



## LEPs and SEPPs

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### Local environmental plans (LEPs)

#### What are LEPs?

LEPs are a type of Environmental Planning Instrument (EPI). EPIs are legal documents that control development and set out how land is to be used. They can relate to a local government area such as LEPs, or they can relate to the whole or part of the State such as State Environmental Planning Policies (SEPPs).

LEPs apply either to all or part of a local government area. LEPs guide planning decisions for local government areas. 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 lists 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. LEPs determine the form and location of new development, and provide for the protection of open space and environmentally sensitive areas.

To work out whether a particular development is permitted within a particular area, you should contact the local council to find out how the area is zoned under the LEP. You can either view the LEP on the [NSW Legislation website](#) or the council's website, or look at it over the counter at Council Chambers. Refer to the colour-

<sup>1</sup> [http://www.edonsw.org.au/legal\\_advice](http://www.edonsw.org.au/legal_advice)

coded planning map of the area, then to the land-use table in the LEP which sets out the permitted and prohibited land uses for the relevant zone. Purposes for which land is zoned may include homes, shops, factories, scenic protection, and environmental protection.

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 residential 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.

### ***LEPs and Part 3A (now repealed)***

The provisions in LEPs can also be overridden by major project approvals granted under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act). For example, where a project is approved under Part 3A, the provisions of a LEP generally do not apply to or in respect of that approval.<sup>2</sup> There is one key exception to this rule, and that is where the project relates to land that is located within an environmentally sensitive area of State significance or a sensitive coastal location *and* that type of development is prohibited under the applicable LEP.<sup>3</sup>

However, the Minister for Planning can amend a LEP in order to authorise a project approved under Part 3A. The Minister can do this by publishing an order in the NSW Government Gazette either removing or modifying any provision in the LEP that prohibits or restricts the development.<sup>4</sup>

[Regional Strategies](#) also impact on LEPs. The Standard Instrument (discussed below) contains a clause that states:

This Plan is subject to the provisions of any State environmental planning policy and any regional environmental plan that prevail over this Plan.<sup>5</sup>

The Planning [Minister has issued a direction](#) that requires some draft LEPs to be consistent with the relevant regional strategy.<sup>6</sup>

### ***LEPs and State significant development (SSD) and State significant infrastructure (SSI)***

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<sup>2</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 75R(3) (now repealed).

<sup>3</sup> *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 8N. The meaning of 'environmentally sensitive area of State significance' can be found in *State Environmental Planning Policy (Major Projects) 2005*, cl 3; the meaning of 'sensitive coastal location' can be found in *State Environmental Planning Policy (Major Projects) 2005*, Schedule 2 cl. 1.

<sup>4</sup> *Environmental Planning and Assessment Act 1979*, s 75R(3A) (now repealed). The types of development that this section applies to are development that is an approved project and development that is a project for which a concept plan has been approved (whether or not approval has been granted for carrying out the project or any part of the project).

<sup>5</sup> Standard Instrument, Principal LEP, cl 1.9 (1).

<sup>6</sup> Direction No. 30 - Implementation of Regional Strategies. This direction applies to land to which the following regional strategies apply: Far North Coast Regional Strategy, Lower Hunter Regional Strategy, Illawarra Regional Strategy, and South Coast Regional Strategy.

The provisions in LEPs can also be overridden by approvals granted under Part 4 Division 4.1 (State Significant Development) and Part 5.1 of the EP&A Act (State Significant Infrastructure).<sup>7</sup>

SSD is still governed by EPIs to some extent. Where an EPI wholly prohibits the development on the relevant land, consent cannot be granted to that development.<sup>8</sup> Where an EPI only partly prohibits the development, consent may be granted.<sup>9</sup>

However, a development application for SSD that is wholly or partly prohibited by an EPI can be accompanied by a proposed change to the EPI to permit the carrying out of the development.<sup>10</sup> In other words, where the development would otherwise be prohibited, the developer can apply to have the EPI changed so that this prohibition no longer applies. The Director-General can also propose changes to a LEP for the purposes of permitting the development of an otherwise prohibited SSD.<sup>11</sup>

Where an LEP needs to be amended to facilitate SSD, only the Planning Assessment Commission (PAC) can approve the amendment.<sup>12</sup> Further, only the PAC can determine the development application for SSD that requires an amendment to a LEP.<sup>13</sup>

## The Standard Instrument LEP

### Where to find the Standard Instrument

The [Standard Instrument](#) is available from the NSW Legislation website.

