

GUIDE FOR WRITING OBJECTIVE RULES AND TESTS

IN DEVELOPMENT ASSESSMENT REQUIREMENTS



March 2010

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PART 1 - CONTEXT

What is the Guide for?

The *Guide for Writing Objective Rules and Tests* is designed to assist planners in preparing good development assessment requirements and to promote the use of objective rules and tests as a way of expressing development assessment requirements.

Development assessment requirements vary in how they are expressed in each jurisdiction, which can make it unclear for applicants what information is expected and how a decision will be made.

This can lead to frustration and uncertainty for those trying to understand and comply with requirements.

Objective rules and tests help to resolve this problem by clearly and transparently setting out what is necessary to meet a requirement.

This guide is a step toward greater national consistency in the way development assessment requirements are expressed. Although planning instruments can differ in their construction there are common categories of requirements.

The guide explores how objective rules and tests can be applied to these categories and how greater uniformity across jurisdictions can be achieved.

What is the Leading Practice Model for Development Assessment

The Leading Practice Model for Development Assessment in Australia was developed by the Development Assessment Forum (DAF) to guide jurisdictions in developing efficient, effective and nationally harmonised development assessment systems.

The Leading Practice Model includes ten leading practices for development assessment of which leading practice two is the most relevant to this guide.

Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

What does Leading Practice Two seek to achieve?

Well written assessment criteria can provide certainty to both the community and the applicant.

Clear development assessment criteria mean that decisions will more consistently achieve policy objectives and that development applications can be assessed against relevant and transparent criteria that are available from the outset.

What is a development assessment requirement?

A “development assessment requirement” is a rule (standard, criterion, measure) that sets an expectation for a type of development or a particular area. They are used in assessing the appropriateness of an application. Compliance with the requirement will generally affect the outcome of a planning decision.

Development assessment requirements can be included in policies, spatial plans, strategies, codes or specific provisions. Requirements are most commonly expressed in statutory instruments.

What are objective rules and tests?

“Objective rules and tests” are development assessment requirements expressed in a manner that:

- (a) *“...are transparent and binding (embodied in statutory documents not discretionary policy),*
- (b) *can be objectively applied by experts,*
- (c) *with consistent and predictable results,*
- (d) *are as precise, specific, quantified and objective [measurable] as possible (based on evidence not guesswork),*
- (e) *use the appropriate dimensional, performance or impact techniques to be both effective and efficient, and*
- (f) *are expressed in plain english using common terms.”*

Development assessment requirements should, as far as possible, be written as objective rules and tests so that all applications can be tested against the same conditions.

This creates a more efficient, faster, and less ambiguous way of expressing development assessment requirements.

What do objective rules and tests mean for writing development assessment requirements?

To ensure simplicity and certainty of development outcomes, policy makers should always aim to write clear, measurable requirements, where both the intention and compliance can be easily understood.

However, it may not always be possible to use objective rules and tests, as some requirements lend themselves more easily to this than others.

The following table sets out the categories of development assessment requirements and the likely appropriateness of objective rules and tests.

| | Characteristics | Use of objective rules and tests? |
|--|--|--|
| Visionary statements | <p>Broad statements about the way a place will develop or an issue will be dealt with.</p> <p>Typically refined by more detailed development requirements.</p> | <p>Yes but not always possible</p> <p>When drafting policy there should be a clear link between the 'vision' and clear implementation requirements on the ground.</p> <p>This requires thought during the visioning process about what specific development parameters will be required to achieve the objective or vision and how these will be measured and assessed.</p> |
| Statutory policy & requirements | <p>Requirements set out in a statutory document.</p> <p>Closely interpreted and must be carefully drafted.</p> | <p>Yes, necessary to decisions</p> <p>There must always be a clear expression of how a matter is to be assessed as individual planning decisions are made on the basis of compliance.</p> <p>Difficulties in the interpretation of the requirements create the opportunity for dispute.</p> <p>A clear format with objective assessment criteria and decision guidelines will assist in any legal interpretation.</p> |
| Codes of practice | <p>Generally contain development assessment requirements.</p> <p>Sometimes :</p> <ul style="list-style-type: none"> the requirements are additional to those contained in statutory policy approval is not required if there is compliance with the requirements there can be assessment by an external third party. <p>Codes lend themselves to the code assessment and self assessment tracks of the <i>Leading Practice Model</i>.</p> | <p>Yes, necessary to decisions – especially for those made by external parties</p> <p>Codes and guidelines should be included in, or linked to a statutory instrument. If not, interpretation will lead to debate about how much weight the requirement should be given.</p> <p>Codes and guidelines must be written in a way that delivers very specific outcomes.</p> |
| Guidelines | <p>Matters that 'guide' a decision maker when making a decision.</p> <p>Not generally contained in a statutory document and not mandatory to comply.</p> | <p>Yes, desirable for transparency</p> <p>Guidelines are useful to decision makers and also to those making development applications.</p> <p>Guidelines can be a useful way of demonstrating to applicants the desired form of development or ways of meeting formal requirements.</p> |

