for Spatial Datasets and Maps (i.e. Using the same format template, colours, zone names etc as required under the Department’s guidelines). Where the planning proposal is prepared by a proponent, this may not initially be possible. However, for exhibition purposes, the Gateway determination may require that mapping compliant with these technical requirements be prepared to ensure consistency with council’s current SI LEP maps.

The Gateway may also determine that additional mapping be prepared to support the exhibition of a planning proposal. Where this is the case, this requirement will be included in the Gateway determination.
2.5 Part 5 – community consultation

An indication of any proposed community consultation is required with the planning proposal.

The planning proposal should outline the community consultation to be undertaken in respect of the proposal, having regard to the requirements set out in ‘A guide to preparing local environmental plans’. For the purpose of public notification the guide distinguishes between ‘low impact’ and other types of planning proposals.

If a RPA considers a greater period of public notification is required or that a public hearing should be held, it should be explained in this part of the planning proposal.

The Gateway determination will then confirm the public consultation that must be undertaken in respect of the planning proposal. This part of the proposal must be revised to reflect any change to the consultation requirements specified in the Gateway determination prior to the proposal being publicly exhibited.

Additional information or studies may be required to be included in the planning proposal before consultation is undertaken with the public or Government agencies. This is to ensure interested parties / persons can make an informed opinion regarding the proposed LEP amendment. The requirement for this additional information or studies will be outlined in the Gateway determination document.

2.6 Part 6 – project timeline

A primary goal of the plan making process is to reduce the overall time taken to produce LEPs. The Gateway determination will confirm the level of information necessary to support a planning proposal and the consultation requirements. This is to ensure that the plan making process will be completed within a reasonable time.

In order to meet this goal, the Minister or GSC may consider taking action to finalise the LEP if the timeframes approved for the completion of the planning proposal are significantly or unreasonably delayed.

The inclusion of a project timeline with the planning proposal will provide a mechanism to monitor the progress of the planning proposal through the plan making process. It will also allow the RPA, the Department and Parliamentary Counsel’s Office (PCO) to more accurately manage resources to ensure there are no unexpected delays in the process.

The timeframe for the completion of the planning proposal will depend on the complexity of the matter, the nature of any additional information that may be required and the need for agency and community consultation. The following details should be provided as a minimum in the project timeline:

- anticipated commencement date (date of Gateway determination)
- anticipated timeframe for the completion of required technical information
- timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)
- commencement and completion dates for public exhibition period
- dates for public hearing (if required)
- timeframe for consideration of submissions
- timeframe for the consideration of a proposal post exhibition
- date of submission to the Department to finalise the LEP
- anticipated date RPA will make the plan (if delegated)
- anticipated date RPA will forward to the Department for notification.

The project timeline will be assessed by the Department, and may be amended by the Gateway to provide the necessary level of confidence that the LEP will be finalised within a reasonable time.
3 What happens next?

The RPA will undertake an assessment of the planning proposal information provided and decide whether the proposal contains sufficient information to meet the requirements of the Act and this guideline. The RPA will then decide whether or not to send the proposal to Gateway. The RPA will generally consider the matter at a council meeting and resolve to send the planning proposal to the Department for consideration.

Once the planning proposal is submitted to the Department the proposal is assessed by the Department’s regional office, and in some instances the LEP Review Panel. The regional office or Panel, where relevant, will make a recommendation to the Minister, GSC or delegate as to whether there is merit in the proposal proceeding and if so, whether any conditions should be attached to the proposal to ensure it progresses. If it is determined that a proposal should proceed, the Minister, GSC or delegate will issue a Gateway determination and the matter will be returned to the RPA to finalise in accordance with any conditions imposed by the Gateway.
4 Need more information?

The preparation of a planning proposal is the critical first step in the plan making process. The plan making process includes opportunities for the review of decisions to be undertaken to ensure that proposals with strategic merit can be considered in a timely manner. In certain circumstances the plan making process has been delegated to council to ensure that local planning decisions are made at the local level.

To assist understanding of the plan making system the Department has prepared Planning Circulars PS Independent reviews of plan making decisions and PS 16-002 Delegation of plan making decisions which explains in more detail the various components of the plan making process. A guide to preparing local environmental plans has also been updated.

These documents may be found on Department’s website at www.planning.nsw.gov.au/gateway-process

If you require additional information about preparing a planning proposal or the plan making process, you should initially contact one of the Department’s regional teams. Contact details for these teams can be found on the Department’s website (www.planning.nsw.gov.au/contact-us) or by phoning the Department’s Information Centre on (02) 9228 6333 or 1300 305 695.
Attachment 1 – Information checklist

**STEP 1: REQUIRED FOR ALL PROPOSALS**
(under s55(a) – (e) of the EP&A Act)

- Objectives and intended outcome
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- Justification and process for implementation (including compliance assessment against relevant section 117 direction/s)

**STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS**
(Depending on complexity of planning proposal and nature of issues)

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<th>Planning Matters or Issues</th>
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<td><strong>Strategic Planning Context</strong></td>
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<td>Consistent with the relevant regional plan, district plan, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or</td>
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<td>Seeking to update the current planning controls if they have not been amended in the last 5 years.</td>
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<td><strong>Site Description/Context</strong></td>
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<td>Aerial photographs</td>
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<td>Building mass/block diagram study (changes in building height and FSR)</td>
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<td>Lighting impact</td>
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<td>Development yield analysis (potential yield of lots, houses, employment generation)</td>
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<td>List any additional studies that should be undertaken post Gateway determination</td>
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Dear Simon,

Re: Planning Proposal to Amend Murray River LEP2011
   Additional Permitted Use
   Floating Restaurant
   Murray River at Paddle steamer Hero Mooring
   Echuca/Moama

As a result of our recent meeting with yourself and Council Administrator David Shaw which resulted in extremely positive support for the proposal, I now submit a formal Planning Proposal for consideration by Council.

The proposal is to extend the existing mooring used to berth the paddle steamer Hero in the Murray River and to then establish Oscar W’s Restaurant on the extended mooring.

As you are well aware Oscar W’s was an acclaimed dining venue that was situated in the historic Port of Echuca on the banks of the Murray River. The building housing the restaurant is owned by the Shire of Campaspe and due to the owner failing to keep the building up to expected health and safety standards the building and restaurant were closed.

The Licensee of Oscar W’s has since then renovated and opened the American Hotel in Echuca. This venue is now solidly established and the owner wants to re-establish the Oscar W’s restaurant.

The opportunity has arisen whereby the owners and operators of the paddle steamer Hero
have agreed with the owner of Oscar W’s to expand the Hero mooring and to establish Oscar W’s as a floating restaurant on the expanded mooring.

The paddle steamer Hero has been painstakingly restored by Gary Byford and is now the most wonderful vessel which showcases the full glory of the workmanship of days gone by.

Having these two iconic businesses operating from the same site, practically in the centre of Echuca Moama, will create an enormous tourist attraction that promises to expand on the recent renovations undertaken at the Port of Echuca historic precinct.

To allow this proposal to proceed the Murray LEP must first be amended accordingly.

The site of the mooring is zoned W2 Recreational Waterways under the Murray River LEP 2011. In this zone a restaurant is a prohibited use within the associated Land Use Table.

As the PS Hero Mooring is eminently suitable for this use it is requested Council consider this proposal which will allow “Restaurant” as a land use at this particular site only. It is not proposed, nor is it wanted to allow such use elsewhere in the W2 Zone.

The submission of a Planning Proposal to allow a restaurant is made due to the merits of the specific site.

The site is adjacent to the south bank of the Murray River and is hence accessed from Victoria. Access to the site is controlled by the Shire of Campaspe. The shire of Campaspe have also indicated their support for this proposal to proceed.

The Shire of Campaspe have provided a bitumen walking track to the gangway that connects the mooring to the bank. They have also provided underground electricity supply and underground filtered water supply to the mooring.

Car parking is available at the nearby Tourist Information Centre.

The specific site is known as Commercial mooring CL6224 which has been issued to the owners by the NSW Roads and Maritime Services (NSW RMS).

