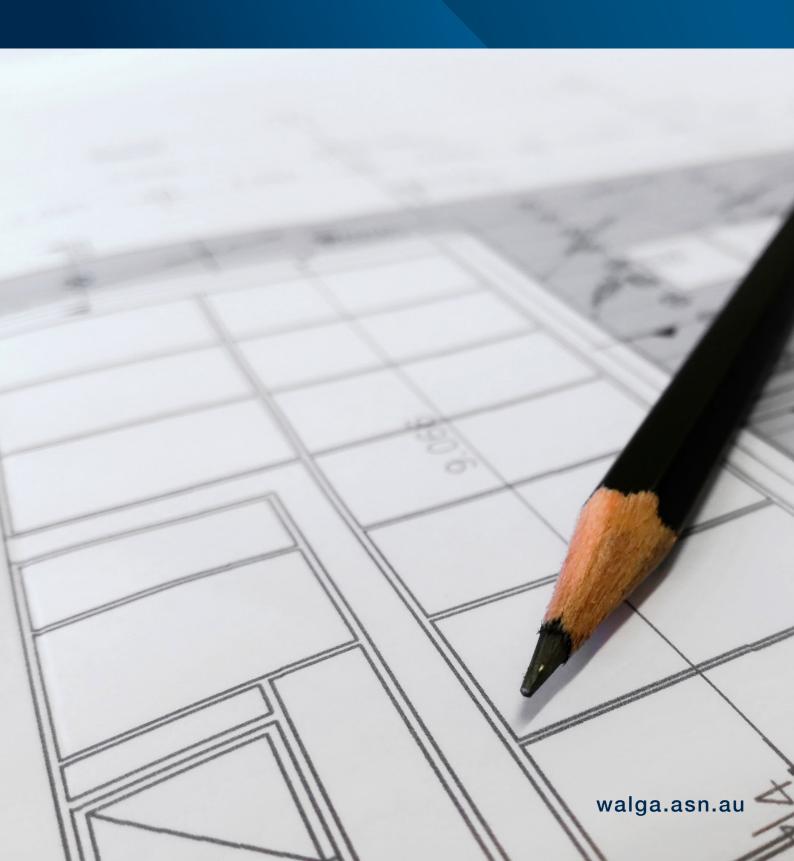


Local Planning Policy Guide

A tool to aid in the writing, development and review of policy





Introduction

Local Planning Policies (LPPs) are an important and commonly used planning instrument in Western Australia. They help Local Governments set clear expectations for areas and development classes, provide direction to applicants on how Local Governments are likely to exercise discretion, and outline acceptable development standards. LPPs remain one of the few planning instruments over which Local Governments retain control over the preparation and adoption of, providing Local Governments with an opportunity to ensure that local planning frameworks reflect the particular values and needs of their local communities.

However, LPPs are often criticised due to perceptions that there is limited consistency across Local Government jurisdictions both in content and style, and therefore can be detrimental to the legibility of the planning system.

The continued use of LPPs, and the ability of Local Governments to set their own local planning frameworks, is vital in ensuring that communities continue to have faith in the planning system to provide appropriate contextual responses as Western Australia continues to grow. Standardisation of the content and planning controls within LPPs is not supported by WALGA, and given this situation, is not the purpose of this Guide.

The Western Australian Local Government Association (WALGA) considers that there is scope to improve both the consistency and legibility of LPPs while retaining appropriate local content and planning controls.

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Purpose of this Guide

WALGA has prepared this Guide in order to:

- Assist in improving consistency in the way that LPPs are worded, structured and applied across Local Government jurisdictions;
- Provide guidance on the preparation and writing of LPPs (Part 3);
- Provide guidance on the way that LPPs could be ordered and numbered (Part 4);
- Provide guidance on how LPPs could be structured (Part 5); and
- Provide a template LPP that summarises the information in Parts 3, 4 and 5 (Part 6).