Traditionally, LEPs have tended to differ markedly between different local government areas, with each council creating its own zones, zone objectives and permissible uses for each zone. Some local councils also had multiple LEPs operating at the same time which made it difficult to know which planning controls applied to a given piece of land.

In 2005, the NSW Government changed the law to require the standardisation of LEPs. The amendments allow the Planning Minister to stipulate the form and content of a LEP by issuing a 'standard instrument'. The Standard Instrument itself is not a LEP. Rather, it is a template outlining the form, and to some extent, the content that all LEPs must adopt. It includes directions as to how some of the provisions are to be applied and indicates whether they are compulsory or optional provisions.

### ***Directions from the Planning Minister***

The Planning Minister can issue directions (known as 'section 117 Ministerial Directions') that local councils must follow when preparing new LEPs.<sup>14</sup> The directions cover six broad categories: employment and resources; environment and

<sup>7</sup> SSD and SSI are defined in the *SEPP (State and Regional Development) 2011*.

<sup>8</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(2).

<sup>9</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(3).

<sup>10</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(5).

<sup>11</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(5); *Environmental Planning and Assessment Act 1979* (NSW), Part 3 Division 4B.

<sup>12</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(6).

<sup>13</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 89E(6).

<sup>14</sup> *Environmental Planning and Assessment Act 1979* (NSW), s.117(2).

heritage; housing, infrastructure and urban development; hazard and risk; regional planning; and local plan making.

### ***What provisions does the Standard Instrument contain?***

The Standard Instrument is a template which contains a number of compulsory and optional provisions. Each council will need to 'fill in the gaps' of the template and decide which of the standard zones will apply to which land in the Local Government Area.

- **Zones**

The Standard Instrument contains 35 different zones. These zones are grouped under 8 broad headings; rural zones, residential zones, business zones, industrial zones, special purpose zones, recreation zones, environment protection zones and waterway zones.<sup>15</sup>

The choice of zone should reflect the primary intended use of the land.

It is important to note that the council cannot create any new zones or sub zones in addition to those that are set out in the Standard Instrument. It must pick a zone from the 35 provided in the Standard Instrument to apply to the land in question.

- **Overlays**

Planning overlays are used where a number of planning responses are required to manage multiple values on the one piece of land. For example a 'water supply area' overlay could identify land within a water supply catchment on a map (which may include land in several different zones), and set out detailed additional considerations or standards that must be applied before consent can be granted to a development application.<sup>16</sup>

Some overlays constitute environmental overlays that recognise that land is, for example, in a water supply catchment, or contains a wildlife corridor. Others recognise that the land is naturally constrained or subject to a particular hazard, for example, flood prone land or land in a high bush fire risk area. Overlay provisions can apply to land that is in several different zones.

Any overlay provisions will apply in addition to the objectives and land use table for the zone. The provisions can set out extra considerations that a decision-maker must take into account before approving development in that zone. However, the overlay cannot alter the permissible or prohibited uses that are set out in the Standard Instrument and must be consistent with those uses.

You might suggest the use of overlays to recognise environmentally sensitive or constrained land where that land is zoned for development purposes.

- **Land Use Table**

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<sup>15</sup> *Standard Instrument, Principal LEP*, cl 2.1

<sup>16</sup> [Department of Planning, LEP Practice Note, Standard Instrument for LEPs - Frequently Asked Questions.](#)

The Standard Instrument contains a Land Use Table which sets out the objectives of each zone and the types of development that are:

- (a) Permitted without consent;
- (b) Permitted with consent; or
- (c) Prohibited.

For example: Zone E3 Environmental Management states:

### **1 Objectives of zone**

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.

