

Heritage Planning Practice Note No. 1

Procedures for Preparing Local Environmental Plans

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INTRODUCTION

This note sets out standard procedures for preparing local environmental plans (LEPs) involving heritage considerations. Following these procedures will ensure that issues affecting the preparation of an LEP are effectively dealt with, and can help reduce delays in having the plan gazetted.

PREPARATION OF AN ENVIRONMENTAL STUDY AND DRAFT LEP

When notifying the Department of Urban Affairs and Planning (the department) of its resolution to prepare a draft LEP, council should advise what heritage matters are to be addressed in the plan.⁽¹⁾

In the case of a major LEP, council should ensure that a heritage study is prepared. This will provide a list of items to include in the heritage schedule, identify heritage conservation areas and make recommendations about management provisions in an LEP and development control plan (DCP).

Councils should consult with the Heritage Office under s. 62 of the EP&A Act in preparing these plans or studies.

The study should be carried out in accordance with the publication *Heritage Studies* in the NSW Heritage Manual. Councils undertaking heritage studies can apply to the Heritage Assistance Program, administered by the Heritage Office, for dollar-for-dollar financial assistance. Applications close in March each year.

A list of buildings and sites covered by orders made under the *Heritage Act 1977* can be obtained from the Heritage Office or the regional planning teams of the department. A list of other registers is included in *Heritage References* in the NSW Heritage Manual. These registers are not exhaustive, and should be used only as an indicative list for local LEPs.

(1) Refer to section 54, *Environmental Planning and Assessment (EP&A) Act 1979* and clause 6(2)(d), EP&A Regulation.



HERITAGE PLANNING PRACTICE NOTE NO. 1

SUBMISSION OF DRAFT LEP TO THE DEPARTMENT OF URBAN AFFAIRS AND PLANNING — SECTION 64 (EP&A ACT)

To ensure that the draft LEP is consistent with other documents the council should check that:

- the heritage schedule contains all items identified in a heritage study (any omissions will need to be justified)
- if a heritage study has not been carried out, the schedule should contain all items on the Register of the National Estate and items subject to orders under the Heritage Act
- the draft plan contains the latest heritage provisions (see *Heritage Planning Practice Note No. 2* in the NSW Heritage Manual)
- proposed zonings and other provisions in the draft LEP do not adversely affect scheduled heritage items or conflict with the plan's conservation objectives.

All heritage items should be identified by an address and real property description in the draft LEP schedule. Normally only the exteriors of heritage items are included in the schedule, but councils can include interiors if they are particularly significant. It is also desirable for the boundaries of items to be clearly indicated on a map accompanying the schedule. Two copies of the map are required by the department.

The powers of the *Local Government Act 1993* are available to councils to control the demolition of buildings and structures listed in the draft LEP's heritage schedule through a local approvals policy. For other types of heritage under threat that have been identified in a draft plan, councils may wish to apply for temporary protection under the Heritage Act.

Note: Consultation pursuant to section 62, should still be referred to other relevant heritage agencies (such as the National Trust or Australian Heritage Commission). To avoid duplication, the Heritage Council does not normally comment on draft plans prior to the section 83 or section 21(2) reporting stage.

SECTION 65 CERTIFICATE, EXHIBITION, AND CONSIDERATION OF SUBMISSIONS (EP&A ACT)

Where the section 65 certificate is issued by the council under delegated authority, it must ensure that the draft plan complies with the above.

Any outstanding heritage issues should be resolved prior to exhibition of the draft LEP to avoid delays. The heritage study can be exhibited together with the draft plan, however it is generally advisable to exhibit and seek comment on a heritage study and gain community acceptance of its findings before a draft LEP is prepared.

Consideration of Submissions

On the basis of submissions received, the council may decide to *delete* items from the heritage schedule. Any deletions must be justified on heritage conservation grounds.

An item should only be *added* to the schedule after exhibition if requested by the owner and if its heritage significance has been verified. Additional items nominated by third parties should only be added if the heritage significance has been verified and the owner has been given the opportunity to make a submission.

SECTION 83 AND SECTION 21(2) CONSULTATIONS (HERITAGE ACT)

Section 83 of the Heritage Act requires consultation with the Heritage Council about draft planning instruments affecting heritage items subject to conservation orders. The Heritage Council should also be advised of any other draft LEP which has a substantial heritage component, to enable it to make a submission to the Minister for Urban Affairs and Planning under section 21(2) of the Heritage Act. The reports to the Heritage Council are to be prepared by councils whether using s. 69 delegation or not.