The actual position of the mooring was re-located by the Shire of Campaspe as part of their Port of Echuca Revitalisation Project (PERP). This project was a multimillion dollar program funded jointly by the Commonwealth, State and Local Governments to reinvigorate the historic Port of Echuca. Approval for the re-location of the mooring to its current position was approved by the Shire of Murray in DA 208/12.

A copy of the plan endorsed under that approval, showing the re-located mooring is included in the Planning Proposal document at attachment 10.

From that plan it can be seen that the position of the mooring is directly opposite “peg 2”.
“Peg 2” refers to a peg that was placed as part of a survey to define the position of the State Border between NSW and Victoria in the vicinity of the Port of Echuca.

The survey was undertaken by the Division of Survey and Mapping Victoria and was approved jointly by the Surveyors General of NSW and Victoria. The plan relating to the survey has been registered in the Victorian Titles Office as CP111023.

A copy of the plan is attached. It can be seen that AMG co-ordinates have been allocated to peg 2. As such peg 2 is a reliable reference point from which the site can be defined. This is necessary to allow accurate mapping of the area which is subject to this proposal. A plan showing the location of the extended mooring relative to peg 2 is included with the planning proposal at item 12.

The site of the proposal will not interfere with the day to day operations of the Port of Echuca yet it is close enough to the Port to be an important adjunct to the continued commercial success of the port.

The proposal will combine two attractions that Echuca is well known for, being paddle steamers and fine dining. It will provide an enormous flow on effect to the town and will support local agriculture providers and will provide more jobs for local people.

We have obtained support for the proposal from NSW RMS, DPI (Fisheries) and Victoria Police – see attached letters and emails.

Senior Management and Planning Staff from the Shire of Campaspe have also been enthusiastic about the proposal and have indicated their support.

The NSW Office of Environment and Heritage have provided advice that the proposal to establish the restaurant on the mooring does not breach the provisions of the Murray Regional Environmental Plan 2 (MREP2) – see copy email enclosed.

This same advice has been independently provided by Planning Lawyers, Bazzani Scully and Priddle – see enclosed letter.

Formal consent of the landowner, being the NSW Department of Crown Lands, has been sought and is currently being processed. This should be available early in 2017.

At present the paddle steamer Hero is licensed to carry 78 passengers. It is proposed that the expanded pontoon and restaurant will have inside seating for 48 patrons and outdoor seating for another 32 people.

Thus the maximum number of people that could be using the paddle steamer, mooring and restaurant at any time is 150. It is envisaged that 65% of this usage will occur after 5pm.

The formal Planning Proposal and associated items are now enclosed for consideration by Council. A cheque for $4520 is also enclosed as requested.
A full set of schematic design drawings are also enclosed for your information.

I trust this submission is in order however please do not hesitate to contact me should you require any further details.

Yours faithfully

Mark F Langenbacher
Licensed Surveyor
PLANNING PROPOSAL

MURRAY LEP 2011

COMMERCIAL MOORING CL6224

MURRAY RIVER

MOAMA

ZONE W2 RECREATIONAL WATERWAYS

CL.2.5 ADDITIONAL PERMITTED USE

RESTAURANT
PLANNING PROPOSAL
ADDITIONAL PERMITTED USE
COMMERCIAL MOORING CL.6224
MURRAY RIVER, MOAMA NSW

PART 1 – OBJECTIVES OR INTENDED OUTCOME

To amend the Murray LEP 2011 to allow a floating restaurant to be established on the mooring associated with the Paddle steamer Hero in the Murray River at Echuca.

PART 2 – EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by:

- Introducing “Restaurant” as an additional permitted use for the PS Hero mooring into Schedule 1 of the Murray LEP 2011 via Clause 2.5. Such use is to be carried out with Development Consent.

The extent of the site affected by the proposal is shown on the plan at Attachment 3.

PART 3 – JUSTIFICATION

SECTION A – Need for the Planning Proposal

Q1. “Is the Planning Proposal a result of any strategic study or report?”

No. The Planning Proposal is the result of a former regionally and internationally acclaimed dining venue intending to re-establish in a new location.

The intended position of the restaurant on the mooring associated with the Paddle steamer Hero compliments/furthers the intended outcome of the recently completed Port of Echuca Revitalisation Plan (PERP). The PERP was a multimillion dollar program funded by the Commonwealth, State and Local Government to reinvigorate the Port of Echuca to attract more tourists.

The PERP was expected to deliver amongst other things:

- an additional 22,000 visitors annually to the Port of Echuca and;
- provide indirect economic benefit to the region.

The PERP recognised that the visitor experience must be strengthened, valued and must meet or exceed expectations.

The re-establishment of a local icon in the proposed location is seen to be a way of enhancing the visitors experience to Echuca/Moama and compliments the PERP.

A copy of the PERP is attached at item 10.
Q2. "Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?"

The Planning Proposal is to allow an additional permitted use only on a particular site.

The particular use to be permitted is deemed appropriate to the site given the location of the site and its position relative to the Port of Echuca which is an important tourist attraction.

As the site is within the Murray River it is not considered appropriate to re-zone the site from the current W2 Recreational Waterways Zone.

The Planning Proposal to allow an additional permitted use on the particular site requires less of a change to the LEP than a re-zoning and provides a more appropriate outcome.

SECTION B – Relationship to Strategic Planning Framework

Q3. "Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?"

RIVERINA - MURRAY REGIONAL PLAN (DRAFT)

The draft Riverina – Murray Regional Plan is a blueprint for creating a sustainable future for the region with strong, resilient local communities.

The plan proposes that making a diverse and competitive economy is central to creating more jobs, strengthening the regions towns and cities and sustainably managing the agricultural resources.

A priority of the plan is to capitalise on the regions strengths in the Agribusiness sector. The plan proposes greater investment in agricultural value-adding and to make the town’s cities and villages more vibrant places in which to live and work.

The plan identifies that agribusiness is a key economic sector for the region. Agribusiness includes food, beverage and other product outlets. The plan also recognises that the Murray River has great scenic beauty, a rich cultural heritage and provides enviable lifestyle and tourism opportunities.

These qualities need to be enhanced but also protected.

The Planning Proposal is consistent with the aims of the plan in that it will:

- Provide employment opportunities
- Strengthen the agri-business sector
- Diversify and strengthen the local economy
- Enhance the lifestyle in the towns of Echuca and Moama
- Attract additional tourists to the area
- Capitalise on, as well as add to, the scenic beauty of the Murray River
- Add to the character of the nearby important heritage precinct of the Port of Echuca

ASSESSMENT CRITERIA

a) Does the proposal have strategic merit?

Yes. The Planning Proposal is consistent with and further the aims of the draft Riverina – Murray Regional Plan.

b) Does the proposal have site-specific merit, having regard to the following:

- "the natural environment (including known significant environmental values, resources or hazards)"

The use of the expanded mooring for a restaurant will enhance and compliment the surrounding environmental values.

The mooring is close to the Echuca Wharf and surrounding heritage precinct. The restaurant has been designed to reflect the architectural forms and materials of this important tourist attraction.

The mooring is on the edge of the Murray River sent against a background of River Red Gums. The colours and materials of the restaurant have been selected to integrate with the natural environment.

- "the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal"

The nearby land on the Victorian side of the Murray River is Crown Land. It is set aside for public purposes and includes a walking and cycling track around the aquatic reserve.

The land on the opposite side of the Murray River in NSW contains two existing residences. These are separated from the river by a stand of mature River Red Gums. No further development will occur in this area as the land is subject to flooding.

Between the site of the Planning Proposal and the Port of Echuca, the Shire of Campaspe, as manager of the Port, have approval for some additional paddle steamer moorings.

The Planning Proposal is not in conflict with any of these uses.
"the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision"

The Planning Proposal is to take place on an existing mooring that is used to berth the PS Hero. The Hero has approval to carry 78 passengers and as such the relevant infrastructure required is already in place at the mooring.

