



PROPOSED STATUTORY AMENDMENTS

Local Character Provision

Explanation of Intended Effect

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Introduction

This Explanation of Intended Effect (EIE) proposes a framework for the identification and consideration of local character in the planning system. The framework will allow councils to amend their local environmental plans (LEPs) to give legislative weight to local character areas. An optional provision in the Standard Instrument Local Environmental Plan (SI LEP) has been drafted to provide this pathway for councils.

Changes to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) are also proposed to provide for limited local character areas that may be excluded from the Low Rise Housing Diversity Code. This EIE has been prepared under section 3.30 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The local character provision will allow a council to adopt a map overlay and a local character statement. The map will identify the boundaries of a local character area and the local character statement describes an area's existing character and sets out its desired future character. The statement must be developed in accordance with the Local Character and Place Guideline and detail how future growth will be consistent with the identified character.

This document seeks feedback on both the proposed amendment to the Codes SEPP and the proposed local character provision.

Part 1 – Background and context

This section provides an overview of:

- The implementation of local character local planning controls and associated framework
- Proposed changes to the Codes SEPP
- The role of the proposed local character provision and associated overlay.

Part 2 – Proposed local character provision

This section explains policy objectives for the proposed local character provision in LEPs. It describes how the proposed provision will work and what it seeks to achieve. It also outlines a two-stage process which will allow an exclusion from the application of the Low Rise Housing Diversity Code for discrete areas of local character in a local government area.

Part 3 – Policy changes

This section describes the proposed changes to environmental planning instruments.

Part 1 – Background and context

1.1 Including local character in local planning controls and associated framework

Local character is the combination of built and natural, public and private environments which give a place its unique feel. It is distinctive, differentiates one area from another and is often highly valued by the community. It is important to understand local character in a holistic way, involving examining the relationship with people and the social, environmental and economic factors of a place. Considering local character is important in developing strong, unique, desirable and designed communities.

In order to provide a simple way for councils to include the complex concept of local character in LEPs, the Department prepared an optional provision for inclusion in the SI LEP. An exhibition draft of the proposed clause is provided at the end of this document. [Planning Circular PS 18–00 respecting and enhancing local character in the planning system](#) first flagged this as a potential option to elevate local character in the planning system.

The proposed provision gives councils a pathway to develop tailored and creative planning responses that acknowledge what is special or unique about an area. Local character is not solely concerned with preservation, but instead provides a way to plan for how a place will respond to a growing population, while retaining and enhancing its distinctive character.

The proposed provision will allow a council to adopt a map overlay which identifies the boundaries of a local character area and requires the council to consider its local character statement when assessing development applications. A local character statement must be developed in accordance with the [Local Character and Place Guideline](#) and describe an area's existing character and detail its desired future character. It will also set out how future growth will be consistent with the identified character.

The Department released the [Discussion Paper – Local Character Overlays](#) for public exhibition in February 2019 which explored a proposed approach for introducing local character overlays into the SI LEP. The submissions received from that exhibition have been used to inform the drafting of the local character provision.

Where a council intends to apply a local character overlay and develop a local character statement, a planning proposal needs to be submitted to the Department for consideration. The proposed framework for defining a local character area and seeking an exemption from the Low Rise Housing Diversity Code (LRHDC) is outlined in Part 2.2 of this document.

It is not mandatory for councils to investigate local character, however if a council intends to include local character provisions in the LEP, it will need to use the local character provision to ensure consistency across the planning system.

1.2 Proposed change to the Codes SEPP

It is acknowledged that there are particular areas that possess a distinct character which may be undermined by the controls set out in the LRHDC. Given this, it is recognised that some areas could be exempt from the application of the LRHDC.

Clause 1.19 of the Codes SEPP identifies land where complying development cannot be carried out. It is proposed to amend this provision by way of introducing an additional subclause which states that any land identified as being within an “exclusion zone” will be unable to seek approval through the complying development pathway under Part 3B of the Codes SEPP. Please refer to Part 2.2 of this EIE which sets out the proposed framework for exemptions from the LRHDC in limited areas.

1.3 The role of the local character provision and overlay

In developing and finalising local strategic planning statements (LSPSs) many councils identified the importance of local character and included various actions to investigate and elevate local character. The proposed local character provision enables councils to respond to those actions.

Local character areas should only apply where councils and their community feel that additional support is necessary because the broader zone objectives do not provide sufficient guidance or direction to manage change, while supporting local character.

