



PARLIAMENTARY COUNSEL'S OFFICE

Council information for drafting, making and notification of LEPs delegated to councils

Procedures for LEPs delegated to Councils

The relevant steps and requirements for the drafting and plan-making process for delegated LEPs are as follows:

1. A Council may be authorised by a gateway determination to make a proposed LEP under delegation from the Minister or the Greater Sydney Commission (if the land is in the Greater Sydney Region).
2. After community consultation (if required by the gateway determination) and forwarding of any revised planning proposal to the Minister or the Greater Sydney Commission (as appropriate), the Council may request PCO to draft the instrument.
3. The drafting request should be in the same form as requests made to the Department of Planning and Environment for the drafting of non-delegated instruments and should be sent by email to parliamentary.counsel@pco.nsw.gov.au. To help PCO respond to requests to draft delegated LEPs, the request email to PCO should meet the following requirements:
 - a. The email should include the proposed name of the draft LEP, including the proposed amendment number. This should take the form *[LEP name] Local Environmental Plan YYYY (Amendment No NN)*, for example, *Sample Local Environmental Plan 2014 (Amendment No 1)*.
 - b. The email should include the name and contact details of the Council contact officer.
 - c. The email should contain copies of the planning proposal, the gateway determination and any changes to the planning proposal arising from the gateway determination. These should be attached as documents, and not included in the form of links to a website.
 - d. The email and attachments altogether should not be any larger than 20MB in size. If attachments are in the form of PDFs, the documents should be saved directly to PDF where possible rather than printed and scanned, as scanned documents can have large file sizes.
4. A copy of the drafting request should be sent to the applicable regional office of the Department. Maps should not be sent directly to the PCO and are to be forwarded to the applicable regional office of the Department under arrangements made by the Department with Councils for the transfer of maps by Councils. For map procedures, see the material on additional procedures for maps that is set out below.
5. When PCO receives a drafting request from a Council the matter will be allocated to a legislative drafter. The contact details of the allocated PCO drafter will be advised to the Council contact officer. Drafts will be provided to the Council contact officer by

email and discussed with the Council contact officer by email or phone. If necessary, a draft may also be the subject of a meeting at the office of PCO.

6. Requests by the Council for changes to draft LEPs prepared by PCO should be given in the form of written or oral narrative comments and not in the form of a revised draft instrument. This enables a more precise understanding of Council's intentions and policy. Council will have an opportunity to respond to all revised drafts.
7. It is not part of the drafting role of PCO to advise whether the settled instrument is consistent with the applicable gateway determination. It is not part of the drafting role of PCO to advise whether re-exhibition is necessary in any case.
8. After the form of a draft LEP is settled by the PCO drafter with the Council contact officer, the draft will be subject to final review by the senior PCO officer who will sign the opinion on legality. The LEP will be converted by PCO into a final published form suitable for signing by the delegate and for publication on the NSW legislation website.
9. PCO will provide to the Council contact officer, by email, an opinion that the draft LEP can legally be made together with a final published PDF version of the instrument. An LEP should not be signed by the Council or a Council delegate unless an opinion has been given that the LEP can legally be made.
10. It is important that a draft LEP is not re-typed or changed before it is signed and after an opinion is given by PCO. If further changes are required, the matter is to be returned to PCO for preparation of a revised draft and an opinion that the revised LEP can legally be made. If any changes to maps associated with the opinion are made after the opinion is given, the altered maps must be forwarded to the applicable regional office of the Department, together with a new map cover sheet, for transfer to PCO.

A draft LEP must not be re-typed because the PCO draft is prepared using the PCO word processing program that is designed for integration with, and is linked to, notification and publishing on the NSW legislation website.

Revised procedures for maps for standard instrument LEPs and LEPs using standard

The following procedures have been agreed to by PCO and the Department:

1. PCO no longer carries out checks of maps or map cover sheets.
2. The Department will continue to upload copies of proposed maps and unsigned map cover sheets (MCS) onto the shared File Transfer Protocol (FTP) site as the maps become available (and replace the maps when changes are made).