How this Guide could be used

The Guide could be used by Local Governments when undertaking a review of their Policy Manuals or periodic review of individual LPPs. Local Governments undertaking these reviews could modify the structure of their LPPs and also consider the way in which their LPPs are numbered and grouped, discussed in Part 4.

Local Governments could also consider the principles of writing an LPP, discussed in Part 3, to ensure that appropriate language is utilised to reflect the standing and role of an LPP within the planning framework.

Structure of this Guide

This Guide is structured in 6 sections. These sections are designed to be read progressively, culminating in a template LPP that Local Governments may choose to apply. All parts of this Guide are suggestive, meaning that Local Governments can choose those parts that help to address their local needs. The design of the structure is intentional and designed to accommodate the varying levels of resource availability across Local Government jurisdictions.

Parts 1 and 2 of the Guide explain the guide and the process undertaken in its development. Parts 3, 4 and 5 provide users with the tools to produce an LPP.

This guide provides information that Local Governments can refer to when reviewing or developing Local Planning Policies."



Purpose of a Local Planning Policy

The general function and purpose of an LPP is not clearly defined within the planning framework itself. Therefore Local Governments seeking to establish or review an LPP should be cognisant of the considered opinion of the State Administrative Tribunal, which has stated that an LPP,

"as a matter of '[g]ood public administration', is for the decision-maker to formulate, adopt and publish planning principles that find expression in a planning policy in order to guide the decision-maker's exercise of discretion in planning assessment decision-making."

Standing of a Local Planning Policies

The ability for Local Governments to prepare an LPP is provided for within Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, henceforth referred to as the 'deemed provisions'. In particular cl. 3 of the deemed provisions states that a,

"local government may prepare a local planning policy in respect of any matter related to the planning and development of the Scheme area." While this permits LPPs to be established over a broad range of matters, the wording of cl. 3(2) and cl. 3(3) of the deemed provisions should be contemplated when a Local Government is considering the scope of a proposed LPP. Clause 3(3) states that an LPP can address a strategic or operational matter but must be based on sound town planning principles. Further, cl. 3(2) states that an LPP may be applied to either one or more classes of matters and can be applied to a part or the entirety of a Scheme area.

In understanding the standing of an LPP it is important to be cognisant of the weight a decision maker can give to any particular policy when making a decision. The State Administrative Tribunal has clearly enunciated the test to be applied to determine the weight given to any particular LPP, that being:

- whether it is based on sound town planning principles;
- whether is it a public, rather than a secret policy;
- whether it is a public policy conceived after considerable public discussion;
- the length of time the policy has been in operation; and
- whether it has been continuously applied².

Local Governments should be cognisant of all the above matters when developing, implementing and reviewing LPPs.

¹ Clive Elliott Jennings & Co Pty Ltd v Western Australian Planning Commission (2002) 122 LGERA 433 [24]

Relationship to Planning Scheme

LPPs, while prepared under a Local Planning Scheme, are not part of a scheme. Their primary role is to guide development, clearly articulate what Council aims to achieve through development control, and provide additional information concerning the position a Local Government will likely take on particular planning matters. A LPP should not be inconsistent with a Local Planning Scheme, and in instances where this occurs, the provisions of the Scheme would prevail.

LPPs are matters for which Local Government and Development Assessment Panels should have 'due regard' when making a determination under a Local Planning Scheme. Clause 67 of the deemed provisions sets out matters which are to be considered by a Local Government. The Supreme Court of Western Australia has found that 'to have due regard' in a planning context means that relevant matters be given:

- "active and positive" consideration; or
- "proper, genuine and realistic" consideration.

Note that under cl. 67, Local Governments in making decisions are able to form an opinion on what matters are matters that are deemed to be relevant or not in the determination of a development application. Once a matter has been determined to be relevant, the Local Government must have regard to this when making a determination, to the extent it is consistent with the Scheme. Where an LPP is deemed to be a relevant matter it must be actively considered in the determination by a Local Government.