PART 2 – GUIDELINES

What do objective rules and tests look like?

In writing development assessment requirements both what is essential to meeting an objective and what is practical need to be considered. The rules should seek to control only what is important and limit the number of requirements to the minimum necessary to achieve the objective.

Assessment requirements should be:

- S** – specific
- M** – measurable
- A** – achievable
- R** – relevant
- T** – time bound

The two main ways of writing assessment requirements are mandatory **prescriptive** requirements such as minimum setback and maximum height controls and **performance** based requirements where there may be more than one 'acceptable solution'. These two techniques are not mutually exclusive and can be used together.

A worked example of a development assessment requirement is set out below. This shows that an objective rule or test can be written in a variety of ways but that the ease of assessment will relate to the level of prescription; the more prescriptive the requirement, the easier the assessment.

Worked example

| Process | Prescriptive | Performance based | Both |
|---|---|--|---|
| Objective: To protect the consistent built form of a heritage streetscape. | | | |
| Step 1: Determine the basic measure. What is to be measured? | The height of new or altered buildings. | The height of new or altered buildings. | The height of new or altered buildings. |
| Step 2: Can the measure be quantified? How much (increase/decrease)? | Yes <i>The height of new or altered buildings must not exceed 12 metres above ground level.</i> | Yes, but preferable to have a number of ways to meet the objective. <i>The height of new or altered buildings should be consistent with the dominant parapet height.</i> | Yes, but some flexibility desired. <i>The height of new or altered buildings should not exceed 12 metres except where it can be demonstrated that the additional height is consistent with the dominant parapet height.</i> |
| Step 3: Can the quality of the outcome be described? What kind of change is expected? | <i>The height of new or altered buildings must not exceed 12 metres above ground level to maintain a consistent streetscape.</i> | <i>The height of new or altered buildings should be consistent with the dominant parapet height when viewed from street level. Buildings should be set back in a stepped manner from the street frontage to reduce the impact of long views.</i> | <i>The height of new or altered buildings should not exceed 12 metres except where it can be demonstrated that the additional height is consistent with the dominant parapet height. Buildings should be set back in a stepped manner from the street frontage to reduce the impact of long views.</i> |

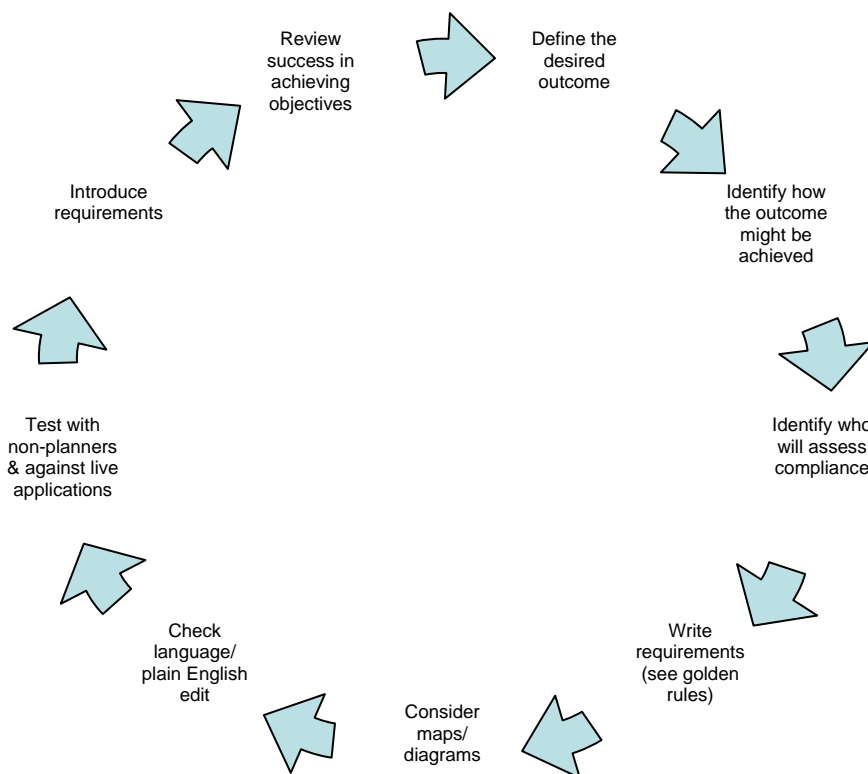
| | | | |
|---|---|---|---|
| Step 4: How compliance can be demonstrated? | Streetscape elevation showing height of buildings above ground level. | Streetscape elevation showing height of buildings above ground level. plus Plan showing setbacks. | Streetscape elevation showing height of buildings above ground level. plus Plan showing setbacks. |
| Step 5: Consider whether an external third party may be able to assess compliance? | Yes | Yes, but professional judgement required. | Yes, but some professional judgement required. |