The Shire of Campaspe have installed electricity and water to the site. Sewerage is stored in stainless steel tanks below the mooring (or boat) and is collected and pumped out by a contractor on a regular basis.

Access is via the walking track that exists along the river bank.

Car parking for patrons is available at the nearby tourist information centre.

Q4. "Is the Planning Proposal consistent with the Councils local strategy or other local strategic plan?"

Murray River Council prepared the Strategic Land Use Plan 2010-2030 to address key planning issues affecting the Shire.

The vision statement includes that “Councils vision is for a prosperous community with a diversified economy integrated with a sustainable and productive natural resource base.”

The Council recognises that there is a rich history associated with agriculture and the river trade.

The Council also states in the Strategic Land Use Plan that “Since around 1980, tourism has become the principal economic activity in Moama. Moama features a wide range of tourist accommodation and related facilities and has experienced a boom in this type of development over the past 10 years. It is reasonable to presume that tourist activities and accommodation will continue to expand in Moama.”

“The river environments of the Shire are the principal attraction for visitors and in recent times there has been an increase in demand to accommodate them in locations adjacent to or near the water. Given the sensitivity of the riverine environment, it is essential that any development undertaken within it is done in a manner that has nil environmental impact. Activities that have potential to impact detrimentally on the environment are bank disturbance, effluent disposal and human presence.”

The Planning Proposal is consistent with the Strategic Land Use Plan in that it:
  - will add to a diversified economy
  - assist the local agricultural producers
- enhance the heritage precinct of the Echuca Wharf and Port
- add another tourist attraction to the local area
- provide an opportunity to enjoy the riverine environment without causing any detrimental impact

Q5. "Is the Planning Proposal consistent with applicable State Environmental Planning Policies?"

Yes. The Murray Regional Environmental Plan No 2 – Riverine Land is a deemed State Environmental Planning Policy (SEPP) as of 1 July 2009. This plan is applicable to the subject site.

Clause 13 of MREP2 contains a Planning Control and Consultation table that defines various types of development and the relevant controls applicable.

The Planning Proposal is to use an existing mooring for an additional purpose being a restaurant.

Item 25 of Clause 13, MREP2 is “Single mooring”. This use is permissible with Council consent and has been in place at this site for a number of years.

Item 27 of Clause 13 MREP2 is “Tourist Related Facility”. It is important to this proposal to note that the additional use of the mooring for the purposes of a restaurant does not turn the mooring into a Tourist Related Facility.

The definition of Tourist Related Facility under item 27 is “An establishment, place or vessel which provides for either accommodation or entertainment or food or beverage and which is permanently fixed in or on the River Murray or is on land adjacent to the River Murray”.

Given that the proposal is to use a larger pontoon than is currently being used, and that this pontoon is not permanently fixed in or on the Murray River (as it is able to be untied and towed away during time of flood or for repairs), the use remains classified as either (20) Marina (Small) or (25) Single Mooring. Both of these uses are consistent with MREP2.

This view is confirmed by the NSW Office of Environment and Heritage. A legal opinion from Bazzani Scully Priddle has also been provided to confirm these views.

(27) Tourist Related Facility is a prohibited use under MREP2 hence the opinions provided are important in establishing that the Planning Proposal is consistent with MREP2.

Q6. "Is the Planning Proposal consistent with applicable Ministerial Directions (S.117 directions)?"

The Minister for Planning has issued directions under Section 117 of the Environmental Planning and Assessment Act which must be considered when
making Planning Proposals.

The Section 117 Directions relevant to this Planning Proposal are:

2. Environment and Heritage
   2.3 Heritage Conservation

4. Hazard and Risk
   4.3 Flood Prone Land

6. Local Plan Making
   6.3 Site Specific Provisions

The specific objectives of each direction and the consistency with the Planning Proposal are as follows;

2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

The site of the Planning Proposal is in the C1 Moama Historic precinct which is classified as being of State Significance in Schedule 5 Part 2 of the Murray LEP 2011.

The proposed restaurant has been architecturally designed so that it will compliment the style, colours and materials of other buildings in the heritage precinct.

The heritage precinct is a vibrant tourist attraction and the Planning Proposal will enhance the area.

4.3 Flood Prone Land

The objective of this direction are;

a) to ensure that development of flood prone land is consistent with the NSW Government’s Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and

b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

Although the Murray River is subject to flooding and the site of the Planning Proposal is within a Flood Planning Area, the provisions of this direction are not directly relevant to the Planning Proposal. The restaurant is to be located on a mooring which of course is designed to float. The mooring rises and falls as the water level in the river fluctuates. The
subject restaurant will always remain safely above the level of any flood that might occur hence the provisions of this direction are met by the proposal.

6.3 Site Specific Provisions

1) The objective of this directions is to discourage unnecessarily restrictive site specific planning controls.

What a relevant planning authority must do if this directions applies:

4) A Planning Proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

a) Allow that land use to be carried out in the zone the land is situated on, or
b) Rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already required in the zone, or

c) Allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal planning instrument being amended.

Option (c) is the appropriate alternative selected in this case. The introduction of the land use into Schedule 1 of the Murray LEP will specify that it may be carried out with development consent. This requires development approval be granted for the use and such approval will contain conditions as Council deems appropriate.

The Planning Proposal is consistent with the relevant ministerial directions.

SECTION C – Environmental, Social and Economic impact.

Q7. “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?”

Whilst the Planning Proposal is within the Murray River it is very unlikely to have any adverse effect on these items. This is because the proposal is on an existing mooring. The restaurant will collect all wastes in stainless steel tanks that will be regularly pumped out and discharged into the relevant sewerage system. There will be no pollution of the river as evidenced by the manner in which the mooring and PS Hero have operated for a number of years.
Q8. "Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?"

The mooring site is not affected by any environmental issues such as landslip, erosion or bushfire.

Noise from patrons may be considered an environmental issue however it is believed this will be minimal.

The venue is to be established to provide a fine food and dining experience and for patrons to enjoy the ambience of the Murray River. Loud noise is not expected to be associated with this type of venue. The planning controls to be imposed will limit the hours of operation of the venue. This will further ensure that noise should not cause a nuisance.

Q9. "Has the Planning Proposal adequately addressed any social and economic effects?"

The social and economic impacts of the Planning Proposal are seen to be positive.

The proposal will add an additional venue to the popular tourist destination of Echuca/Moama. The venue will provide a dining experience that is not available anywhere else. The operators of the venue are experienced restaurateurs and hospitality professionals who will ensure the venue is operated in a socially responsible manner.

It is expected that the venue will also attract visitors in its own right thus adding economic benefit to the towns. The venue will also provide economic benefit by providing employment opportunities.

The proposal will not have any impact on items or places of Aboriginal heritage. The mooring and the associated paddle steamer are already on site and operational.

Schools and hospitals will not be affected by the proposal.

The Planning Proposal is located away from the existing retail areas of Echuca and Moama. The venue is not a retail venue and will not detract shoppers from these areas. It will more likely attract patrons who may then visit the local shops, thus value adding to the local retailers.

SECTION D – State and Commonwealth Interests

Q10. "Is there adequate public infrastructure for the Planning Proposal?"

Yes. The proposal will operate from an existing commercial mooring. The Shire of Campaspe, as part of the Port of Echuca Revitalisation Plan, have provided electricity and water to the mooring. These services are already used by the PS Hero and will service the new venue.
Road access is available to the nearby Echuca/Moama visitor centre where a bitumen car park is available for use by patrons.

It is then approximately a 200m walk from the car park to the mooring. The access track is partly along a bitumen path and partly along a dirt road.

The dirt road leads from the bitumen car park and runs past the site. It then continues towards the onion patch and dry dock where it ends. This road is used by service and delivery vehicle tending the PS Hero and is suitable for the provision of services to the proposed venue.

As discussed elsewhere in this proposal, sewerage from the PS Hero is collected in stainless steel tanks and then pumped out by a contractor on a regular basis. A similar system will be used by the proposed restaurant.

Any additional upgrades required to infrastructure to service the proposed venue will be paid for by the operators.

Q11. “What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?”