Relationship to State Planning Policies

In general terms an LPP can be inconsistent with the provisions of a State Planning Policy (SPP). Though this is not preferable and should be avoided where possible. In accordance with cl. 4(1)(b) of the deemed provisions, where a proposed LPP is inconsistent with a SPP it must be referred to the Western Australian Planning Commission (Commission) for comment. It is important that in the preparation or review of an LPP that the Local Government assesses the proposal against the state planning framework and the provisions of their Scheme.

The Commission in making a determination of an application for subdivision may give permissible considerations to an LPP, even where the relevant provisions are inconsistent with an SPP. However, in such a case, the Commission would generally give less weight to such a provision than it would the provisions of its own policies³. Thus, while the LPP may guide the formulation of the Local Government's advice to the Commission on a proposed subdivision, it will not guide the exercising of the Commission's discretion in the same manner. Local Government's should consider this when formulating LPPs relating to subdivision.

Relationship to State Planning Policy 7.3: Residential Design Codes

While an LPP can be considered where it is inconsistent with the provisions of a State Planning Policy, careful consideration should be given by Local Governments when developing LPPs to the interrelationship between LPPs and both volumes of State Planning Policy 7.3: Residential Design Codes (R-Codes).

Part 7 of the R-Codes Volume 1 and cl. 1.2 of the R-Codes Volume 2 provide provision for decision-makers to prepare LPPs to alter certain development standards of the R-Codes where a specific local need arises. Both volumes forbid the alteration of the R-Codes unless such modifications relate to matters expressly permitted for alteration and modification under the R-Codes.

Local Governments when seeking to modify the R-Codes through an LPP should in scoping such a policy refer to cl. 7.3.1 of the R-Codes Volume 1 and cl. 1.2.2 of the R-Codes Volume 2. These provisions outline the sections of both volumes that may be modified by a Local Government, without consent of the WAPC, subject to conditions.

Further to this, and notwithstanding cl. 7.3.1 of Volume 1 and cl. 1.2.2 of Volume 2, a Local Government may modify any other deemed-to-comply provision of Volume 1 or the Acceptable Outcome listed in cl. 1.2.3 of Volume 2, where approval is sought and gained from the WAPC. Clause 7.3.2 of Volume 1 and cl. 1.2.3 of Volume 2 outline considerations Local Government decision makers should consider when proposing changes to these parts of the R-Codes.



Background

Working Group

In late 2018 WALGA convened a workshop between the Department of Planning, Lands and Heritage and a group of Local Government planners from eight metropolitan Local Governments to discuss the possibility of developing a template LPP for variations to State Planning Policy 3.1: Residential Design Codes. This was in anticipation of the release of Stage 1 of Design WA and the new State Planning Policy 7.3: Residential Design Codes Volume 2 – Apartments.

At the initial meeting the working group determined that the development of any template LPP that sought to mandate specific development provisions would likely not be supported. Such a decision would remove the ability to consider the local context in any policy formulation. There was, however, general agreement in providing guidance on a standardised LPP structure. Further, there was support for a common numbering and ordering regime for LPPs.

This Guide has been developed in line with the outcomes of the initial meeting of the working group. The working group was consulted prior to the finalisation of the Guide and their feedback incorporated where possible.

Guide Preparation

In preparing this Guide a number of research and analysis tasks were undertaken to provide additional rigour to the approach. These are outlined below.

A desktop analysis of all metropolitan Local Government's local planning frameworks was undertaken. This included an analysis of their LPPs and particularly if a consistent structure was applied. Common approaches were noted to aid in the development of the Guide. Further, the current approach to grouping and numbering LPPs was also analysed.

Secondly, a random sampling of rural and regional Local Government's local planning frameworks was analysed. This assisted in framing the Guide in a way that would suite the broad range of Local Governments in Western Australia.

Lastly, a review of the relevant literature and regulations was undertaken to ensure that the advice in Part 1 of this Guide was accurate and relevant for users.

Principles to consider

This part sets out a number of principles that a Local Government could consider when writing or reviewing an LPP.