What process should be followed when developing objective rules and tests?

Involving the community and development industry is important to create good, workable objective rules and tests. It allows greater transparency and ownership of the requirements and allows evidence to be discussed and the desired outcomes to be agreed.

It is also useful to consider whether similar objective rules and tests have been developed by other jurisdictions. Often planning issues are not unique to a particular area and there are valuable lessons to be learnt. Sharing of information and solutions contributes to the achievement of greater national harmony in development assessment systems.

The steps below are an outline of a useful internal process for developing objective rules and tests.



The 'golden rules' of writing objective rules and tests

Objective rules and tests should be developed with the following ten tests in mind:

1. Implement an objective

- Development assessment requirements should include an **objective** that clearly outlines the intent of the requirement.
- An objective flows from the policy basis. A good objective will be grounded in reality and go further than 'motherhood statements'. It will point the way toward strategies or actions.
- The writer should consider, in drafting a development assessment requirement, the number of ways the objective can be met. Is there only one solution? Or are there a number of acceptable solutions?

2. Relate to an assessment trigger

- Any development assessment requirement must be linked to a 'permit' trigger. There must be some way that the requirements can be legitimately considered when making a decision.

3. Express in a clear and concise format

- Often the intent of a development assessment requirement and the means of achieving it are lost in unnecessary description, analysis or extracts from other documents. Keep requirements concise and simple.
- All development assessment requirements should state an objective, how the requirement is to be applied and assessment criteria.
- This tells the user:
 - What outcomes are expected;
 - Where and how the requirement is to be applied; and
 - How to know when the objective has been achieved.
- Use a map or diagram to communicate a requirement when this is clearer than a written statement. A map or diagram should be drawn in a manner that communicates the rule without having to refer back to text.

4. Reflect stakeholder views

- Use input from the community and development industry in the development of objective rules and tests to ensure they are valid and their purpose is understood. This can also help to improve the language of requirements for users.

5. Help to make a decision

- Development assessment requirements:
 - Should be evidence based and well researched to maintain credibility;
 - Should clearly define what constitutes compliance; and
 - Are aided by quantitative measures, as it is easier to show compliance and for the assessor to measure it.
- The more quantitative the provision, the less discretion there is to vary it. Including a range of acceptability is useful when a single figure may be seen as arbitrary.
- It will not always be possible or desirable to quantify compliance depending on the issue and the number of ways in which an objective may be met. In such cases, criteria should be drafted to be as clear and measurable as possible.
- Development assessment requirements should be tested on live applications to show the likely outcomes, any ambiguity or uncertainty.

6. Help to understand what would be supported

- A useful way of showing what would be supported is to provide an 'acceptable solution' that meets the objective. This provides the user with one definitive option for compliance or a more difficult route of showing compliance with the objective.

- Another useful way is to include 'decision guidelines' that set out the matters the decision maker will positively consider when making a decision. The decision guidelines should do more than to just repeat objectives.

7. Maintain consistency

- Check other development requirements in the planning instrument to ensure there is no repetition or inconsistency.