Several NSW councils use map layers (an overlay) in their LEP to capture and identify character areas, however there is no standard approach. The proposed provision will ensure consistency and effectively align the development outcomes to the strategic vision and plans that sit above the LEP.

Part 2 – Draft Provision

The local character provision has been developed as the key statutory mechanism for councils to promote the desired future character in their local government areas. The associated map overlay, and standalone local character statement provide the local context and content. A copy of the local character provision is attached to this paper.

The provision will apply to land identified as a “local character area” on the Local Character Areas Map in an LEP. The map layer will identify the boundaries of a local character area. The provision, if adopted, will give statutory weight to local character in decision-making. A local character statement will set out the desired future character of each local character area.

2.1 Objectives of the proposed local character provision

The objectives of the proposed provision are to:

- provide a consistent way for councils to elevate local character into their local environmental plans
- empower development controls within the DCP for a proposed development within the character area

- be mandatory for councils seeking to exclude limited local character areas from the Low Rise Housing Diversity Code

Note: determining a local character area does not automatically exempt those areas from any state policy and any other relevant requirements under the EP&A Act and *Environmental Planning and Assessment Regulation 2000*.

2.2 Defining local character areas and producing a local character statement

A local character statement is always developed in consultation with the community. It is a place to describe a community's preferences for how an area could change over time and includes a description of existing character and the desired future character of the mapped local character areas.

Local character areas are generally categorised in three ways: change, enhance and maintain. When defining local character and producing a local character statement the broad steps below should be followed:

Defining local character areas

- **Engage with the community** – undertake preliminary consultation to which areas are to be identified as local character areas
- **Identify an area's character** – map out boundaries and describe the major characteristics including social, environmental and economic features
- **Examine different sources of information** – demographic data, local records, history
- **Set desired future character** – set one of the three characterisations: change, enhance and maintain considering any strategic plans in operation
- **Produce a character statement** – using the criteria above and in line with the *Local Character and Place Guideline*

More information on how to assess and characterise local character is provided in the [Local Character and Place Guideline](#).

Local character statements are a standalone document that sit outside of the LEP and the DCP. Legal weight is given by being referred to in the proposed LEP provision. Local character statements aim to provide certainty to the public and industry that the identified vision and objectives of a local character area will be supported through planning controls.

Development controls and design outcomes for each identified local character area will be included in council's DCP. Built form and other design related outcomes relevant to that particular local character area can also form part of the local character statement.

Local character statements will be reviewed regularly by councils. It is proposed that this will occur when local housing strategies are reviewed and updated.

Maps containing local character areas will need to be consistent with [Standard Technical Requirements for Spatial Datasets and Maps August 2017](#).

Amending the LEP for local character areas

An amendment to the SI LEP to include the local character provision as an optional provision as well as a map layer to accommodate a local character overlay is proposed. Where a council intends to apply a local character overlay and develop a local character statement, a planning proposal needs to be submitted to the Department for consideration. Councils will need to provide objectives, justification and explanations as per [Planning Proposals – A guide to preparing planning proposals](#) and [A guide to preparing local environmental plans](#). This ensures that all applications for including local character in LEPs are evaluated in a consistent manner.

Prior to submitting a planning proposal, councils will be required to consult with the Department in the formulation of the map layer. Councils need to ensure that the planning proposal includes the following information:

- draft local character statement
- number and type of lots impacted by the local character area
- alignment to strategic planning including the LSPS and local housing strategy
- evidence of community and industry consultation

Councils also need to consider the consolidation of current overlays in their LEP with the local character layer. For example, site specific overlays or active street frontages (where appropriate) may be combined to set the objectives of the desired future character of an area or neighbourhood. The consolidation of overlays **must not** turn off any state policy, including the Codes SEPP.

Framework for exemptions from the Low Rise Housing Diversity Code for limited areas

Some councils have indicated that certain areas within their areas have a distinct character that is not consistent with the controls in the LRHDC. However, exemptions from the LRHDC should not be based on local character alone and exclusions will not be provided for whole local government areas or for the entirety of a particular zone.

A comprehensive evidence base on housing need and supply, demographic information and details of where diverse housing forms are being encouraged in the area must support a planning proposal seeking an exclusion from the LRHDC. These requirements will be centred on councils having undertaken a strategic planning process including a local housing strategy that indicates the range, quantity and diversity of housing required for their community's future housing needs.