Clear and concise

An LPP should be written in plain English and in a way that allows it to be readily understood by members of the public. Language should be clear and concise, and avoid ambiguous statements. Clear and concise language is fundamental in ensuring a transparent planning system.

Not contradict or unnecessarily repeat a Local Planning Scheme

Where an LPP is inconsistent with the provision of a Local Planning Scheme, the Scheme will prevail. Therefore, contradictions of a Scheme by an LPP should not occur.

Repetition of the provisions of the Scheme should also be avoided. This includes definitions. Where necessary, clauses of the Scheme should be referred to and repetition of the Scheme should only occur where it is fundamental to the operation and understanding of the LPP.

Assist Local Government to make a decision

An LPP should assist a Local Government to make a decision, particularly where a matter of discretion is involved. An LPP should also assist others (i.e. proponents and the community) in understanding the appropriateness of a proposal or, during a public comment period, provide information for the proposal they are commenting on.

A clear objective

An LPP should include a clear objective or set of objectives to aid decision makers in the assessment of proposals. Objectives should flow from the policy basis for the LPP, and be the basis from which the appropriateness of any proposal is tested against. Objectives should be consistent with both the Local Planning Scheme and Local Planning Strategy. Objectives should be written in plain English, be concise, be unambiguous, and begin with the infinitive form of the verb. For example: 'to enable', 'to promote', 'to protect', 'to preserve' and 'to ensure'.

Objectives should avoid the use of definitive phrases like 'to require', 'to mandate' or 'to regulate' where they relate to acceptable development standards. More definitive language may be appropriate where the objective relates to a strategic matter.

Mandatory provisions

An LPP is a 'due regard' document and as such should not prescribe mandatory requirements in the way a Local Planning Scheme does. LPPs should avoid the use of terms such as, 'shall' and 'must' in policy provisions, except where those provisions relate to compliance with the objectives of the Policy, and compliance with those provisions is required to be considered to meet a 'deemed-to-comply' pathway.

Acceptable development and performance principles or deemed-to-comply

Where an LPP seeks to provide development standards to a class or number of classes of development, Local Governments may consider including acceptable development provisions and performance principles.

Acceptable development provisions often outline: a Local Government's preferred approach for meeting the objectives of an LPP; compliance with these requirements which may allow for consent without the need to obtain a development approval, without needing to advertise the proposal; or, both. Acceptable development provisions are simply one way to address the objectives, not the only way.

Assessment against performance principles requires Local Governments to exercise judgement and consider whether or not an application meets the objectives of the LPP or performance objectives. An LPP may require a higher level of public consultation for matters requiring assessment against the performance principles.

It is acknowledged that the use of acceptable development provisions and performance principles may not be appropriate in all contexts and for all land-uses. For some development classes, such as within industrial estates, it may be appropriate to exclude the 'performance principle' and simply rely on an assessment against the objectives.

Alternatively, and perhaps preferably by some Local Governments, a 'deemed-to-comply' approach can also be considered. Where any proposal is inconsistent with the 'deemed-to-comply' criteria, a proposal would in turn be assessed against the objectives of the LPP. 'Deemed-to-comply' approached may be more appropriate in situations such as consideration of height variations, facilitation of the retention of trees, and assessments in heritage areas.

Local Governments should give careful consideration to whether an 'acceptable development' pathway or 'deemed-to-comply' approach is the most appropriate method on a particular policy or provision within a policy.

Not repeat or contradict other LPPs

An LPP should not contradict or repeat another LPP. Conflicting LPPs can weaken a community's understanding of the local planning framework and its intentions.

Inherently some LPPs may compete and therefore, a Local Government in making decisions will need to weight the level of regard it gives to each individual LPPs when making a decision. However, LPPs that directly conflict with each other should be avoided. Where there is considerable overlap between more than one LPP, a Local Government should consider merging them into one single LPP with a broader scope and streamlined structure.

Where the LPP applies

Where an LPP applies to a specific area this should be clearly defined in the policy.