### **2 Permitted without consent**

Home occupations

### **3 Permitted with consent**

Dwelling houses

### **4 Prohibited**

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

Each zone may also have additional directions that clarify how certain developments should be dealt with under the zone. For the E3 Environmental Management zone, the additional directions state that:

The following must be included as either "Permitted without consent" or "Permitted with consent" for this zone:

- Environmental protection works
- Roads

Home industries, kiosks, cellar door premises, neighbourhood shops and roadside stalls may (but need not) be included as permitted with consent.

- **Miscellaneous provisions**

The Standard Instrument contains a number of important miscellaneous provisions that relate to matters such as the classification of public land, development within the coastal zone, development below the mean high water mark, heritage conservation,

the preservation of trees and vegetation and bush fire hazard reduction.<sup>17</sup> Some of these provisions are optional and some are compulsory.

### ***Can councils change the zone objectives?***

Councils are permitted to add additional objectives to a zone to reflect particular local objectives of development, but the added objectives must be consistent with the core objectives as set out in the Table.

Objectives are an important part of zoning as they provide a context that helps to interpret the rest of the zone's provisions. For example, it may be unclear as to whether a particular development is allowed in the zone and in such cases the objectives will help to decide the matter.

The Standard Instrument requires the decision-maker to 'have regard' to the zone objectives when deciding whether to approve a certain development in the zone.<sup>18</sup> This contrasts with some existing LEPs that require the decision-maker to act consistently with the zone objectives.

For example, the Standard Instrument contains a compulsory clause that states:

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.<sup>19</sup>

The provision in the Standard Instrument will have implications for challenging council decisions to approve developments that are clearly inconsistent with the zone objectives as the Standard Instrument dilutes the importance of the objectives in this regard.<sup>20</sup>

### ***Can councils change the types of development that are allowed in each zone?***

Councils can add to the types of development that are permitted or prohibited in the zone. However, councils are not allowed to remove any types of development from the list contained in the Standard Instrument.

### **How are LEPs prepared?**

#### *The Standard Instrument Local Environmental Plan*

The [Standard Instrument – Principal Local Environmental Plan](#) prescribes the form and content of all LEPs throughout NSW.<sup>21</sup> The LEP making process is known as the 'gateway process'.<sup>22</sup>

<sup>17</sup> *Standard Instrument, Principal LEP*, Part 5.

<sup>18</sup> *Standard Instrument, Principal LEP*, cl 2.3 (2)

<sup>19</sup> *Standard Instrument, Principal LEP*, cl 2.3(2).

<sup>20</sup> See [Conservation of North Ocean Shores Inc v Byron Shire Council & Ors](#) [2009] NSWLEC 69 for an example of a case where the council's failure to act consistently with the objectives of a zone gave rise to a successful legal challenge to their decision to approve a development in that zone.

<sup>21</sup> *Standard Instrument (Local Environmental Plans) Order 2006, Standard Instrument—Principal Local Environmental Plan*.

<sup>22</sup> *Environmental Planning and Assessment Act 1979* (NSW), Part 3 Division 4.

All local councils are required to prepare a new principal LEP for their local government area in accordance with the standard LEP instrument. The standard LEP instrument contains standard definitions, zones, clauses and land-use tables as well as a standard format.

The instrument sets out some provisions which are mandatory, and others which are optional. All new LEPs must adopt the mandatory provisions of the standard LEP instrument before they can be publicly exhibited or recommended for gazettal.<sup>23</sup>

The Department of Planning and Environment has revised the timeline for Councils to complete LEPs and adopt the standard instrument. Note: In upgrading their LEPs to the new standard instrument, some local councils have followed and will be following the old process for making LEPs, not the gateway process outlined below. This is because they commenced the process before the new process came into effect.<sup>24</sup>

The Planning Minister (or a delegate) oversees the LEP-making process,<sup>25</sup> with the 'relevant planning authority' being responsible for preparing new LEPs.<sup>26</sup> The relevant planning authority will often be the local council, but in some cases this role may be delegated to a [Joint Regional Planning Panel](#) (JRPP) or the Director General of Planning and Infrastructure.<sup>27</sup>

### **What is a spot rezoning?**

A spot rezoning usually aims to increase the development potential of a site. Spot rezonings require an amendment to the LEP, which is usually proposed in response to a particular development proposal. A developer cannot prepare an LEP amendment, but it can request a council or other relevant planning authority to.<sup>28</sup>

The process for carrying out a spot rezoning is the same as for making an LEP (see below).