The NSW Office of Environment and Heritage (OEH) were consulted some time ago with respect to this proposal.

The view of OEH is that the proposal can be considered by the Murray River Council under classification 20 of MREP2.

The proposal will be referred to OEH for comment. They will comment on biodiversity and the office advises that at this stage they consider such impacts to be minor.

The OEH will also comment on the assessment of impacts on Aboriginal objects.

The OEH also mentioned that the EPA may comment on erosion and sedimentation mitigation measures. Mitigation measures to prevent pollution of the Murray River will also be relevant.

EPA and Fisheries may also have additional requirements.

The Shire of Campaspe (Victoria) have also been consulted about this project and have indicated their support.
ATTACHMENTS

1. Information Checklist
2. Cadastral Plan showing site and surrounds
3. Aerial photograph with site highlighted
4. Site Photographs
5. Existing Zone Map with site highlighted
6. PS Hero and Mooring
7. Schematic Design - Existing and proposed plan views.
8. Schematic Design – Proposed plan
9. Schematic Design – North-East perspective
10. Port of Echuca Revitalisation Plan
11. Commercial Mooring Licence CL6224
12. Site Plan
### Attachment 1 – Information checklist

**STEP 1: REQUIRED FOR ALL PROPOSALS**
(under s55(a) – (c) of the EPRA Act)

- Objectives and intended outcomes
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- Justification and process for implementation (including compliance assessment against relevant section 17 direction/s)

**STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS**
(Depending on complexity of planning proposal and nature of issues)

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<td>Urban Design Considerations</td>
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<td>List any additional studies that should be undertaken post Gateway determination</td>
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Planning Proposal “Murray River, Moama” – Restaurant
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0424
2. Cadastral Plan showing site and surrounds

3. Aerial photograph with site highlighted
4. Site Photographs

**Photo Number 1**
View downstream towards Echuca Wharf from pontoon.

**Photo Number 2**
Western end of Timber Shed on Timber Pontoon, with security system.

**Photo Number 3**
Bollard with rope work on Pontoon.

**Photo Number 4**
Rope fender between Paddle Steamer and Pontoon.

**Photo Number 5**
Northern Side of Timber Shed on Timber Pontoon, with security system.

**Photo Number 6**
View upstream towards the Echuca – Moama Bridge.
Photo Number 7
Rope work on top deck of the Paddle Steamer 'Hero'.

Photo Number 8
Ceiling low level of the Paddle Steamer 'Hero'.

Photo Number 9
Rope and Bollard on the Paddle Steamer 'Hero'.

Photo Number 10
Rear entrance on the Paddle Steamer 'Hero'.

Photo Number 11
Rope work on Timber Deck of Pontoon.

Photo Number 12
Gangplank to Timber Pontoon.

Planning Proposal “Murray River, Moama” – Restaurant
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5. Existing Zone Map with site highlighted

Planning Proposal “Murray River, Moama” – Restaurant
S:\S6572\Planning Proposal\Planning Proposal.doc
6. PS Hero and Mooring

7. Schematic Design - Existing and proposed plan views.
8. Schematic Design – Proposed plan

9. Schematic Design – North-East perspective
10. Port of Echuca Revitalisation Plan
## 11. Commercial Mooring Licence CL6224

**Renewal**

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<th>MTARINE PRODUCT SERVICES</th>
<th>Locked Bag 8/200 CAMPERDOWN NSW 1450</th>
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<td>13 12 68</td>
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**Commercial Mooring Licence**

**AN OCCUPATION LICENCE ISSUED UNDER THE MANAGEMENT OF WATERWAYS AND WATERSIDE LAND REGULATIONS N.S.W.**

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<td>Address</td>
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**Location**

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**Commercial Licence No.**

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**Expiry Date**

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**Pay By Date**

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**Number of Sites:**

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*For instalments, the first instalment can only be made at a RMS office, by BPAY or by mail.*

**Standard Conditions:** Please be aware and comply with all conditions contained in the enclosed Commercial Mooring Licence leaflet.

**Special Conditions:**

DO NOT DETACH. FULL FORM TO BE RETURNED WITH PAYMENT

---

**Signature of Licensee**

**Credit**

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**Planning Proposal “Murray River, Moama” – Restaurant**

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12. Site Plan

NEW SOUTH WALES

VICTORIA

Planning Proposal “Murray River, Moama” – Restaurant
S:\S6572\Planning Proposal\Planning Proposal.doc
Dear Chris

Re: Additional Information
Planning Proposal for Restaurant
Murray River, Echuca, Vic

In reply to your request for additional information to assist Council in determining the above mentioned application, I wish to provide the following details;

- "Assessment demonstrating compliance with the W2 Recreational Waterways Zone of the Murray LEP 2011."

Under the Murray LEP 2011, the objectives of Zone W2 Recreational Waterways are as follows;

- To protect the ecological, scenic and recreation values of recreational waterways.
- To allow for water-based recreation and related uses.
- To provide for sustainable fishing industries and recreational fishing.

The Planning Proposal put before Council is to permit the existing mooring associated with the Paddlesteamer Hero to be used for the additional purpose of "a restaurant".

This will require the existing mooring to be extended and new structures to be erected on the mooring deck.
As the mooring already exists it is without question that the mooring satisfies the objectives of the W2 Zone Recreational Waterways. Any extension to the mooring will not change its compliance with the objectives of the W2 Zone.

There is a timber shed existing on the mooring that is built in a rustic style to complement the nearby Port of Echuca. The additional building required for the restaurant is proposed to be constructed from similar rustic materials to compliment the historic nature of the area.

The mooring is associated with the Paddlesteamer Hero which is licensed to carry 80 persons, usually 5 crew and 75 patrons. The Hero is licensed to serve alcohol to the guests. Food is prepared by external caterers although a commercial kitchen is on board.

The planning proposal to allow the mooring to be used for the secondary purpose of a restaurant is seen as being a logical extension to the usage of the Paddlesteamer Hero.

Permitting the extended mooring to also be used as a restaurant will not compromise the zone objectives.

- "To protect the ecological, scenic and recreational values of recreational waterways."

The proposed extended mooring will have no different impact on the ecology of the Murray River to that of the existing mooring.

The extended mooring will require one additional building to allow for the restaurant. The additional building will be in the same style as the existing shed on the mooring and as such it will blend in with the existing scenery along the river.

The use of the Murray River for recreational purposes will not be affected by the Planning Proposal. People will still be able to go fishing, boating, walking as they do now.

The proposed restaurant on the mooring is seen as being an additional way in which people can enjoy their recreational time on the waterway.

- "To allow for water-based recreation and related uses."

The mooring is already associated with water based uses. This will be enhanced if it can also be used as a restaurant as is proposed.
- "To provide for sustainable fishing industries and recreational fishing."

Neither of these uses will be affected by the planning proposal.

Under Section 3 of Zone W2 Recreational Waterways, a mooring is included in the list of land uses that can be undertaken with consent viz;

3 **Permitted with consent**

"Aquaculture; Boat building and repair facilities; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Charter and tourism boating facilities; Environmental facilities; Environmental protection works; Floor mitigation work; Heliports; Information and education facilities; Jetties; Kiosks; Marinas; Mooring pens; Moorings; Recreation areas; Recreation facilities (outdoor); Roads; Water recreation structures; Water supply systems; Wharf or boating facilities"

Land uses that are prohibited in the zone are listed in Section 4 as follows;

4 **Prohibited**

"Industries; Multi dwelling housing; Residential flat buildings; Seniors housing; Warehouse or distribution centres; Any other development not specified in item 2 or 3"

It is noted that as a "restaurant" is not listed in the either Section 2 or Section 3 of the zone, it must be treated as prohibited.

After meeting with Senior Council Managerial Staff and the Administrator it was agreed that this application would need to be submitted as a Planning Proposal that would allow the use of the mooring as a restaurant, at this site only, via inclusion in Schedule 1 of the Murray LEP.

