



Planning circular

PLANNING SYSTEM

Local planning; Planning Systems

Circular	PS 21-014
Issued	2 December 2021 ¹
Related	Replaces PS06-014

Minor amendments to local environmental plans using section 3.22

This circular provides guidance on the process for making minor amendments to local environmental plans in accordance with section 3.22 of the *Environmental Planning and Assessment Act 1979*.

Introduction

Section 3.22 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) allows certain types of minor amendments to be made to environmental planning instruments (EPIs) without following the usual plan-making procedures (particularly public exhibition) under Part 3 of the EP&A Act.

This circular provides guidance on the process to be followed when a council wishes to prepare an amendment to a LEP in accordance with section 3.22.

What is a section 3.22 amendment?

Section 3.22 may be used to prepare a LEP to amend or repeal another LEP to:

- (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, or
- (b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature, or
- (c) deal with matters that the Minister considers 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.

Unless the amendment is clearly a matter that falls within (a) or (b) above, the expectation is that (c) will be relied upon for most section 3.22 amendments. This limb of section 3.22(1) requires the Minister to

form the requisite view under that provision, which is appropriate in most instances.

The ability to make an amendment in accordance with section 3.22 will need to be assessed on the facts of each individual case. While judgement will need to be exercised in such assessments, the consequence of an amendment being made in accordance with section 3.22 should be that:

- there is no need for exhibition of the draft instrument (e.g. public exhibition has previously occurred, and gazettal of the section 3.22 amendment will be sufficient notification), and
- the amendment will not have a significant impact on the environment or adjoining land.

Types of amendments that might be permitted using section 3.22

Some examples of the types of amendments that might be permitted using section 3.22 are outlined below. These examples are intended as a guide only and, as mentioned above, proposed amendments will need to be considered on the facts of each individual case.

- The correction of a minor typographical error.
- The minor correction of text relating to the intent of a provision or descriptions of land to which a provision applies.
- An amendment to resolve a minor discrepancy between the map and the written instrument.

¹ Revised 10 August 2023 to include updated reference to the *Local Environmental Plan Making Guideline*

Process for making a section 3.22 amendment

The Department processes requests under section 3.22 of the EP&A Act as follows:

1. Council should advise the Department of the proposed amendment by submission of the **attached** submission template 'Section 3.22 EP&A Act Submission' via the NSW planning portal with Part A completed. This will inform the Department's decision as to whether the matter is appropriate for a section 3.22 amendment. It will also inform the Minister's decision to make any resulting instrument.
2. The Department will check the information submitted by the council and, if it agrees that all the relevant information has been provided and that the proposed matter is appropriate for amendment under section 3.22, the relevant regional or place team within the Department will assess.
3. If the Department does not agree that the matter is appropriate for amendment under section 3.22, the Department will inform the council of this in writing. This advice may identify any issues to be addressed before the Department will reconsider the matter.
4. If the matter is considered appropriate for amendment under section 3.22, the Department's legal team will arrange the preparation of a draft LEP to give effect to the amendment.
5. Once the amending LEP is finalised, the Department will confirm with council that it wishes to proceed with the amendment.
6. The Department will then forward the amending LEP, along with the completed s3.22 submission form, to the Minister.
7. The Minister will decide whether to make the amending LEP under section 3.36(2) of the EP&A Act and in accordance with section 3.22.

8. If the Minister decides to make the amending LEP, public notification will occur through the publication of the amending LEP on the NSW Legislation website.

Further information

The **Local Environmental Plan Making Guideline** provides advice on the various stages in the plan-making process including details of plan-making functions undertaken by councils.

This guide and information on the planning proposal process is available on the Department's website at planning.nsw.gov.au

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

Department of Planning and Environment circulars are available at:

<https://www.planning.nsw.gov.au/policy-and-legislation/planning-system-circulars/>

Authorised by:

Marcus Ray

Group Deputy Secretary Planning and Assessment

Department of Planning and Environment

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

© State of New South Wales through the Department of Planning and Environment planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies 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.



**Planning,
Industry &
Environment**

DPE file no:

Section 3.22 EP&A Act submission

Part A. Council to complete

Subject:

.....
(Insert name of amending LEP)

Report requesting the making of an amending local environmental plan under sections 3.22 and 3.36(2) of the *Environmental Planning and Assessment Act 1979*.

Background:

..... (Insert name of council) resolved on
....., to amend..... (Insert name of LEP) and
to request that the Minister for Planning and Public Spaces make the plan under sections 3.22 and 3.36(2) of
the *Environmental Planning and Assessment Act 1979*. The draft amending plan is attached. The land to
which this amendment applies is

.....
.....
.....
(Specify area. Attach map if appropriate)

Why there is a need for the amendment:

.....
.....
.....
.....
(Please attach a separate sheet if necessary)

What the amendment does:

.....
.....
.....
.....
.....

(Please attach a separate sheet if necessary)

Why the amending plan is suitable to be made in accordance with section 3.22:

.....
.....
.....
.....
.....

(Please attach a separate sheet if necessary)

The council requests that the Minister agree to make draft.....(Name of amending LEP)

Signed: Date:

Name: Position:

On behalf of: (Name of council)

Part B. Department use only

Date deemed adequate or returned to Council as inadequate:

Department position:

Opinion that instrument may be legally made:

Recommendation:

Date:

Signed:

Name: