



LEPs and SEPPs

Last updated: January 2013

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Sydney: 02 9262 6989

Northern Rivers: 1800 626 239

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Environmental Planning Instruments (EPIs)

‘Environmental planning instruments’ is the collective name for LEPs, and SEPPs, but does not include development control plans (DCPs).² The provisions of EPIs are legally binding on both government and developers.

How can I find a LEP or SEPP?

The full text of all EPIs is available online at the [NSW Legislation website](#). In addition, most councils make their LEPs available on their websites.

One primary function of EPIs is to specify what kinds of development are allowed in an area. LEPs deal with the local government area, and SEPPs can deal with specific locations, types of places (e.g. coastal wetlands), or the whole of NSW.

An EPI can also:

- specify whether development consent is required for certain types of development;
- prohibit certain types of development (‘prohibited development’);
- declare a category of development to be ‘designated development’ (which requires an environmental impact statement);
- reserve land for a public use (such as hospitals, parks or schools);
- declare when the concurrence (agreement) of a Minister is required; and

¹ http://www.edonsw.org.au/legal_advice

² *Environmental Planning and Assessment Act 1979* (NSW), s. 24.

- declare categories of advertised development.²

Standardisation of EPIs

The Planning Minister can prescribe the form and content of an EPI by issuing a 'standard instrument'.³ Standard instruments themselves are not EPIs, but they are a blueprint of what an EPI should contain, including directions as to whether a particular provision is compulsory or optional once the standard instrument is adopted.

For example, there is a standard instrument for the preparation of local environmental plans.⁴ See our [Local Environmental Plans](#) Fact Sheet for more information.

Inconsistency between EPIs

Where two EPIs are inconsistent (e.g. a LEP is inconsistent with a SEPP), a SEPP prevails over a LEP (unless the EPI states otherwise).⁵ Where two SEPPs are inconsistent, usually the most recent SEPP states that it prevails.⁶

Challenging an EPI in the Land and Environment Court

Any person can challenge the legal validity of an EPI in the Land and Environment Court.⁷ The person challenging the legal validity of the EPI must argue that the EPI is not legal, was not made according to the law, or that the correct procedure was not followed in the making of the EPI. Any legal challenge to the validity of an EPI must be commenced in the LEC within 3 months of the date of the publication of the LEP or SEPP in the NSW Government Gazette.⁸

Example: Using Environmental Planning Instruments

You are a member of a local bushcare group. You are concerned about a proposed warehouse development on a block of bushland near Lake Parramatta. You want to know whether the proposed development is permissible under the relevant Environmental Planning Instruments.

You obtain a section 149 certificate from Parramatta City Council, or consult with council staff and councillors and read business papers from council meetings, and discover that:

1. Under the Parramatta Local Environmental Plan 2011, the land is zoned E2 Environmental Conservation. Warehouse and distribution centres are listed as prohibited development.
2. Under State Environmental Planning Policy No. 19 - Bushland in Urban Areas, development consent is required for the removal of bushland in certain areas.

³ *Environmental Planning and Assessment Act 1979* (NSW), ss. 33A, 33B.

⁴ *Standard Instrument (Local Environmental Plans) Order 2006* (NSW), published in NSW Government Gazette, No 42, 31 March 2006, p 1879; *Environmental Planning and Assessment Act 1979* (NSW), s. 33A(2).

⁵ *Environmental Planning and Assessment Act 1979* (NSW), s. 36.

⁶ *Environmental Planning and Assessment Act 1979* (NSW), s. 36.

⁷ *Environmental Planning and Assessment Act 1979* (NSW), s. 123.

⁸ *Environmental Planning and Assessment Act 1979* (NSW), s. 35.

You conclude that a warehouse is not permissible. Council could not lawfully approve a development application for a warehouse under the LEP under the current zoning.

How can I find out which LEPs and SEPPs apply? (planning certificates)

A site can be covered by more than one EPI. To find out all the EPIs that apply to a site, you can either work it out yourself (by looking at all the EPIs), or obtain a certificate from the local council which tells you which EPIs apply. These certificates are called 'planning certificates' or 'Section 149 certificates' (because they are issued under s. 149 of the EP&A Act). The prescribed application fee for a planning certificate is \$53.⁹ Planning certificates are usually included in contracts for the sale of land, or contracts to obtain finance, to show the prospective purchaser (or bank) what they can do with the land.

Glossary

Key to terms used in this Fact Sheet

Act means the *Environmental Planning and Assessment Act 1979 (NSW)*

DCP means a development control plan

Director-General means the Director-General of the Department of Planning and Environment

Environment Minister means the NSW Minister for the Environment

EIS means an Environmental Impact Statement

EP&A Act means the *Environmental Planning and Assessment Act 1979 (NSW)*

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*

EPBC Act means *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

EPI means an environmental planning instrument, which includes LEPs and SEPPs

JRPP means a Joint Regional Planning Panel

LEC Act means the *Land and Environment Court Act 1979*

LEP means a local environmental plan

OEH means the NSW Office of Environment and Heritage

Planning Minister means the NSW Minister for Planning

Relevant planning authority means the local council, or a JRPP or the Director General of Planning and Infrastructure

⁹ *Environmental Planning and Assessment Regulation 2000 (NSW)*, cl. 259.

SEPP means a *State Environmental Planning Policy*

SSD means *State significant development*

SSI means *State significant infrastructure*

TPO means a tree preservation order

TSC Act means the *Threatened Species Conservation Act 1995*