This is to be achieved via clause 2.5 of the LEP and such use will require Development Consent.
Assessment against Murray REP2 Riverine Land

(Whilst Council staff agrees that the subject development does not meet the description of a 'tourist related facility' as outlined in clause 13, please provide assessment against all relevant clauses of this deemed SEPP.)

The Murray Regional Environmental Plan No. 2 – Riverine Land consists of 3 parts.
Part 1 Introduction
Part 2 Planning Principles, and
Part 3 Planning Requirements and Consultation

Part 1 includes clauses 1-7 as follows;
1. Name of plan.
2. Aims of the plan.
3. Objectives of the plan.
4. Where the plan applies.
5. How this plan affects other plans.
6. Definitions.
7. Notes.

These clauses are general in nature and other than clause 4 which states that the plan does apply to this site, do not require any further comment.

Part 2 includes clauses 8, 9 & 10 as follows;
8. When planning principles should be applied.
9. General principles.
10. Specific principles.

Comment on these clauses with respect to the Planning Proposal is relevant in the following instances;

8. When planning principles should be applied.

This part applies when:

(a) N.A.
(b) A consent Authority determines a development application, or
(c) N.A.

When this part applies, the following must be taken into account;

(a) the aims, objectives and planning principles of this plan.

(b) any relevant River Management Plan.

(c) any likely effect of the proposed plan or development on adjacent and downstream local government areas.

(d) the cumulative impact of the proposed development on the River Murray.

Comment on these principles as relevant to the planning proposal submitted to the Council are as follows;

Aims:

(a) "To conserve and enhance the riverine Environment of the River Murray for the benefits of all users."

The proposal to expand an existing mooring and to use it for the additional purpose of a restaurant does not contravene the aims of Murray REP 2.

Objectives:

(a) "To ensure that appropriate consideration is given to development with the potential to adversely affect the Riverine Environment of the Murray River."

The planning proposal will be undertaken with due consideration of the environment. Suitable systems for the containment of any waste products are already in place. These will be expanded as deemed necessary so that no risk of damage to the environment will occur.

(b) "To establish a consistent and coordinated approach to environmental planning and assessment along the Murray River."

The Planning Proposal will be considered by the local Council under its LEP. The decision making process will be supported by comments sought from the NSW Office of Environment and Heritage, Department of Primary Industries, Roads and Maritime Services, Department of Lands and NSW Department of Planning.
"To conserve and promote the better management of the natural and cultural heritage values of the riverine environment of the River Murray."

The planning proposal will not impact on either the natural or cultural heritage values of the Murray River.

10. Specific Principles.

Access

- "The waterway and much of the foreshore of the River Murray is a public resource. Alienation or obstruction of this resource by or for private purposes should not be supported."

The existing mooring does not obstruct the waterway, nor will the expanded mooring.

Access to the existing mooring is via a walking track across Crown Land from the nearby car park at the Visitor Information Centre.

The walking track has been constructed by the Shire of Campaspe and is open to the public. There is no obstruction of the foreshore of the Murray.

- "Development along the main channel of the River Murray should be for public purposes. Moorings in the main channel should be for the purposes of short stay occupation only."

The mooring has already been approved by RMS and the Shire of Campaspe as well as the NSW Department of Crown Lands. No additional mooring is proposed.

- "Human and stock access to the River Murray should be managed to minimise the adverse impacts of uncontrolled access on the stability of the bank and vegetation growth."

There is no stock access available to the mooring nor is such access proposed. Human access is via walking tracks and vehicular tracks through Crown Land adjacent to the Echuca Aquatic Reserve. The Shire of Campaspe manages the area on behalf of the Department of Crown Lands.
Bank Disturbance

- "Disturbance to the shape of the bank and riparian vegetation should be kept to a minimum in any development of riverfront land."

The planning proposal to use the existing mooring for the additional purpose of restaurant does not require any disturbance of the bank or riparian vegetation. The existing access to the mooring will be maintained without modification.

Flooding

- "Where land is subject to inundation by floodwater:

(a) the benefits to riverine ecosystems of periodic flooding,
(b) the hazard risks involved in developing that land,
(c) the redistributive effect of the proposed development on floodwater,
(d) the availability of other suitable land in the locality not liable to flooding,
(e) the availability of flood free access for essential facilities and services,
(f) the pollution threat represented by any development in the event of a flood,
(g) the cumulative effect of the proposed development on the behaviour of floodwater, and
(h) the cost of providing emergency services and replacing infrastructure in the event of a flood.

The proposed restaurant is to be located on an existing mooring. The mooring of course is designed to float on the water and will rise and fall accordingly with the water level in the river.

The restaurant will not be directly affected by flooding. Access to the mooring can be affected by flood water, if it is necessary patrons can be transported to the restaurant by the paddlesteamer Hero via the Echuca Wharf.

The mooring/restaurant will have no impact on the natural cycle of flooding within the river.

There is no risk of pollution in the time of a flood as all waste is stored in tanks underneath the mooring. The tanks are pumped out on as needs basis.
The level of floodwater is not affected by the mooring, it floats on the water.

Emergency services will not be required in times of a flood as the mooring is designed to float as the water level rises and falls.

Infrastructure such as water and electricity are already connected to the mooring via underground pipes and cables hence these services are not affected by floodwater.

- “Flood mitigation works constructed to protect new urban development should be designed and maintained to meet the technical specifications of the Department of Water Resources.”

Not applicable.

Land degradation
- “Development should seek to avoid land degradation processes such as erosion, native vegetation decline, pollution of ground or surface water, groundwater accession, salination and soil acidity, and adverse effects on the quality of terrestrial and aquatic habitats.”

Not applicable. The proposal is for an additional permitted use on an existing floating mooring. None of these issues are relevant.

Landscape
- “Measures should be taken to protect and enhance the riverine landscape by maintaining native vegetation along the riverbank and adjacent land, rehabilitating degraded sites and stabilizing and revegetating riverbanks with appropriate species.”

The proposal to permit an additional use on an existing mooring will not impact on the landscape. No vegetation will be removed. The status quo will remain.
River related uses

- "Only development which has a demonstrated, essential relationship with the river Murray should be located in or on land adjacent to the River Murray. Other development should be set well back from the bank of the River Murray."

The mooring for the Paddlesteamer Hero has an essential relationship with the Murray River. The proposal to use the mooring for a secondary purpose has no impact on the Murray River and is in accordance with the aims and objectives of this plan.

- "Development which would intensify the use of riverside land should provide public access to the foreshore."

The mooring and paddlesteamer are private property however access is available by the public.

Public access to riverside land adjacent to the mooring is available and unencumbered.

Settlement

- "New or expanding settlements (including rural-residential subdivision, tourism and recreational development) should be located:

  (a) on flood free land,

  (b) close to existing services and facilities, and

  (c) on land that does not compromise the potential of prime crop and pasture land to produce food or fibre.

Not applicable.

Water quality

- "All decisions affecting the use or management of riverine land should seek to reduce pollution caused by salts and nutrients entering the River Murray and otherwise improve the quality of water in the River Murray."

All wastes from the Hero and its associated mooring are self contained and do not impact on the river. The same system of waste capture, storage and containment will be used for the restaurant. There will be no impact to water quality by the planning proposal.
Wetlands

- "Wetlands are a natural resource which have ecological, recreational, economic, flood storage and nutrient and pollutant filtering values.

Land use and management decisions affecting wetlands should:

(a) provide for a hydrological regime appropriate for the maintenance or restoration of the productive capacity of the wetland,

(b) consider the potential impact of surrounding land uses and incorporate measures such as a vegetated buffer which mitigate against any adverse effects,

(c) control human and animal access, and

(d) conserve native plants and animals.

Not applicable.

PART 3 includes clauses 11-14 as follows;


13. Planning Control and Consultation Table.


Clauses 11 and 12 detail essentially administrative processes.

I have consulted with the following Departments and Authorities in formulating the Planning Proposal and only positive comments have been obtained.