### **Relevant Planning Authorities**

There are a number of individuals and bodies that can be nominated by the Minister for Planning as the 'relevant planning authority' for the purpose of making a LEP.

#### ***Planning Assessment Panels, planning administrators and joint regional planning panels***

Sometimes the Minister for Planning will delegate the task of preparing a draft LEP or planning proposal to a planning assessment panel, a planning administrator or a regional panel. During the period of appointment, the planning administrator,

<sup>23</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 33A, *Standard Instrument (Local Environmental Plans) Order 2006*, (cl. 4).

<sup>24</sup> *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 12(2).

<sup>25</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 53.

<sup>26</sup> *Environmental Planning and Assessment Act 1979* (NSW), ss. 54-55.

<sup>27</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 54.

<sup>28</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 54.

planning assessment panel or joint regional planning panel is taken to be the council in the exercise of the functions that are allocated to it.<sup>29</sup>

### ***Planning Assessment Panels***

These are statutory bodies.<sup>30</sup> A planning assessment panel can exercise all functions of councils. They can act as a consent authority (approving or rejecting development applications) and they can make LEPs and other planning instruments.<sup>31</sup>

For example, the Planning Minister appointed the Ku-ring-gai Planning Panel as a planning assessment panel in 2007 and gave it the power to make LEPs. One of the reasons the Minister gave for appointing the planning assessment panel was that the council was taking too long to make a draft a LEP.

Each planning assessment panel will have different terms of reference and functions which are set out in the Order creating it. The Order commences once it is published in the NSW Government Gazette.

A planning assessment panel is made up of 3-5 people appointed by the Minister for Planning.<sup>32</sup> The members must have relevant skills and knowledge in planning and development matters.<sup>33</sup>

The council continues to operate as normal when a planning assessment panel is created. The planning assessment panel only takes on some of the functions of council and can only make decisions in regards to those functions that have been delegated to it. All other functions continue to be performed by the elected council as normal but that council cannot perform the functions that are allocated to the planning assessment panel.

However, the NSW Government has released a draft policy on plan making and delegations, and this may change.<sup>34</sup>

### ***Planning administrators***

When a planning administrator is appointed, he or she can exercise all of the functions of council.<sup>35</sup> However, the Minister may limit the functions that can be exercised by the planning administrator.

### ***Joint Regional Planning Panels***

A joint regional planning panel is a statutory body representing the Crown.<sup>36</sup> A joint regional planning panel can exercise a number of the functions of councils. They can

<sup>29</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s 118AB(1)(b).

<sup>30</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, Schedule 5B.

<sup>31</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s 118AB(3).

<sup>32</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s 118AA(4).

<sup>33</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s 118AA(5).

<sup>34</sup> <http://www.planning.nsw.gov.au/Development/Onexhibition/tabid/205/ctl/View/mid/1081/ID/76/language/en-US/Default.aspx>.

<sup>35</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s 118(2).

<sup>36</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s 23G(5).

act as a consent authority (approving or rejecting development applications) and they can make LEPs and other planning instruments.<sup>37</sup>

## The Gateway Process

### 1. Planning proposals prepared and submitted to Minister

Before a new LEP or an amendment to an existing LEP can be made, the relevant planning authority must prepare a planning proposal which explains the intended effect of the new LEP and the justification for it, including any relevant maps showing the intended rezoning, and the details of how the authority proposes to carry out community consultation.<sup>38</sup> This planning proposal is then given to the Planning Minister.<sup>39</sup>

