

	<p><b>Guideline</b></p> <p><b>Planning for Non-Planners</b></p>	
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# Planning for Non-Planners

## Background:

The principal legislation regulating land use in NSW is the Environmental Planning and Assessment Act 1979 (EP&A Act). The NSW Department of Planning and Environment (DoPE) administer the Act. The Minister responsible for the Act is the NSW Minister for Planning. The EP&A Act allows plans to be made to guide the process of development and to regulate competing land uses.

There are three main elements to the legislative scheme that regulates planning and development in NSW. These are:

- The Environmental Planning and Assessment Act 1979 (EP&A Act), which set out the major concepts and principles, including Part 4 which deals with development applications,
- The Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), which contain many of the details for the various processes set out under the Act; and
- Environmental planning instruments (EPIs), which set out when development consent is required, and often nominate the consent authority for specific types of development.

The DoPE also provides Strategic Plans, circulars and guidelines to guide development and the actions of councils. Councils also produce their own strategic plans to guide local development. The following sections clarify the current difference between strategic plans and statutory plans.

## Strategic Plans:

Strategic Plans provide the long-term vision for land use planning. Relevant plans for LMCC staff and councillors to consider are:

### The Lower Hunter Regional Strategy:

The DoPE develops regional strategies for regions throughout the State. The Lower Hunter Regional Strategy (LHRS) applies to the five local government areas of Newcastle, Lake Macquarie, Port Stephens, Maitland and Cessnock. The primary purpose of the LHRS is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the region's population for the next 25 years. The LHRS also refocuses development in the Lower Hunter towards the strengthening of vibrant centres that support the role of Newcastle City Centre as the regional city.

### Lifestyle 2030:

Council's Lifestyle 2030 Strategy (LS2030) provides the long-term direction for the overall development of the City and describes Council's high-level policies for managing private and public. Lifestyle 2020 (LS2020) served the Lake Macquarie community for ten years; Lifestyle 2030 Strategy is a revised version of that Strategic Plan, reflecting shifts in planning policy and social, economic, and environmental trends through the period 2000 to 2012. LS2030 is consistent with the provisions in LHRS, but provides a key focus for the Lake Macquarie LGA.

## Statutory Plans:

To facilitate the delivery of the vision outlined in the Strategic Plans, the EP&A Act allows two types of environmental planning instruments (EPIs) to be made:

- State Environmental Planning Policies (SEPPs) and
- Local Environmental Plans (LEP)

### State Environmental Planning Policies (SEPPs)

State Environment Planning Policies (SEPPs) are meant to address planning issues of State Significance, such as the provision of Infrastructure and Coastal protection. The practical effect of a SEPP is often to take power away from councils in order to allow/prohibit certain types of development. SEPPs may make the Planning Minister the decision-maker (consent authority) for the types of development they relate to. As the name implies, these plans generally apply across the State.

### Local Environmental Plan (LEP)

LEPs, such as Lake Macquarie LEP 2014, control development at a local level and set out how land is to be used. They do this by allocating 'zones' to different parcels of land, such as rural, residential, industrial, public recreational, environmental conservation, and business zones. Each zone has a number of objectives, which indicate the principal purpose of the land, such as agriculture, residential or industry. Each zone also specifies which developments are permitted with consent, permitted without consent, or prohibited. All land, whether privately owned, leased or publicly owned, is subject to the controls set out in the applicable LEP, so it is a very important instrument.

While LEPs are a key planning document, it is important to remember that their provisions can be overridden by SEPPs so they do not provide the final word on what kind of development is allowed in each zone. For example, a LEP might prohibit certain development in a particular zone but a SEPP might allow such development if it achieves one of the SEPP's aims. This is because SEPPs tend to deal with matters of State significance and can override local planning controls in order to deliver State significant development or State planning objectives.

When councils prepare LEPs, they must follow directions made by the Minister for Planning. These are called s117 Directions. Councils must also use the format stipulated by the Minister, which is known as the Standard Template LEP. The zones councils can use and the dictionary of terms and uses are all prescribed in the Standard Template LEP. The overall effect is to introduce standardisation across council areas in NSW, but it also curtails the "creativity" of councils to address local issues.

## Other Types of Plans:

### Development Control Plans (DCP)

The EP&A Act allows a local council or the Director-General of Planning and Environment to make development control plans (DCPs). A DCP, such as Lake Macquarie DCP 2014, is a guideline that deals with particular aspects of LEPs in more detail than the LEP. For example, a DCP can:

- Impose additional requirements (to those under the EP&A Act) as to when a development application must be advertised or publicly notified (e.g. to neighbours) by declaring something to be 'advertised development'
- Identify criteria that a council must consider when assessing a development application e.g. building setbacks, solar access, parking provision etc.

