LEPs and SEPPS

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Sydney: 02 9262 6989
Northern Rivers: 1800 626 239
Rest of NSW: 1800 626 239

Other planning documents

Development control plans

The EPA Act allows a local council or the Director-General of Planning and Infrastructure to make development control plans (DCPs). DCPs deal with particular aspects of LEPs in more detail than the LEP.

For example, a DCP can:

- impose additional requirements (to those under the EPA Act) as to when a development application must be advertised or publicly notified (e.g. to neighbours) by declaring something to be ‘advertised development’.
- can provide for (or exclude) the need to advertise or publicly notify particular types of development (other than designated development or advertised development).
- can specify additional criteria that a council must consider when assessing a development application.

Unlike LEPs and SEPPs, DCPs are not environmental planning instruments and are not legally binding. However, a consent authority must take a DCP into account.

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2 Environmental Planning and Assessment Act 1979 (NSW), ss. 74B-74F; Environmental Planning and Assessment Regulation 2000 (NSW), cls. 16, 21, 24.
3 Environmental Planning and Assessment Act 1979 (NSW), s. 74C(1)(b), (c) and (d).
4 Environmental Planning and Assessment Act 1979 (NSW), s. 74C(b), (c).
when considering a development application. LEPs and SEPPs take priority over a DCP.6

The process for making and approving DCPs, including the requirements for public exhibition, is set out in the EPA Regulation 2000.7 The Planning Minister can direct a local council to make, amend or revoke a DCP.8

DCPs can be viewed at your local council, and will generally be available on the council website.9

**Councils must review DCPs once new principal LEP made**

All local councils must remake their LEPs in accordance with a Standard LEP Instrument (see above). Once a local council has adopted a new principal LEP they must also review and remake their existing DCPs with a view to ensuring that only one council-made DCP and one Minister-made DCP applies to each site.10

Click here to go to the Department of Planning Circular (30 September 2005) on how the 2005 Amendments affect LEPs and DCPs.

**Section 117 Directions**

Section 117 of the EPA Act empowers the Planning Minister to give directions to a particular council, or to all councils generally, as to what they must include in their LEPs.11 Councils must give effect to these directions when preparing draft LEPs in response to the Standard LEP Instrument.12

Click here to go to the Department of Planning and Environment’s website on local environmental plan directions (s 117 Directions).

**Planning circulars, practice notes and guidelines**

The Department of Planning and Environment issues planning circulars, practice notes and guidelines. These are not legally binding, but they provide practical guidance to councils on how to interpret and implement the EPA Act.

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5 Environmental Planning and Assessment Act 1979 (NSW), s. 4(1) definitions ‘environmental planning instrument’.
6 Environmental Planning and Assessment Act 1979 (NSW), s. 79C(1)(a)(iii). See also Botany Bay City Council v Premier Customs Services Pty Ltd [2009] NSWCA 226 (3 August 2009) in which the Court held that although DCPs are not ‘determinative’ a DCP must be considered as a ‘fundamental element’ or a “local point” of the s79C process. This arguably means that councils must show actual application of the DCP and its standards and need to provide clear justification for departing from the DCP in relation to a particular development.
7 Environmental Planning and Assessment Act 1979 (NSW), s. 74C(5).
8 Environmental Planning and Assessment Act 1979 (NSW), s. 74E(1); Environmental Planning and Assessment Regulation 2000 (NSW), cls. 18-21A.
9 Environmental Planning and Assessment Act 1979 (NSW), s. 74F(1).
10 Environmental Planning and Assessment Act 1979 (NSW), s. 74E(4); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 25AC.
11 Environmental Planning and Assessment Act 1979 (NSW), s. 74C(2), (4), (5), s 74E(2); DIPNR Circular - PS 05 - 008, 30 September 2005, p 6.
12 Environmental Planning and Assessment Act 1979 (NSW), s. 117(3); Section 117 Ministerial Directions issued 30 September 2005.
LEPs and development applications

If you are concerned about a particular development proposal, the individual development application may often not be the real problem. For example, you may be concerned about the appropriateness of the type of development which is permitted by the local environment plan, not the quality of the particular development application itself. If so, this is a zoning problem.

To respond to this problem, you can:

- Lobby your local council, or the Planning Minister, to rezone the land. Run a community campaign to raise awareness of the issue and build community support for your position. Support your arguments with evidence about the environment, social or economic benefits of rezoning.

- Check that the development application has correctly described the proposal. A developer cannot get consent for something that would otherwise be prohibited by labeling the proposal as if it were a permitted one. Get legal advice if you doubt the description given in a development application.

- Check that the LEP was correctly made. An LEP that is not made in accordance with the procedural requirements set out in the EPA Act may be invalid. You will need to act quickly if you propose to take legal action, because the validity of an EPI cannot be challenged more than three months after the LEP is published in the Government Gazette.13

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)

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