8. Use language that is easy to understand

- Avoid use of technical terms and jargon. Development assessment requirements should be in plain english so that as many readers as possible can understand the meaning.
- Mean what you say. If a development assessment requirement is a 'rule', then it should be named as one, so that users can understand its intent.
- Definitive language such as 'must' is preferred. The term 'may' infers discretion and should only be used if there are possible alternatives.
- Other pointers include:
 - write positively
 - use the active voice
 - use verbs instead of nouns
 - keep sentences short
 - avoid cross references to other documents or other parts of the planning instrument
 - stick to common and simple words such as 'show' not 'demonstrate'
 - don't use out dated words such a 'hereto' or 'notwithstanding'
 - don't use French or Latin words like 'ultra vires'

9. Limit the use of reference documents

- An applicant should not need to refer to other external documents either to understand or comply with a development assessment requirement.
- Codes or guidelines that are integral to the assessment of a requirement should be included in a statutory document and clearly linked to an objective.
- Sometimes it is useful to refer to a background strategy or study to assist users to understand the context of the requirement however including this background in a planning instrument only clutters it unnecessarily.
- If a document is referenced it should be an approved document that has been through appropriate levels of public consultation.
- An external document should not be quoted.

10. Improve transparency

- A good development assessment requirement is best located in a statutory instrument. This is a clear and logical location, as it makes it easier for users to find and measure compliance.
- It also enables better enforcement and more clearly stated implications for non-compliance.
- 'Under the counter' policies and development requirements (documents that are not formally adopted but are used in decision making) are an unfair imposition on applicants and should never be used.

11. Measure success

- For a development assessment requirement to be successful there must be some way of measuring the consistency of its application and outcomes.
- The easier it is for an applicant to prove compliance with requirements, the easier it is to measure a policy objective's effectiveness. Performance based requirements can be more difficult to measure.
- Development assessment requirements should be reviewed regularly to test whether the outcome is being achieved, whether the requirements (objective rules or tests) can be reasonably met and whether any modifications are required.

PART 3 - EXAMPLES

Example 1 – Gumnut development plan

BEFORE

X.01

SET BACKS

Standard

A new building should be set back from side or rear boundaries so that the building respects the neighbourhood character and limits impact on adjoining dwellings.

A design response must be submitted to demonstrate this.

There is a requirement to do something but no guidance about how and no measurable criteria to determine what is acceptable.

The user must go through an uncertain process to find what is acceptable.

AFTER

X.01 SIDE AND REAR SETBACKS OBJECTIVE

To ensure that the height and setback of a building from a boundary respects the neighbourhood character and limits the impact on the amenity of existing dwellings.

Standard

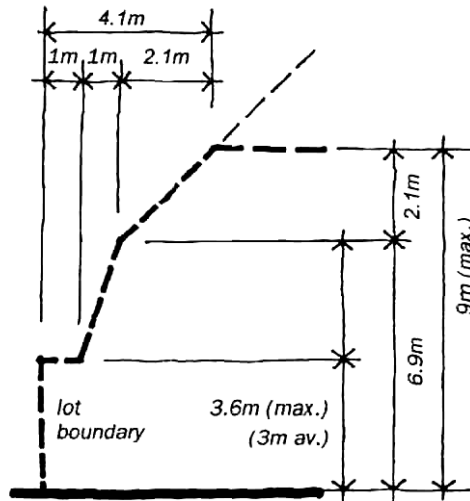
The standard is specific with numerical values so that compliance can be easily measured

A new building should be set back from side or rear boundaries by 1.0 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1.0 metre for every metre of height over 6.9 metres.

Sunblinds, verandahs, porches, eaves, fascias, gutters, masonry chimneys, flues, pipes, domestic fuel or water tanks, and heating or cooling equipment or other services may encroach no more than 0.5 metres into the setback.

Diagram B1 Side and rear setbacks

Maps and diagrams can be useful ways of explaining standard



Decision guidelines

Before deciding on an application, the responsible authority must consider:

Decision guidelines are useful so that the user knows how a decision will be made.

- Any relevant neighbourhood character objective, policy or statement set out in this scheme.
- The design response.
- The impact on the amenity of the habitable room windows and secluded private open space of existing dwellings.
- Whether the wall is opposite an existing or simultaneously constructed wall built to the boundary.
- Whether the wall abuts a side or rear lane.
- The need to increase the wall height to screen a box gutter.