The local council can prepare a planning proposal at any time. The Director General or a JRPP must be directed by the Planning Minister to prepare a planning proposal before doing so.<sup>40</sup> The Minister can appoint the Director-General as the relevant planning authority in a number of circumstances.<sup>41</sup> The most likely are where:

- The Minister believes the proposed LEP relates to a matter that is of State or regional environmental planning significance;<sup>42</sup> or
- The Minister believes the council has failed to comply with its obligations with respect to the making of the proposed LEP or has not carried out those obligations in a satisfactory manner.<sup>43</sup>

Also, the Minister can appoint a planning administrator, a planning assessment panel or a joint regional planning panel (or all of them) to exercise the functions of a council (including the function of preparing a draft LEP) if:<sup>44</sup>

- The Minister believes that the council has failed to comply with its obligations under the planning legislation;<sup>45</sup>
- The Minister believes that the council's performance with regards to planning and development matters is unsatisfactory in some respect (such as delays in dealing with those matters);<sup>46</sup>
- The council agrees to the appointment;<sup>47</sup> or
- A report by the Independent Commission Against Corruption recommends such an appointment due to serious corrupt conduct by any of the councillors in connection with the exercise of their functions.<sup>48</sup>

<sup>37</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s 118(3).

<sup>38</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 55.

<sup>39</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 56.

<sup>40</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 53-60.

<sup>41</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 54(2).

<sup>42</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 54(2)(a).

<sup>43</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 54(2)(d).

<sup>44</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, ss. 54(1), (2), (5).

<sup>45</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 118(a).

<sup>46</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 118(1)(b).

<sup>47</sup> *Environmental Planning and Assessment Act 1979 (NSW)*, s. 118(1)(c).

If the owner of land (a developer) requests a rezoning, the relevant planning authority can agree to embark upon the rezoning process by preparing a planning proposal on condition that the developer either carry out studies for the proposal (e.g. environmental studies), or that the developer pays the costs of the authority.<sup>49</sup>

The planning proposal must contain:

- A statement of objectives and intended outcomes of the proposal;<sup>50</sup>
- An explanation of the provisions of the proposal;<sup>51</sup>
- A justification of the objectives and outcomes, including how this is to be implemented;<sup>52</sup>
- Maps containing the appropriate detail, including land-use zones, heritage areas and flood prone areas;<sup>53</sup> and
- Details of the community consultation that will be undertaken.<sup>54</sup>

The Director-General may also issue requirements with respect to the preparation of a planning proposal.<sup>55</sup> These requirements may vary on a case by case basis. If you want to check to see if the Director-General has issued any extra requirements, they should be on the Department of Planning website.

The relevant planning authority can vary a planning proposal at any time during the LEP process, but must give the varied proposal to the Planning Minister.<sup>56</sup> A planning proposal can be withdrawn at any time.<sup>57</sup>

## 2. Minister makes gateway determination

After receiving an initial planning proposal to make an LEP (including a spot rezoning), the Planning Minister must decide whether the planning proposal should proceed, and if so, on what conditions. This is called a gateway determination.<sup>58</sup>

In making a gateway determination, the Planning Minister can decide the following things:<sup>59</sup>

- whether the planning proposal should proceed;
- whether the planning proposal should be resubmitted;
- what community consultation is required, if any (see paragraph below);

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<sup>48</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 118(d).

<sup>49</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58.

<sup>50</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(a).

<sup>51</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(b).

<sup>52</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(c).

<sup>53</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(d).

<sup>54</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 55(2)(e).

<sup>55</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 55(3).

<sup>56</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58(2).

<sup>57</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58(4).

<sup>58</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56.

<sup>59</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56.

- whether any consultation is required with State or Commonwealth public authorities;
- whether a public hearing must be held into the planning proposal by the Planning Assessment Commission or other body; and
- the timeframe for completing the process.