Murray River Council
David Shaw (Administrator)
Simon Arkinstall (Manager Environmental Services)

Shire of Campaspe
Keith Oberin (Economic & Community Development General Manager)
Andrew Fletcher (Manager Planning & Building)

NSW DPI (Fisheries)
Peter Heath (District Fisheries Officer Riverina District)
<table>
<thead>
<tr>
<th>NSW RMS</th>
<th>Deon Voyer (Manager Operations South, Boating Operations Branch)</th>
</tr>
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<tbody>
<tr>
<td>NSW Department of</td>
<td>Steve Pearson (Senior Natural Resource Management Officer)</td>
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<tr>
<td>Primary Industries (Lands)</td>
<td></td>
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<tr>
<td>NSW OEH</td>
<td>Tobi Edmonds (Conservation Planning Officer)</td>
</tr>
</tbody>
</table>

13. Planning Control and Consultation Table

1. ARTIFICIAL LAKE

**Definition:**

"A constructed water body such as an artificial wetland, but does not include dams of less than 1 hectare in surface area used for agricultural purposes or land flood irrigation for agriculture."

Not applicable.

2. AQUACULTURE

**Definition:**

"The farming of aquatic organisms including fish, molluscs, crustaceans and aquatic plants for commercial purposes and which requires intervention in the rearing process to enhance production, whether or not undertaken in a natural or an artificially created body of water."

Not applicable.

3. BANK AND/OR BED WORK

**Definition:**

"Works which relate to the excavation, dredging or alteration to the alignment or shape of the bank or bed of the River Murray (including construction of weirs and floodgates, boat ramps and bank stabilisation works)."

Not applicable.
4. **BOAT INDUSTRY FACILITY**

**Definition:**

"Buildings, structures or facilities used for the construction, maintenance, repair, temporary storage or sale of boats and other vessels, but does not include a large or small marina."

Not applicable.

5. **CANAL DEVELOPMENT**

**Definition:**

"The construction of an artificial navigable waterway."

Not applicable.

6. **CARAVAN PARK/CAMPING GROUND**

**Definition:**

"Use of land for caravans or other moveable dwellings requiring an approval under Part 1 of Chapter 7 of the Local Government Act 1993."

Not applicable.

7. **CHEMICAL, FUEL OR FERTILISER STORAGE ON FLOOD LIABLE LAND**

**Definition:**

"Flood liable land used for chemical, fuel and fertiliser storage."

Not applicable.
8. DESNAGGING OPERATIONS (INCLUDING SNAG MAINTENANCE)

Definition:

"Any work to move or remove either trees or woody debris from the water of the River Murray, other than work which is part of an MDBC approved program."

Not applicable.

9. DESTRUCTION OF NATIVE VEGETATION

Definition:

"The clearing, logging, removal or damaging of any species of trees and shrubs that are indigenous to the River Murray floodplain and that are on land shown on the map as native vegetation."

Not applicable.

10. FLOOD CONTROL WORKS

Definition:

"Works which change the natural or existing condition or topography of land (such as the construction or alteration of levees, channels and mounds) and which are likely to affect the hydrology of the River Murray system."

Not applicable.

11. HAZARDOUS OR OFFENSIVE, OR POTENTIALLY HAZARDOUS OR OFFENSIVE, INDUSTRIES

Definition:

"Use of land for a hazardous or offensive (or a potentially hazardous or offensive) industry."

Not applicable.
12. HAZARDOUS OR OFFENSIVE STORAGE ESTABLISHMENT

Definition:

"Use of land for a hazardous or offensive storage establishment."

Not applicable.

13. HOUSEBOAT OPERATIONS

Definition:

"Commercial operation of a vessel for use as a residence."

Not applicable.

14. INDUSTRY

Definition:

"The manufacturing, assembling, altering, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, processing or adapting of any goods or articles for commercial purposes (other than development referred to elsewhere in this Table)."

Not applicable.

15. INTENSIVE LIVESTOCK KEEPING

Definition:

"Use of land for holding cattle, sheep, goats, poultry or other livestock for the purpose of nurturing by a feeding method other than natural grazing, including:

(a) feed lots,

(b) piggeries, and

(c) poultry farms,"
But not an animal boarding or training establishment or land used for the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land, and intensive hand feeding of livestock as a result of drought, flood, bushfire or other natural disaster.”

Not applicable.

16. LANDFILL

Definition:

“Sites used for the collection and disposal of industrial, trade or human waste (other than development referred to elsewhere in this Table).”

Not applicable.

17. MAINTENACE DREDGING

Definition:

The winning or removal of extractive material from the bed of the River Murray by or for a public authority for the purpose of obtaining sufficient width and depth in the waterway to enable the waterway to continue to function:

(a) as a channel for the escape or passage of water, or

(b) as a safe navigation route for travel or transport by water,

but does not include bank or bed works.

Not applicable.

18. MANUFACTURED HOME ESTATES

Definition:

“Use of land for manufactured homes requiring an approval under Part 1 of Chapter 7 of the Local Government Act 1993.”

Not applicable.
19. MARINA (LARGE)

Definition:

"A pontoon, jetty, pier or the like, capable of providing berths for 10 or more boats used for pleasure or recreation, and extends to any support facilities such as:

(a) any associated slipways or facilities for the repair, maintenance and fueling of, or the provision of accessories and parts for, boats, and

(b) any associated facilities for the storage or provision of food."

Not applicable.

20. MARINA (SMALL)

Definition:

"A pontoon, jetty, pier or other structure or apparatus used or intended to be used to provide berths for boats, and extends to any support facilities on the adjoining area of land, but not development defined as a marina (large)."

Not applicable.

21. PUBLIC UTILITY UNDERTAKING

Definition:

"Any of the following undertakings carried on by or for a public authority that is likely to significantly affect the environment:

rail, road or water transport,

wharfs,

telecommunications,

supply of water, electricity or gas or provision of sewerage or drainage services.

Not applicable. Water supply and electricity are already connected to the existing mooring. These services have been provided to the mooring by the Shire of Campaspe."
22. **RECREATION FACILITY ADJOINING RIVER MURRAY OR ON FLOOD LIABLE LAND**

Definition:

"A building, work or place, adjoining the River Murray or on flood liable land, used for sporting activities, recreation or leisure activities, whether or not operated for the purpose of gain, but not a building, work or place referred to elsewhere in this Table."

Not applicable. The use of an existing mooring as a restaurant does not fall within this definition.

23. **RURAL INDUSTRY**

Definition:

"A business development involving:

a) the handling, treating, processing or packing of primary products, or
b) the regular servicing or repairing of plant or equipment used for the purpose of agriculture or aquaculture or for the purpose referred to in paragraph (a)."

Not applicable.

24. **SEWAGE TREATMENT WORKS**

Definition:

"Works or land used for the collection, treatment and disposal of sewage by or for a public authority."

Not applicable.
25. SINGLE MOORING

Definition:

"A berth or apparatus located on or in the River Murray (but not in a grouped mooring area identified in a River Management Plan) which may be used for the purpose of storing one vessel."

The existing mooring used to berth the Paddlesteamer Hero falls under this classification. It is an existing use and is not the subject of this application. The mooring has been licenced by the NSW RMS as CL6224.

26. STORMWATER DRAINAGE SCHEME

Definition:

"Works designed to collect, channel, store, treat or disperse stormwater runoff from areas of urban development or from development adjacent to the River Murray. Untreated stormwater is water which has not been subjected to measures designed to reduce litter, suspended solids, nutrients or other substances which contribute to a decline in the quality of water in the River Murray system."

Not applicable.

27. TOURIST RELATED FACILITY

Definition:

"An establishment, place or vessel which provides for either accommodation or entertainment or food or beverage and which is permanently fixed in or on the River Murray or is on land adjacent to the River Murray."

The proposal to use the existing mooring for the secondary purpose of a restaurant does not fall under this classification. The reason being is that the mooring is not permanently fixed in or on the Murray River. The mooring is tethered to the bank and can be relocated at any time. This categorisation of the proposed secondary use has been confirmed by the NSW Office of Environment and Heritage, Murray River Council Planning Department and Planning Lawyers Bazzani Scully & Priddle.