Example 2 – Rosalie development plan

BEFORE

Y.01 ENVIRONMENTALLY SUSTAINABLE DESIGN

Standard

The dwelling must comply with the commitments included in the Rosalie Sustainable Design Plan.

An assessment report, prepared by an authorised person, must be submitted with the application and comply with the requirements of the Rosalie Sustainable Design Plan.

Solar orientation

Buildings should be:

- Oriented to make appropriate use of solar energy.
- Sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced.

The user must be diverted to another document/program to seek information about what is acceptable.

A further requirement means that the user can not tell if they are submitting an application that will be successful.

There is no information about who might be an authorised person and how they can be contacted.

What is 'unreasonable'? It is not clear to the reader how to comply with this requirement.

AFTER

Y.01 ENVIRONMENTALLY SUSTAINABLE DEVELOPMENT

Application

These requirements apply to an application to construct a dwelling.

The requirement sets out when it should be used.

An objective is specific and points toward the matters that will be covered.

Energy efficiency protection objectives

To achieve and protect energy efficient dwellings.

To ensure the orientation and layout of development, reduce fossil fuel energy use and make appropriate use of daylight and solar energy.

Assessment criteria

Buildings should be:

- Oriented so that living areas and private open space are located on the north side of the dwelling.
- Designed with at least one living room that faces within 15 degrees of north.
- Designed so that living rooms are provided with a window or window not less than 15% of floor area of the room.
- Designed so that solar access to north facing windows is maximised.
- Sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced.

The standard is specific with numerical values so that compliance can be easily measured.

Decision guidelines

Before deciding on an application, the responsible authority must consider:

- The design response.
- The size, orientation and slope of the lot.
- The existing amount of solar access to abutting properties.
- The availability of solar access to north-facing windows on the site.
- Whether there are other windows in the habitable room which have access to daylight.

The decision guidelines help the reader to understand what the decision maker will consider when making a decision.

Solar access to open space objective

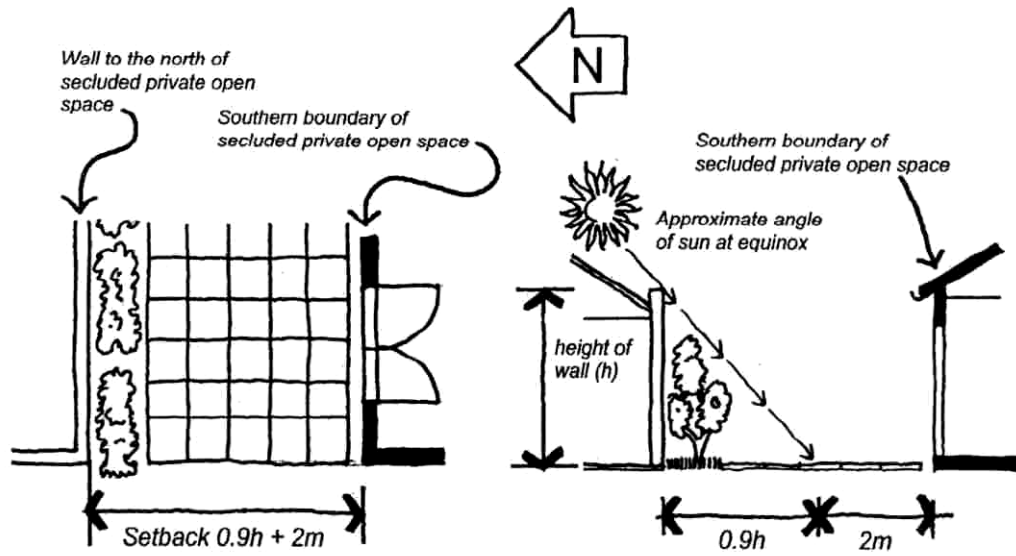
To allow solar access into the private open space of a new dwelling.

Assessment criteria

- The private open space should be located on the north side of the dwelling.
- The southern boundary of private open space should be set back from any wall on the north of the space at least 2.0 metres plus 90% of the height of the wall.

This is a difficult concept but is elaborated on the diagram below.

Diagram - Solar access to open space



Decision guidelines

Before deciding on an application, the responsible authority must consider:

- The design response.
- The useability and amenity of the secluded private open space based on the sunlight it will receive.