Long complicated text explanations of the extent of the LPP should be avoided. Where the applicable area is geographically defined, the use of maps is preferred. Where this map is an attachment it should be referred to in the body of the LPP as the applicable area.

Where the LPP relates to areas already defined in the Scheme, such as a specific zone, then the LPP should state this clearly. For example: 'This policy applies to all development applications under the residential zone'.

Referencing attachments

It is preferable that LPPs are self-contained documents, that is, all provisions and information are contained within the body of the LPP itself. However, this is not always feasible, particularly where documents such as design guidelines are the basis for the LPP or maps and tables are included. Where attachments are used, all attachments must be referenced within the LPP.

Design Guidelines as LPPs

It has been common practice for design guidelines to be formalised as LPPs. In many instances design guidelines are endorsed without any covering policy document accompanying them. This practice should be avoided going forward.

Where a Local Government determines to endorse a design guidelines as an LPP, the design guidelines should be provided as an attachment to an LPP that follows the format outlined in Part 6.

Local Governments are also encouraged, through a comprehensive review of their design guidelines, to incorporate existing design guidelines into the format outlined in Part 6 of this guide. Going forward it is recommended that design guidelines not be established as LPPs and instead, Local Governments look to using Local Development Plans and Precinct Plans as more appropriate mechanisms.

Reviewing LPPs

An LPP should be reviewed regularly to ensure that they remain relevant and in line with sound town planning principles. The age of an LPP reduces its relevance when making decision making, and thus possibly becomes a less useful tool as it ages. The State Administrative Tribunal has determined that the age of an LPP has direct relevance to the weight afforded to it, therefore regular review is warranted⁴.



This section has been adapted from the Victorian Department of Environment, Land, Water and Planning's Planning Practice Note 8: Writing a Local Planning Policy.

Numbering and grouping

This part outlines a preferred approach for numbering and ordering LPPs. Ordering refers to grouping LPPs into common topics, such as: residential, commercial/industrial, design guidelines, and environment and waste. Numbering refers to how LPPs could be identified within those groups. It is hoped that by creating a preferred numbering and grouping of LPPs that the local planning framework will become more consistent over time, within and across Local Government jurisdictions.

LPP Grouping

Local Government planning policies and manuals generally lack consistency in ordering and grouping. While a number of Local Governments do group LPPs into topic categories, this approach is not the norm.

The following model was developed through analysis of the current approaches utilised by Local Government, debated and discussed with the Local Planning Policy Working Group and referenced against the Department of Planning, Lands and Heritage's framework for State Planning Policies. The preferred groupings, including example LPPs that could sit beneath these groupings, are outlined opposite.

LPP Grouping

Local Governments currently use a range of numbering styles. These styles vary across Local Governments and within Local Governments. The numbering of LPPs should be based around the following principles:

- 1. All LPPs should be numbered and begin with the prefix 'LPP';
- 2. The number should be written in the following format: LPP #.##; and
- 3. The number should be made up of two components (before and after the decimal place):
 - the first being the grouping number, and
 - the second relating to the sequential place the policy sits within the grouping.

Where an LPP is rescinded, its number should not immediately be reused. It should remain identified as a rescinded LPP, and identified as such, for a reasonable period, usually two years. Once this period is finalised, the number can re-enter circulation.

Where a Local Government does not group its LPPs, the numbering should follow the order in which the LPPs are displayed on their website or within their policy manual. The prefix 'LPP' should still be used in these situations.