Dividing the process in to two distinct stages means that councils can identify and map character areas first and then undertake more comprehensive investigation to determine where the LRHDC is appropriate to apply. It also allows the focus of local character to stretch beyond housing typology into determining the desired future character of a range of areas within neighbourhoods such as public spaces, retail areas and the natural environment.

Any consideration of an exclusion will need to demonstrate that without complying development, the housing needs of the community can still be effectively met. If it is found that housing targets are not being met or a diverse range of housing is not being delivered in the area, the exempted areas will be reversed and the LRHDC will be reactivated in the area.

It is important to note that exclusions sought through this process will only apply to the LRHDC and only in limited areas. It is proposed to introduce a “exclusion zone” map layer which nominates limited areas as being excluded from the LRHDC. Any area identified within a LRHDC exclusion zone will be unable to seek approval through the complying development pathway under Part 3B of the Codes SEPP. Exclusions cannot apply to all local character areas identified within the local government area.

The steps for defining a local character area and seeking an exemption from the LRHDC are outlined below:

Local character in LEP	Exemption from the Low Rise Housing Diversity Code for limited areas in the local government area
<p>Step 1</p> <p>Broadly define local character and undertake a local character assessment in line with the <i>Local Character and Place Guideline</i></p>	<p>As per criteria in left hand column</p>
<p>Step 2</p> <p>Council prepares a planning proposal with the following evidence:</p> <ul style="list-style-type: none"> • Draft local character statement • Number and type of lots impacted by LC area • Alignment to strategic planning LSPS/LHS • Community consultation <p>Council also needs to consider the consolidation of current overlays in their LEP with the local character layer. For example, site specific overlays or active street frontages (where appropriate)</p> <p>NOTE: any consolidation of overlays must NOT turn off <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> or any other state policy</p>	<ul style="list-style-type: none"> • As per criteria in left hand column as well as additional information including: • Evidence showing the outcomes of the Code are inconsistent with the current and desired future local character – provide examples • Evidence that any exclusion will not result in a reduction of housing diversity overall • Current and historical data on complying development take up including data on the take up of LRHDC • Statistics on the range of housing types approved (DA and CDC) for the prior 5 years • Number of lots and proposed lots that will be excluded from the Code and the number of lots where the Code will still apply • Evidence of community and industry views being considered • A completed LSPS and LHS • Detailed analysis and comparison between Council’s planning controls (including design standards) and the controls in the Code and Design Guide • How the proposal aligns to the strategic direction within regional and district plans • Strategic basis for the request supported by evidence (e.g. urban design studies)

<p>Step 3 – consultation – it is expected that further consultation with the community will take place during the planning proposal exhibition including:</p> <ul style="list-style-type: none"> • Consultation with the broad community • Finer grain consultation with the landowners affected • Consultation with industry and any affected government agencies 	<p>Step 3 – consultation – it is expected that further consultation with the community will take place during the planning proposal exhibition including:</p> <ul style="list-style-type: none"> • Consultation with the broad community • Finer grain consultation with the landowners affected • Consultation with industry and any affected government agencies
Final assessment and plan made	Final assessment and plan made

These two processes can be undertaken concurrently

2.3 Savings and transitional provision

If a council adopts the optional local character provision, a savings and transitional provision will be included to ensure that pending development applications continue to be assessed and determined as if the proposed provision had not commenced.

Part 3 – Policy changes

3.1 Interaction with Codes SEPP

Clause 1.19 in the Codes SEPP identifies land where complying development cannot be carried out and will be amended to include land mapped as excluded from LRHDC. This means that those identified areas will be excluded from the complying development pathway in Part 3B of the Codes SEPP.

3.2 Standard Instrument Local Environmental Plan

The optional local character provision will be available for councils that are seeking to include local character in their LEP.

The associated maps will also be included in council's LEP.

Proposed Local Character provision

public consultation draft

Local character areas

- (1) The objectives of this clause are as follows—
 - (a) to identify local character areas,
 - (b) to promote the desired future character of local character areas.
- (2) The local character and desired future character for a local character area is specified in the *Local Character Areas Statement* published by [insert the name of the body responsible for the publication] at [insert the place of publication] on [insert the date of publication].
- (3) Development consent must not be granted to development on land in a local character area unless the consent authority has taken into account the *Local Character Areas Statement* for the land.
- (4) In this clause—
local character area means land identified as “local character area” on the Local Character Areas Map.

Drafting note 2.1 *The following definition should be included in the Dictionary—*

Local Character Areas Map means the [Name of local government area or other relevant name] Local Environmental Plan [Year] Local Character Areas Map.