**Unlike LEPs and SEPPs, DCPs are not environmental planning instruments and are not Statutory documents.** A consent authority, such as a local council must take a DCP into account when considering a development application. However, Council can vary the standards prescribed in a DCP, if sufficient justification for a variation is provided and has merit. LEPs and SEPPs take priority over a DCP. The process for making and approving DCPs, including the requirements for public exhibition, is set out in the EP&A Regulation 2000. The Planning Minister can direct a local council to make, amend or revoke a DCP.

## Mechanisms of approval:

If someone wants to build a structure or use land and buildings for a particular purpose, they will often need some form of approval before starting the activity. The different types of approval reflect the potential impact that new buildings or uses may have. Something that has the likelihood of little or no impact may only need a licence.

### Not requiring consent but needs approval under a local Approvals Policy

A Local Approvals Policy (LAP) can be prepared and adopted under Chapter 7, Part 3 of the Local Government Act 1993 ("the Act"). The LAP is designed to outline those activities, which under certain circumstances, may be carried out without approval of Council. These are generally activities that require regular inspections and/or licences, such as mobile food vending. Council's Integrated Planning Department is currently preparing the LAP for Lake Macquarie City Council.

### Exempt Development

Many types of renovations and minor building projects do not need approval from a council or private certifier. This is called exempt development. As long as the building project meets specific standards and land requirements (e.g. as defined in the Exempt and Complying SEPP or an LEP), the project will be considered exempt development. Provisions can be found in SEPP (Exempt and Complying Development Codes) 2008 and LMLEP 2014.

### Complying Development

Complying development is a form of planning approval that can be issued by an accredited certifier or a council in the form of a complying development certificate (CDC). This certificate combines approval for use of the land and building construction. The building project must meet specific standards and land requirements (e.g. as defined in the Exempt and Complying SEPP or an LEP), to be considered complying development.

Some types of complying development are subject to local exclusions or variations - these are listed in Schedules 3 and 5 of SEPP (Infrastructure) 2007. A section 149 planning certificate from council will outline what planning controls apply and whether complying development could be considered on the land.

### Requires Consent - Development Application (DA)

In order to obtain development consent, the person proposing the development must lodge a DA with the consent authority. Once a DA has been lodged and the environmental assessment and public participation procedures are completed, the consent authority (decision-maker) can consider the application.

In most cases, the consent authority will be the local council. However, the EP&A Act, the Regulations, or an EPI (LEP or SEPP) can specify a different consent authority, such as:

- The Planning Minister;
- The Planning Assessment Commission (PAC);
- A joint regional planning panel (JRPP); or
- A public authority (other than the council)

The consent authority is often the local council, although councillors may delegate power to determine certain standard or non-contentious applications to the General Manager or other council officers. Nearly 95% of applications are determined under delegation at LMCC.

The consent authority (decision-maker) decides whether to grant or refuse consent.

When deciding on a development application, the consent authority must take into consideration the matters outlined in the Act, including:

- The provisions of any SEPP, LEP or DCP;
- Any proposed environmental planning instrument, which has been placed on public exhibition;
- Any planning agreement;
- Any additional matters set out in the Regulations, such as the NSW Coastal Policy and the need for fire safety;
- The likely impacts of the development, including the impacts on the natural, built, social and economic environment;
- The suitability of the site for the development;
- Any coastal zone management plan;
- Any public submissions made in accordance with the legislation; and
- The public interest

Consents are usually issued with a range of conditions that the development must abide by. This may include hours of operation, waste disposal, regulation of noise, managing pre-existing contamination, meeting flood floor planning levels and so on. Developments that lead to an increase in the local population will usually be required to pay Development Contributions (s94 contributions) to upgrade recreation and community facilities.

The Act states that conditions must be reasonable and relate specifically to the development. Council cannot approve a development and expect it to correct another issue or matter in the neighbourhood that isn't related to or exacerbated by the development.

## Designated Development

Designated development is development that is specifically listed by an environmental planning instrument or the regulations. It generally relates to development that is likely to have significant impacts on the environment, such as concrete batching plants. If development is Designated Development, an Environmental Impact Statement (EIS) is to be prepared and submitted with a DA.

## Not requiring Consent but requires an Assessment under Part 5 of the EP&A Act

Public authorities, such as the State Government, are generally permitted to carry out development without consent, however, those authorities are still required to assess the environmental impacts of their activities. Activities that can be considered under Part 5 are usually identified in an LEP or a SEPP, but often it will be necessary for a Planner to guide or navigate a non-planner through this part of the planning system.

The purpose of the Part 5 of the Act is to ensure public authorities fully consider environmental issues before they undertake or approve activities that do not require development consent. As such, it has commonly been used to assess activities such as roads, railways, dredging and forestry works, which do not require consent. If these activities are judged by the relevant public authority to significantly affect the environment, then an environmental impact statement will need to be prepared and considered by this authority.