Note: Reporting to the Heritage Council under section 83 or section 21(2) must take place after exhibition of a draft planning instrument and before submitting the draft plan to the Department of Urban Affairs and Planning under s. 68 or reporting to the Minister (under delegation of section 69, EP&A Act).



Following consideration of a section 83 or section 21(2) report by the Heritage Council, the local council will be advised of the decision. (Annexure A outlines the standard format and content for both types of report).

SECTION 69 REPORT TO THE MINISTER FOR URBAN AFFAIRS AND PLANNING, UNDER DELEGATION

Consultation with the Heritage Council under section 83 or section 21(2) of the Heritage Act must take place prior to reporting to the Minister (section 69, EP&A Act).

If the Heritage Council has already endorsed the draft plan, consultation is only necessary at this stage if substantial changes have been made to the provisions or schedule.

The section 69 report must advise the Minister of any inconsistency with government policy (such as Direction G21), as well as any amendments which have been requested by the Heritage Council. The report may recommend alterations to the LEP, or the deferral of some matters.

The report should also recommend that the Minister revoke all section 130 orders applying to items protected by the LEP. A draft gazettal notice must also be submitted to the department (see Annexure B).

All items on the schedule to the section 130 order revocation gazettal notice must be identified by real property description.



ANNEXURE A
STANDARD CHIEF TOWN PLANNER'S REPORT TO THE
HERITAGE COUNCIL FOR LEPS WITH HERITAGE CONSIDERATIONS

CONFIDENTIAL

HERITAGE COUNCIL MEETING OF..... 19....
section 83 and/or section 21(2), *Heritage Act 1977* Consultation

DRAFT LOCAL ENVIRONMENTAL PLAN (LEP) FOR

SUMMARY: Council has prepared a draft LEP for ... [*describe the land to which the plan applies*] A copy of the draft plan is at Attachment No.....

Consultation with the Heritage Council under section ... of the Heritage Act is required before the draft plan is made because:

- **section 21(2)***— the draft LEP involves the following important heritage considerations: ... [*e.g. heritage schedule and provisions are being incorporated or it flows from a heritage study part-funded by the State*]... ; **and/or** [*delete, as appropriate*]
- **section 83***— ... [*number*] sites within the local government area are currently covered by conservation instruments under the Heritage Act and will be affected by the plan as shown in Attachment No.

DRAFT LEP CONTENTS: [*Describe the main purpose of the draft LEP, how it introduces standard heritage provisions and a schedule of heritage items, or amends another instrument with such provisions. Append all relevant extracts from the plan. Any variations from the standard provisions and omissions from a heritage study schedule or Australian Heritage Commission or Heritage Council registers must be adequately justified. Any inconsistency with Direction G21 must also be justified.*]

CONSERVATION INSTRUMENTS/MATTERS OF CONCERN TO THE HERITAGE COUNCIL: [*Describe the effects the draft LEP will have on items subject to conservation instruments or on other matters of concern to the Heritage Council. Identify any negative effects and any other provisions included to offset them.*]

RECOMMENDATION: [*Where section 69 delegation (Environmental Planning and Assessment Act 1979) is being used, the council must advise the Minister of the Heritage Council's decision on the following recommendations through the section 69 report.*]

ENDORSEMENT: It is RECOMMENDED that the Heritage Council:

- endorse the draft LEP as submitted; and*
- advise the Minister pursuant to section 83(2) or section 21(2)* of the Heritage Act that it endorses the aims, objectives and provisions of draft LEP No. in so far as they relate to heritage conservation; and
- (*if section 130 orders are in place*) recommend to the Minister that he revoke the section 130 orders on the items listed in the attached schedule, upon the making of the plan.*

[Signed by]

Chief Town Planner

..... Council

Prepared by:

File No.



**ANNEXURE B
SAMPLE SECTION 130 ORDER REVOCATION GAZETTAL NOTICE
(TO ACCOMPANY DELEGATED SECTION 69 REPORTS)**

HERITAGE ACT 1977

REVOCATION OF SECTION 130 ORDER

In pursuance of section 134 of the *Heritage Act 1977*, I the Minister for Urban Affairs and Planning, having considered a recommendation by the Council, do, by this my notice, revoke the section 130 order(s) gazetted on in respect of..... .

CRAIG KNOWLES

Minister for Urban Affairs and Planning

Sydney, 199 .

SCHEDULE A

[Identify real property description]

[Additional schedules, if required]