Failure to comply with the requirements set out in the Minister's gateway determination will not invalidate an LEP, unless the failure relates to community consultation requirements.<sup>60</sup>

At this stage, the Planning Minister could require an environmental study to be undertaken but that is at the discretion of the Minister and is not guaranteed.<sup>61</sup>

### 3. Community consultation

As part of the gateway determination, the Planning Minister decides what sort of community consultation is required for making an LEP or spot rezoning.<sup>62</sup> The Planning Minister decides whether or not any community consultation is required before making the LEP.<sup>63</sup> Any community consultation requirements that the Minister determines must be carried out. The relevant planning authority only needs to consider any submissions made during community consultation to satisfy the requirement, and the law does not specify any particular weight that must be given them.<sup>64</sup>

If the Planning Minister does decide that community consultation is required, then the process is as follows.<sup>65</sup>

- The relevant planning authority must make the planning proposal publicly available during the period of community consultation. A summary is permitted for detailed provisions;
- During the period of community consultation, any person can make a written submission to the relevant planning authority (remembering that the planning authority cannot vary those parts of the LEP which are mandatory under the Standard LEP Instrument);
- The relevant planning authority can choose whether to make the submissions available to the public.

The relevant planning authority can vary a planning proposal at any time during the LEP process, but must give the varied proposal to the Planning Minister.<sup>66</sup> Further community consultation is not required following a variation unless the Minister directs.<sup>67</sup>

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<sup>60</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56(8).

<sup>61</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56(2)(b).

<sup>62</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56(2)(c).

<sup>63</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56(2)(c).

<sup>64</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(8).

<sup>65</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57.

<sup>66</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58.

<sup>67</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58(3).

The whole planning proposal does not need to be exhibited. Detailed provisions may be summarised instead of being set out in full if the Director-General is satisfied that the summary provides sufficient details for community consultation.<sup>68</sup>

Any person can make a written submission during the community consultation stage. Submissions should be made to the relevant planning authority. Submissions should respond to the provisions of the planning proposal but it is important to note that where the planning proposal is implementing the Standard Instrument, it is not possible to object to provisions that implement a mandatory provision of the Standard Instrument.<sup>69</sup> See our [Commenting on Draft LEPs/Planning Proposals](#) Fact Sheet for more information.

It is important to remember that you can only make submissions during the community consultation stage and if the Minister decides that the exhibition period is to be brief you will only have a short period of time in which to lodge your submission.

#### **4. Any person can request a public hearing**

A person who makes a written submission can request that the relevant planning authority arrange a public hearing on the issues raised in their submission.<sup>70</sup> It is up to the relevant planning authority to decide whether or not to hold a public hearing, based on whether it thinks the issues raised in the submission are significant enough to warrant the hearing.<sup>71</sup> It may also hold a public hearing on any issue without a submission requesting one is held.<sup>72</sup>

The report from any public hearing must be given to the relevant planning authority, which can choose whether or not to make the report publicly available.<sup>73</sup>

The relevant planning authority must consider all written submissions and the report of any public hearing.<sup>74</sup>

The relevant planning authority can vary the planning proposal after considering the public submissions or report from a public hearing.<sup>75</sup> If the relevant planning authority does vary the planning proposal, it has to forward the revised planning proposal to the Planning Minister.<sup>76</sup>

Further community consultation on the revised planning proposal is not required unless the Minister says so.<sup>77</sup>

In addition to altering the planning proposal, the relevant planning authority may also, at any time, request the Minister to determine that the planning proposal should not proceed.<sup>78</sup>

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<sup>68</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(2).

<sup>69</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(3).

<sup>70</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(5)(a).

<sup>71</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(5)(b).

<sup>72</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(6).

<sup>73</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(7).

<sup>74</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 57(8).

<sup>75</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58(1).

<sup>76</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58(2).

<sup>77</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58(3).