The maps and MCS:

- a. will not be checked by PCO, and
- b. are only for the information of PCO to assist with the wording for map references in the LEP, and
- c. are the responsibility of the Department or, where delegated, the Council staff who can make any necessary changes to the maps and MCS prior to the LEP being made.

Where changes are made to the maps and MCS after PCO has issued an opinion that the LEP may legally be made, the LEP should be returned to PCO for a further opinion if the changes affect the wording of the LEP.

3. When an amending LEP includes changes to adopted maps, the clause that effects the change will not contain technical information relating to the identification of the affected and new map tile sheets. Accordingly, PCO will be able to issue an opinion on the legality of the words set out in the LEP without waiting for the MCS and maps to be finalised.

The clause will make the following declaration:

4 Maps

The maps adopted by the XYZ Local Environmental Plan 20? [ie the name of the principal LEP] are amended or replaced, as the case requires, by the maps approved by the Minister [or “the Greater Sydney Commission”, as appropriate] on the making of this Plan.

When making the LEP, the Minister or the Greater Sydney Commission, or delegate of the Minister or the Greater Sydney Commission, will sign the MCS that lists the maps being amended, replaced or adopted, including the map identification number for each map.

Publication of delegated LEPs and maps on the NSW legislation website

Once the LEP, and any map cover sheet, has been signed by the Council’s delegate, the Council should email a request to the applicable regional office of the Department for online notification of the LEP on the NSW legislation website. The regional office will forward the request to the Departmental officer responsible for sending notification requests to PCO. At the same time, the signed MCS and final maps to which the LEP relates will be uploaded by the Department to the FTP site so that PCO has the correct official version of the maps and signed map cover sheet for use on the NSW legislation website.

The LEP that will be notified is the one held by PCO for which the Opinion was given. Delegated LEPs must not be re-typed or altered in any way. If changes to the LEP are required, contact the PCO. The map cover sheet and maps are the responsibility of the delegate.

The LEP will generally be notified on a Friday following the established weekly legislation cycle. However, urgent or delayed notification can be arranged at other times if required. LEPs usually take effect on notification.

For normal notification on a Friday the request for notification should be sent to the applicable regional office of the Department by 12 noon on the Tuesday of that week. Requests for special notification should be made by telephone to the regional office as soon as possible, and any request by the Department to PCO for special notification should be made preferably no later than 10.00 am on the day in question.

The request by Council to the applicable regional office of the Department should include the following:

- the full name of the LEP,
- PCO’s file reference (which is on the top of the Opinion relating to that LEP or on the bottom left hand side of the LEP itself)
- the name and position or office of the delegate who signed the LEP and map cover sheet (if applicable).

The front page of the signed LEP, the Opinion relating to the LEP and the complete signed map cover sheet (if applicable) must also be included with the request. The maps that relate to any map cover sheet must be supplied to the applicable regional office of the Department.

Following notification of the making of the LEP, PCO will update the NSW legislation website, including incorporating the changes made by any amending LEP into the Principal LEP being amended and updating any map index with the relevant new maps so that current and historical maps are available.

If any map contains an identification error, the map will not open from the link on the map index. Any such error will be referred by PCO to the Department so it can be fixed. Any such errors and other errors detected by the Department will ordinarily be able to be fixed by the Department by an erratum noted on the relevant documents by the officer who signed the relevant MCS when it was made. PCO will not require any verification relating to substituted MCS or maps that have been corrected to fix errors.

Council inquiries about draft LEPs

Inquiries by Councils of PCO about draft LEPs should be sent in the first instance to parliamentary.counsel@pco.nsw.gov.au and addressed to the Manager, LEP drafting program. Inquiries about maps and other matters should be directed to the applicable regional office.

Parliamentary Counsel
October 2016