Preferred LPP Framework

- 1. Residential
 - Variations to the R-Codes
 - Home Business/Home Occupations
- 2. Commercial & Industrial
 - Child Care Premises
 - Service Stations
 - Short-Term Accommodation
 - Licenced Premises
 - Display Homes
 - Fast Food Outlets
- 3. Environment, Natural Resources & Waste
 - Waste Management Plans
 - Tree Retention
- 4. Transport & Infrastructure
 - Vehicle Access
 - Telecommunication Facilities
 - Crossovers
 - Right of Ways
 - Bicycle Parking & End of Trip Facilities
- 5. Design Guidelines & Precinct Plans
 - Residential Design Guidelines
 - Mixed Use Design Guidelines
 - Local Development Plans (when endorsed as an LLP)
 - Activity Centre Plans (when endorsed as an LPP)
- 6. Planning Procedures
 - Advertising of Proposals
 - Design Review Panels
 - Community Engagement
 - Public Art
 - Street Addressing
 - Cash-in-lieu
- 7. Miscellaneous
 - Sea Containers
 - Uniform Fencing
 - Signs

Where a Local Government has a need to include an additional grouping due to local requirements, it is recommended that this grouping be added onto the end of the list in this Guide. With this grouping beginning with an '8'. Common additional groupings may include 'rural' or 'heritage', which would be used for those Local Governments with significant lands with primary industry uses or a significant number of heritage areas.

Where a Local Government has a small number of LPPs there may be no need to group LPPs into rigid categories. In these situations it is recommended that Local Governments order their LPPs in a manner consistent with the groupings. This will further aid consistency of local planning frameworks across the state.

Where a Local Government has incorporated their LPPs into a broader policy manual, it is recommended that all LPPs be clearly identified within the manual and that the Local Government order their LPPs in a manner consistent with the groupings suggested above. In these situations, it is also recommended that LPPs be included in a separate document, available online, to reduce confusion as to which policies are or are not LPPs.

LPP Structure

The approachability of LPPs is a key matter of transparency for Local Government. An LPP should be easy to read, be concise and generally be user-friendly.

The use of a consistent LPP structure is likely to improve the accessibility of a local planning framework and legibility of LPPs, while improving consistency across jurisdictions in the event that this structure is applied across multiple jurisdictions.

The below structure is the preferred format. It is important to re-emphasise that this structure is non-obligatory and that Local Governments have the flexibility to apply structures that suit their own needs. A template LPP can be found in Part 6 of this guide.

In formulating an LPP, Local Governments should remove any of the unnecessary sections from the recommended structure provided below. However, it is recommended that all LPPs include the following sections: citation; objective; introduction; applicable subject; and, footer. These are critical sections which if removed or not included, will reduce the effectiveness of an LPP.

LPP Header

This header should include basic information such as an LPP's name and number. Generally, information such as the Local Government Logo will be included in the header of the LPP.

Citation

This section should make clear that the LPP is a policy endorsed in line with the provisions of the Scheme, as opposed to another operational policy of the Local Government. Preferred wording for this section is included within Part 6.

Introduction

Provide a brief introductory statement, which may include background information that frames the need for the LPP. The basis or purpose for the LPP should be included. This section may make reference to objectives of the Local Planning Strategy or State Planning Policies as the basis for the LPP.

Objectives

An LPP should include a clear objective or set of objectives to aid decision makers in the assessment of proposals. Objectives should flow from the policy basis for the LPP and be the basis against which the appropriateness of any proposal is tested.

Applications subject of this Policy

Outline the geographical location or to which class of development the LPP applies. Where the LPP applies to a large or complex area, a map should be used.

Submission requirements

Outline what documentation should be lodged with particular types of development applications, where relevant. Where these requirements are provided for in another LPP then this part can be omitted.

Consultation

Outline any expectations for community consultation. Where the Local Government has an LPP or procedure that relates to the 'public advertising of proposals', this should be referenced here.

Note: WALGA has developed a Model LPP for the advertising of planning proposals, available here. Local Governments may wish to consider this model policy when developing their own LPPs on this topic.

Policy statement

An LPP should assist a Local Government Where the LPPs primary function is development control then a Local Government should consider naming this section 'Development Requirements' or similar.

Acceptable development provisions

Acceptable development provisions provide clear guidance on how proposals can meet the objectives of an LPP. Acceptable development provisions should not be construed as the only way for a proposal to meet the objectives (and this should be also stated).

These provisions may be divided into general requirements that are to be applied to all proposals under the LPP or more specific provisions related to one particular class of development. Where both are included, general provisions should be listed first.