As a result this classification is not applicable to the Planning Proposal.
28. WASTE DISPOSAL FACILITY

Definition:

"Any plant, equipment, apparatus, device, machine, mechanism or land used for the collection and disposal of industrial, trade or human waste, including a pump ashore facility, package sewage treatment works, waste transfer depot or junk yard. A dry toilet, septic tank, sewerage treatment works or development referred to elsewhere in this Table is excluded."

The existing mooring has toilet facilities on board. Waste is stored in stainless steel tanks below deck and is pumped out by a contractor on a regular basis.

The same toilets and system of waste collection and disposal will be utilised when the mooring is also used as a restaurant. No alteration to the already approved and operational waste disposal system is required.

This category is not applicable to the Planning Proposal.

29. WATER RECREATION FACILITY

Definition:

"Piers, wharves, boat sheds or other structures which have a direct structural connection between the bank or the bed of the River Murray and which are used primarily for public recreational purposes."

Not applicable.

30. WETLAND FILLING, DREDGING, DRAINING OR CLEARING

Definition:

"Filling, dredging, draining or destruction of native vegetation on land shown on the map as "wetlands"."

Not applicable.
31. WETLAND SUBDIVISION

Definition:

"Subdivision of land shown on the map as "wetlands"."

Not applicable.


This clause states that buildings should be set well back from the River unless the building is dependent on a location adjacent to the Murray River.

The mooring is of course a building that is dependent on being located in the river. The additional use of the mooring for the purpose of a restaurant will not conflict with the objectives of this clause which are to:

- "Maintain and improve water quality."

  All waste from the mooring is already captured and contained in stainless steel tanks that are pumped out regularly.

  This same management regime will continue when the restaurant use is established hence the river water quality will be maintained.

- "Minimise hazard risk and the redistributive effect on floodwater associated with the erection of buildings on the floodplain."

  Not applicable. The mooring is a platform that floats on the river. It does not impact on the water levels as it is designed to rise and fall with the water level in the river.

- "Protect the scenic landscape of the riverine corridor."

  The mooring includes a timber building that is built out of materials that compliment the riverine corridor and the nearby historic Echuca Wharf and Port precinct. The restaurant building has been architecturally designed to continue this same style and will thus not impact on the scenery.
• “Improve bank stability.”

Access to the mooring is already in place, and consists of both bitumen and unsealed walking tracks that lead to a metal gangplank that bridges the gap between the top of the bank and the mooring.

No change to the existing access is required hence there will be no impact on bank stability.

• “Conserve wildlife habitat.”

The mooring floats on the river, it has no impact on either aquatic or terrestrial wildlife. The proposed extension of the mooring and its use as a restaurant will also have no impact on habitat.

This clause also deals with the disposal of effluent in the riverine environment, specifically as related to the use of septic tanks.

The mooring and restaurant do not use septic tanks, rather all waste is collected and stored in stainless steel tanks below deck. The waste is then pumped out by a contractor on a regular basis. No effluent impacts on the river water.

This clause also recommends that buildings should be screened from the river by landscape plantings.

This clause is relevant to buildings that are located on the river bank but is not applicable to structures such as moorings that are in the river itself.

SUMMARY

In summary it can be seen that the proposed secondary use of the mooring for the purposes of a restaurant does not conflict with the contents aims and objectives of the Murray REP2 Riverine Land.

STATE ENVIRONMENTAL PLANNING POLICY No 64 – Advertising and signage

Signage associated with the proposed restaurant has not been finalised at this time, however it will consist of a business identification sign consisting of the words “Oscar W’s”.

0454
It is recognised that development consent for signage will be required from both the Murray River Council and Roads and Maritime Services (RMS) NSW.

Although advertising signs are prohibited within a waterway under clause 10 of this SEPP, this prohibition does not apply to Business Identification Signs (Clause 9).

This application is for a Planning Proposal and it is likely that a subsequent Development Consent will be required should the proposal be approved. Details of the Business Identification Sign and consent for same will be sought at that time.

SECTION 117 DIRECTION 4.4 – Planning for Bushfire Protection (see subsection 3)

"When this direction applies
(3) This direction applies when a relevant planning authority prepares a Planning proposal that will affect, or is in proximity to land mapped as bushfire prone land."

The bushfire prone land mapping prepared by Murray River Council indicates that the site of the mooring, being within the river, is not bushfire prone land.

However the mapping indicates that land on the NSW side of the river opposite the mooring, is bushfire prone. The river at this point is approximately 75 metres wide, hence it can be deemed that the site of the development is in proximity to Bush Fire Prone land and as a result the requirements of Planning for Bushfire Protection do apply.

Land immediately abutting the site of the mooring on the Victorian side of the river is not classified as being Bushfire Prone Land. In Victoria the planning terminology for Bushfire Prone Land is land that is affected by the Wildfire Management Overlay or WMO.

An extract of the Campaspe Shire (Vic) WMO mapping is attached. This mapping shows that the foreshore of the Murray River is not affected by the WMO. However just back from the foreshore is a public park known as the Echuca Aquatic Reserve. This land is shown as affected by the WMO. This classification is incorrect. Under the NSW RFS classification system, the park is treated as “managed land”. Photos are provided with this report to verify this assessment.

Under the Building Code of Australia (BCA), the proposed restaurant on the mooring is a class 6 building.

A class 6 building does not require assessment under the Sections of PBP that apply to residential developments, isolated rural developments and Special Fire Protections Purposes.
Clause 4.3.6 (f) details the PBP requirements for class 6 buildings as follows;

"the general fire safety construction provisions are taken as acceptable solutions, but the aim and objectives of PBP apply in relation to other matters such as access, water and services, emergency planning and landscaping/vegetation management."

In circumstances where the aims and objectives of PBP (section 1.1) are not met, then the construction requirements for bush fire protection will need to be "considered on a case by case basis."

Clause 1.3 (b) of PBP relates to "other classes of building" i.e.: class 6 buildings as follows;

"For other classes of buildings (such as factories, shops and warehouses) BPMs will only apply at the development assessment stage. Consent will be determined on a case by case basis without the need to refer the development application to the RFS. However, if the Council is concerned that the development does not meet the aim and objectives of PBP, then the matter may be referred to the RFS for its advice. The provisions under the BCA for fire safety will be accepted for bush fire purposes where the aim and objectives of PBP can be met (see objection 1.1)."

The aim and objectives of PBP as prescribed in chapter 1.2 are detailed below. Relevant measures taken to satisfy each objective with respect to this planning proposal are also provided.

Aim and Objectives of PBP

"All development on Bush Fire Prone Land must satisfy the aim and objectives of PBP.

The aim of PBP is to use the NSW development assessment system to provide for the protection of human life (including firefighter) and to minimise impacts on property from the threat of bush fire, while having due regard to development potential, on-site amenity and protection of the environment."

More specifically, the objectives are to:

"(1) afford occupants of any building adequate protection from exposure to a bush fire."

The proposed restaurant will be on a floating pontoon in the Murray River.
The abutting land south of the site on the Victorian side of the river is known as the "Onion Patch" and adjoining that is the Echuca Aquatic Reserve. These areas are used for Public recreation and are managed by the Shire of Campaspe. Both areas are kept in a reduced fuel state and under the RFS vegetation classification system are identified as being Managed Land.

Similarly to the east and west of the site is the Murray River itself. Again under RFS classification a waterway falls under the Managed Land category.

Managed Land is deemed to be incapable of supporting a bush fire hence there is no threat of bush fire to the restaurant and pontoon from either the east, south or west.

North of the site the Murray River is approximately 70 metres wide. Vegetation on the north bank of the Murray River is classified as being Bush Fire prone and is categorized as "Forest".

By reference to Table 2.5 of PBP it can be seen that the required Asset Protection Zone for a class 1 or class 2 building in this situation is 20m. The available asset protection zone provided by the Murray River is 70m, which is more than 3 times the requirement.

"The purpose of an Asset Protection Zone is to provide for:

- Minimal separation for safe firefighting (access to fire front);
- Reduced radiant heat;
- Reduced influence of convection driven winds;
- Reduced ember viability thereby limiting the impact of ember attack; and
- Dispersal of smoke which would otherwise severely impact on residents affected by reduced mobility or health issues."