## 5. Consultation with OEH where threatened species may be affected

After the gateway decision is made for a LEP to proceed, there are special consultation procedures concerning threatened species. If threatened species, populations, ecological communities or their habitats will or may be adversely affected by the planning proposal, the planning authority who is making the plan (the Minister, Director-General, local council or other delegate), must consult with the Director-General of OEH.<sup>79</sup>

## 6. Minister can ask Planning Assessment Commission to review process

The Planning Minister can also direct the Planning Assessment Commission or a Joint Regional Planning Panel to review a planning proposal at any time if there has been a delay in the matter being finalized, or for any other reason that the Minister thinks appropriate.<sup>80</sup>

## 7. NSW Parliamentary Counsel's Office drafts LEP

Local councils do not draft LEPs. The drafting is commissioned by the Minister and is in practice done by the [NSW Parliamentary Counsel's Office](#) in consultation with the planning authority, under the direction of the Director-General.<sup>81</sup> The planning proposal sets out the intention of the planning authority and the Parliamentary Counsel's Office must represent that intention in drafting the LEP. Once the LEP has been drafted it is then given to the Planning Minister.<sup>82</sup>

## 8. Planning Minister makes final decision on LEP

The Planning Minister makes the final decision on whether to make a new LEP or not.<sup>83</sup> The Minister can choose to include or exclude the variations submitted by the relevant planning authority in consultations, or can refer it back to the relevant planning authority for reworking.<sup>84</sup>

Once the relevant planning authority has finalised the planning proposal, the Director-General arranges for a local environmental plan to be drafted that will give effect to the planning proposal. The Director-General will consult with the relevant planning authority on the terms of the local environmental plan.<sup>85</sup>

The Minister (or the Minister's delegate) will then either:

- make a local environmental plan (with or without variation of the proposals submitted by the relevant planning authority) in the terms the Minister (or delegate) considers appropriate, or
- decide not to make the proposed local environmental plan.<sup>86</sup>

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<sup>78</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 58(4).

<sup>79</sup> *Environmental Planning and Assessment Act 1979* (NSW), ss. 34A.

<sup>80</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56(5).

<sup>81</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 59(1).

<sup>82</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 59(2).

<sup>83</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 59(2).

<sup>84</sup> *Environmental Planning and Assessment Act 1979* (NSW), ss. 59(2), (3).

<sup>85</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 59(1).

<sup>86</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 59(2).

Once the LEP is drafted there is no further opportunity for public comment so the new LEP may vary substantially from the planning proposal that was exhibited to the public.

## 9. Environmental assessment of new LEPs

Before the standard instrument LEP was introduced, local councils had to prepare environmental studies before preparing new LEPs. However, there is no longer a mandatory process for environmental assessments to be done for new LEPs, including spot rezonings. As noted above, whether an environmental assessment is required is at the discretion of the Minister.<sup>87</sup>

## 10. Obligation to disclose political donations

Developers must disclose political donations and gifts when making any planning application.<sup>88</sup>

The obligation to disclose applies not only to all development applications, but also to all formal requests to the Planning Minister, a council or the Director-General of the Department of Planning to initiate the making of an environmental planning instrument or development control plan.<sup>89</sup>

Developers seeking an amendment of a LEP or DCP by a local council must disclose all donations of \$1,000 or more and any gifts which have been made to any local councillor (including when they were a candidate) or employee of that council within 2 years prior to the application or request being made and ending when the application is determined.<sup>90</sup> Where the request is made to the Planning Minister or Director-General of Planning, all political donations of \$1,000 or more must be disclosed.<sup>91</sup>

Disclosure must be made in a statement accompanying the request. If the donation or gift is made after the application or request is made, the developer must lodge a statement with the decision maker within 7 days of making the donation.<sup>92</sup>

Both the Department of Planning and Environment and local councils must make any disclosures publicly available, either on the internet or under arrangements posted on the internet, within 14 days of the disclosure being made.<sup>93</sup>

[Click here to go to see the NSW Department of Planning's policy on donation and gift disclosure.](#)

## Glossary

### Key to terms used in this Fact Sheet

<sup>87</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 56(2)(b).

<sup>88</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 147.

<sup>89</sup> *Environmental Planning and Assessment Act 1979* (NSW), ss. 147(2), (3).

<sup>90</sup> *Environmental Planning and Assessment Act 1979* (NSW), ss. 147(4), (5).

<sup>91</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 147(3).

<sup>92</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 147(6).

<sup>93</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 147(12).

**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

**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*