Variations

As has been outlined above, LPPs are 'due regard' documents and therefore should not include mandatory provisions that form the whole basis for a Local Governments decision.

Where a proposal seeks to vary the acceptable development provisions of an LPP, the Local Government may wish to require that the proposal be advertised for public consultation.

Definitions

Include definitions where appropriate.
Repetition of definitions from a Scheme or
Regulations is not recommended.
Where a definition from a Scheme or
Regulations is critical to understanding the
LPP, the inclusion of any definitions should be
consistent with the higher order document
and appropriately referenced.

When developing new definitions for an LPP, Local Governments should look to other Local Governments with similar LPPs to determine if existing wording for the definition already exists. Consistency between Local Governments aids in the overall legibility of the planning system and there is limited value in having varying definitions.

LPP footer

This footer should include all necessary internal information, such as: approval dates, review dates, matters of internal governance, reference numbers and the internal business units responsible for the LPP. A preferred structure for this footer is included in Part 6 of this guide. Local Governments should amend the footer to reflect internal processes.

Template LPP

Title	Policy Name	Council Logo
Policy Number	LPP #.##	

1.0 Citation

This is a Local Planning Policy prepared under Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015. This Policy may be cited as Local Planning Policy #.## - **Insert Policy Name**.an LPP.

2.0 Introduction

Outline the background and provide a brief introductory statement. This part can help frame the LPP and link it back to the strategic or statutory rational for the policy.

3.0 Objectives

Objectives should be written in dot points and begin with the infinitive form of the verb. For example:

- To enable....
- To promote....
- To protect....
- To preserve....
- To ensure....

4.0 Applications subject of this Policy

Outline what areas or classes of development are subject of the LPP. Where this is shown as a map it may be placed in this part or as an attachment. This part should be written in clear and concise language, and the use of dot points is recommended. For example:

- 'This Policy applies to all bed and breakfast accommodation within a residential zone and in non-residential zones', or
- 'This Policy applies to all multiple dwellings within a Residential Zone', or
- 'An application for approval to commence development (planning approval) is required for:'
 (use this where there are multiple classes of development subject to the LPP with varying
 requirements.

5.0 Application requirements

Clearly articulate expectations of applicants when lodging development applications relevant to this LPP. This part should be written in clear and concise language, and the use of dot points is recommended.

6.0 Policy Statement

6.1 Acceptable development provisions

The nature of the LPP will determine how this part is structured. This section may include general provisions that apply to all proposals, as well as specific provisions that apply to one or more classes of development.

6.2 Variations

Outline the expectation of the Local Government where a proposal does not meet the requirements of the acceptable development provisions. For example:

- 'Applications seeking variations to this Policy shall be determined in accordance with the objectives of this Policy',
- 'Applications seeking variations shall be determined in accordance with the objectives of this Policy and may require consultation in accordance with this Policy'

7.0 Consultation

Outline consultation requirements. Where the Local Government has a procedure or LPP that addresses this matter, make reference to it. For example:

- In some instances, Council may require neighbour consultation before determining whether to approve a use or not,
- For applications that do not comply with the acceptable development provisions contained within this Policy, Council may require that the adjoining neighbour is consulted,
- Applications for **insert land use** will be required to be advertised. Such advertising is to be undertaken in line with the Councils **insert name of advertising LPP** or procedure.

There may be situations where specific consultation requirements may be more appropriate to place within the Policy Statement (Development Requirement) section of an LPP.

8.0 Definitions

This part can be removed if no definitions are included in the LPP.

Responsible Business Unit		
LPP Category	As per part 4 of this Guide	
Publuc Consultation	Yes/No	
Adoption Date	##/##/###	
Next Review Date	##/##/###	
Reference Number (internal purposes)		

ONE70, LV1, 170 Railway Parade West Leederville WA 6007 Ph: (08) 9213 2000

email: planning@walga.asn.au web: walgapip.ning.com