By having an APZ available that is more than 3 times the recommended size it is obvious that the threat of Bush Fire Attack to the site is minimal and this aim of PBP is satisfied.

“(2) provide for a defendable space to be located around buildings.”

A defendable space is defined in PBP as "an area within the Asset Protection Zone that provides an environment in which a person can undertake property protection after the passage of a bush fire with some level of safety."

The restaurant/pontoon is surrounded on three sides by the Murray River which provides a suitable defendable space.
On the Victorian (south) side of the pontoon the managed land including the vehicular access track provides a suitable defendable space.

It should be emphasized that managed land does not present a bush fire hazard so the requirement to provide a defendable space is somewhat unnecessary.

This aim of PBP is satisfied.

“(3) provide appropriate separation between a hazard and buildings which, in combination with other measure, prevent direct flame contact and material ignition.”

Page 5 of Appendix 3 of PBP states that “In general, a deemed to satisfy outcome can be achieved where the building is exposed to a radiant heat flux of less than or equal to 40KW/m² (BAL 40).”

The site of the planning proposal is surrounded on three sides by Managed Land. As managed land cannot sustain a bushfire, there is no threat to the building from these directions.

A Bushfire Assessment Report has been undertaken for the site, see attachment. The report indicates that the bushfire attack level on the north side of the building is BAL 12.5.

As this is less than deemed to satisfy the outcome mentioned above (BAL 40), this aim of the PBP is also satisfied.

“(4) ensure that safe operational access and egress for emergency service personnel and residents is available.”

Vehicular access to and from the site is provided from Heygarth Street (bitumen) via the road and carpark (bitumen) past the visitor information centre and then by a formed track (unsealed) along the bank of the Murray River.

The access route is suitable for cars and trucks (i.e. fire fighting vehicles).

The entire access route is located within managed land, hence it is not subject to bush fire attack and is safe.

This aim of PBP is satisfied.

“(5) provide for ongoing management and maintenance of bush fire protection measures, including fuel loads in the asset protection zone (APZ).”

The Asset Protection Zone located to the north, east and west of the site is within the water of the Murray River. This is naturally free of fuel.
On the south side of the site is land managed by the Shire of Campaspe for public recreation purposes. This area is kept in a reduced fuel state by the Responsible Authority.

This aim of PBP is satisfied.

"(6) ensure that utility services are adequate to meet the needs of firefighter (and others assisting in bush firefighting)."

The utility service required for bush firefighting is water.

Reticulated water is connected to the site via underground pipes. This supply is suitable for drinking water rather than firefighting.

An unlimited supply of water is available for firefighting purposes from the Murray River which surrounds the pontoon.

This aim is satisfied.

SUMMARY

From this analysis it can be seen that the aims and objectives of PBP are satisfied.

Further proof that the proposal satisfied the requirements of PBP can be shown in another way as follows;

Appendix A1.8 of PBP states that other classes of buildings (i.e. class 6) can be assessed under the provisions of Section 79BA of the Environmental Planning and Assessment Act 1979.

A duly completed Section 79BA form is included with this information.

A plan showing vegetation types within 140m of the site together with a plan showing details of access are also included.

This assessment proves that the proposal meets the requirements of Planning for Bushfire Protection even though the site is not classified as being bushfire prone.
SECTION 117 DIRECTION 6.1 – Approval and Referral Requirements

What a relevant planning authority must do if this direction applies

"(4) A planning proposal must:
   a) Minimise the inclusion of provisions that require the concurrence, consultation or referral of a development application to a Minister or public authority, and
   b) Not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:
      i. The appropriate Minister or public authority; and
      ii. The Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act."

I have attempted to contact all relevant public authorities to obtain their consent so that such consents would not be required again at the Development Application stage. Most authorities have complied with this request however one Authority commented that it would not respond until a Development Application referral was received.

"c) Not identify development as designated development unless the relevant planning authority:
   i. Can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and
   ii. Has obtained the approval of the Director General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act."

The impact this planning proposal will have on the environment is negligible. As a result it cannot be identified as designated development.
PART 5 – GUIDE TO PREPARING PLANNING PROPOSALS

COMMUNITY CONSULTATION

The planning proposal to use an existing mooring for the secondary purpose as a restaurant is considered to be a low impact proposal.

- "A low impact planning proposal is 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."

The land use zone of the site of the planning proposal will remain as current, i.e. W2. This is consistent with the surrounding land use zone.

The planning proposal will authorise an additional permitted use on a particular site within the zone.

The additional permitted use is for a “restaurant”. The restaurant will be established on an existing pontoon.

It is noted that a “kiosk” is already a permitted use in the W2 zone.

The definition of a kiosk in the standard LEP is “premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers films and the like.”

The definition of a restaurant or café in the Standard LEP is “a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.”

Effectively there is not that much difference between the two land uses. It is thought that to allow the additional permitted use “restaurant”, particularly in this one specific location only, is not a significant change to the LEP.

Furthermore the mooring on which the planning proposal is to occur is associated with the Paddlesteamer Hero. The Hero is already licenced to carry 80 persons and has the facilities to prepare food on board and to serve this as well as drinks to the patrons. The planning proposal is a logical extension to the existing use of the Paddlesteamer.
• "Consistent with the strategic planning framework."

The planning proposal will maintain the existing zoning of the land, hence the strategic framework will be unaffected by the proposal.

The proposal conforms to the Regional Strategic Planning Framework being Murray REP2 – Riverine Lands and the draft Riverina – Murray Regional Plan.

• "Presents no issues with regard to infrastructure servicing."

The infrastructure that is required to service the planning proposal is already in place as the same services are required for the pontoon/mooring and the Paddlesteamer Hero.

The relevant infrastructure that is in place includes reticulated treated water, electricity and vehicular and pedestrian access.

Toilets are also in place on both the boat and the pontoon. Waste is collected in stainless steel tanks that are located below deck. These are pumped out by a contractor on a regular basis. The effluent is then treated in the town sewerage system.

• "Not a principal LEP."

The principal LEP is the Murray (River) LEP 2011. The planning proposal is to authorise an additional permitted use in schedule 1 of the LEP.

The principal LEP remains.

• "Does not reclassify public land."

Public Land is not re-classified by the Planning Proposal.

The Planning Proposal satisfies the criteria considered to be "Low Impact". As a result the exhibition period for the proposal is fourteen days.

Public exhibition of the planning proposal is expected to be undertaken in the following manner:

- Notification in a newspaper that circulates in the area affected by the planning proposal.
- Notification on the website of the RPA.

- Notification in writing to affected and adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them.

It is not expected that Public Hearing will be required for this proposal.

### PART 6 – GUIDE TO PREPARING PLANNING PROPOSALS

#### PROJECT TIMELINE

The suggested project timeline is as follows:

<table>
<thead>
<tr>
<th>TASK</th>
<th>TIMING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anticipated commencement date (date of Gateway determination)</td>
<td>May 2017</td>
</tr>
<tr>
<td>Anticipated timeframe for completion of required technical information</td>
<td>June 2017</td>
</tr>
<tr>
<td>Timeframe for Government agency consultation (pre and post exhibition as required by Gateway determination)</td>
<td>July 2017</td>
</tr>
<tr>
<td>Commencement and completion dates for public exhibition</td>
<td>August 2017</td>
</tr>
<tr>
<td>Dates for public hearing (if required)</td>
<td>N.A.</td>
</tr>
<tr>
<td>Timeframe for consultation of submissions</td>
<td>September 2017</td>
</tr>
<tr>
<td>Timeframe for the consideration of the planning proposal following exhibition</td>
<td>October 2017</td>
</tr>
<tr>
<td>Date of submission to the Department to finalise LEP</td>
<td>November 2017</td>
</tr>
<tr>
<td>Anticipated date LEP will be made</td>
<td>November 2017</td>
</tr>
</tbody>
</table>

Yours faithfully

Mark F Langenbacher  
Licensed Surveyor