



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

Introduction to Local Environmental Plans

2

This Fact Sheet provides information about how Local Environment Plans (LEPs) are developed and how the community can be involved. It is one of a series of Planning Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) and the Aboriginal community by the NSW Aboriginal Land Council (NSWALC).

Please Note: While all care has been taken in the preparation of these Fact Sheets, they are not a substitute for legal advice in individual cases. The information in this Fact Sheet is current as of March 2011.

What is a LEP?

A LEP is a legal document which guides development and land use within a particular Local Government Area. LEPs outline what a landowner can or cannot do with their land and may provide for the protection of heritage and environmentally sensitive areas.

The law outlining the process for making a LEP is the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**). The EP&A Act is administered by the NSW Department of Planning.

LEPs are developed by the Relevant Planning Authority (RPA), or consent authority, in the area which they apply. This is usually the Local Council, but can also be the Director-General of the Department of Planning, or another person or body nominated by the Minister for Planning.

All land, whether privately owned, leased or publicly owned, is subject to the controls set out in the relevant LEP.

The creation of new LEPs

Most Local Councils in NSW have a current LEP in force. However, recent changes to the EP&A Act mean that all Local Councils in NSW must develop a new comprehensive LEP that conforms to a standard LEP template, known as the 'Standard Instrument'.

The template for the new standard LEP is set out in the *Standard Instrument—Principal Local Environmental Plan*.¹ Several amendments were made to the Standard Instrument template in February 2011 including changes to zone objectives and heritage clauses.²

The Planning Minister has 'prioritised' 67 Local Councils meaning that they must update their LEPs to comply with the new Standard Instrument LEP by 2011. A few Local Councils have already completed their new LEPs. Some Local Councils who have not been prioritised are also making their new LEPs.

As LEPs usually operate for five years there are limited opportunities for the public to comment before they are finalised.

It is strongly recommended that LALCs contact their Local Council and regional Department of Planning Office to find out what stage their LEP is up to.

Given that many Local Councils will be in the process of updating their LEPs to conform to the new Standard Instrument, this is the best opportunity for LALCs and the local community to negotiate the inclusion of certain zonings and provisions such as the protection of local Aboriginal culture and heritage. **Note:** See flow charts at the back of this fact sheet for how to have a say in the LEP making process.

¹ The 'Standard Instrument – Principal Local Environment Plan' can be accessed on the NSW Legislation website at www.legislation.nsw.gov.au Click on 'Browse'. Under heading 'Browse in Force', see sub-heading 'EPs'. Click on 'S'.

² Further information about the 2011 amendments can be accessed on the NSW Department of Planning website www.planning.nsw.gov.au under 'Local Planning', then 'Standard Instrument'.

Other environmental plans

The EP&A Act also outlines the process for making other environmental planning instruments (EPIs) to regulate competing land uses for local government areas, known as State Environmental Planning Policies, or SEPPs.

SEPPs can operate over part or all of the State and more than one SEPP may apply to the same area. If there is any inconsistency between a SEPP and a LEP, a SEPP will generally override a LEP.

EPIs are legally enforceable documents which must be complied with, and are complemented by **Regional Strategies**³ prepared by the Department of Planning. Regional Strategies set out the 25-year plan for future land use of a region.⁴

Glossary of Terms

DCP – Development Control Plan
EPI – Environmental Planning Instrument
JRPP – Joint Regional Planning Panel
LEP – Local Environment Plan
RPA – Relevant Planning Authority
SEPP – State Environmental Planning Policy

Development Control Plans (DCPs)

In addition to LEPs, local councils have the option to implement Development Control Plans (DCPs) where they feel more detailed planning provisions are needed in regard to a particular area.

DCPs must be taken into account by the decision maker when assessing development applications (DAs). DCPs may specify when the community will be notified that a development application has been lodged, and who in the community has a right to be notified.

Zoning

LEPs set the blueprint for future development and conservation in a given area by allocating

‘zones’ to different parcels of land. Each zone has a number of objectives which indicate the principal purpose of the land. The zone will limit what can be done with that land.

Previously, Local Councils could define their own zones meaning that there were large differences between Local Councils.

The new Standard Instrument LEP defines 34 different land ‘zones’ which fit into 8 broad categories: rural, residential, business, industrial, special purpose, recreation zones, environment protection zones, and waterway zones.

Most LEPs include a colour coded map or schedule which indicate what zoning applies to different land in an area. For more information on zoning see NSWALC Planning Fact Sheet 6 - *Land Zoning and Local Environment Plans*.

Culture and Heritage

New Standard Instrument LEPs must include special provisions to protect Aboriginal heritage. Previously this was not a requirement for all local councils. Local councils may also have Aboriginal heritage management plans.

For more information on culture and heritage and planning laws see NSWALC Planning Fact Sheet 3 – *Planning Laws and Aboriginal Culture and Heritage*.

How are LEPs made?

Local Councils who began their LEP making process before July 2009 will generally follow the ‘old system’ for making LEPs. Under the old process a Local Council develops a draft LEP and it is put on display for public consultation. Refer to the flow charts on the following pages for a step-by-step guide to the development of LEPs, including opportunities for having a say.

New ‘gateway’ process for creating LEPs

Any amendments to LEPs or new LEPs which started after 1 July 2009 are required to use a new process for approval. This new LEP process is known as the ‘gateway’ process.

The ‘gateway process’ begins with a **Planning Proposal**, instead of a draft LEP as under the old system. This Planning Proposal is developed by the Relevant Planning Authority.

The Planning Proposal is sent to the Planning Minister for review. The Planning Minister then decides whether the proposal should proceed

³ The Planning Minister issued new Directions under section 117 of the EP&A Act on 1 July 2009. The objective of Direction 30 Implementation of Regional Strategies “gives legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies”. Available at www.planning.nsw.gov.au. Under the heading ‘Local Planning’, click on ‘Local Planning Directions’.

⁴ There are currently nine Regional Strategies in NSW that deal primarily with planning issues in the key growth areas across the State.

through the 'gateway' or not, and whether or not there should be community consultation.

It is important to note that under the new process only the Planning Proposal is put on display, not the draft LEP. There are also limited opportunities for the community to have a say during the development of the new standard LEPs.

The NSW Government has established an online tracking system for LEPs developed after 1 July 2009. If your Local Council's LEP is being made through the new 'gateway' process, the progress of the LEP can be monitored at: <http://leptracking.planning.nsw.gov.au/>.

What is a Planning Proposal?

The Planning Proposal explains the intended effect of the proposed LEP and the reasons for making it.

The Planning Proposal will include maps containing the appropriate detail, including land-use zones, heritage areas and flood prone areas, and will propose details of the community consultation to be undertaken.

Must the community be consulted about a new LEP?

No. Under the new gateway system the Planning Minister decides whether there will be community consultation, and what that community consultation should involve.

Unlike the old system, consultation is only available on the Planning Proposal, rather than the draft LEP itself so it is important to **contact your local council early** in the planning process and raise your concerns.

Amending a LEP

To amend an existing LEP, an application needs to be made to the Local Council or other RPA.

Any individual within the jurisdiction of the LEP may apply for the LEP to be amended. This includes applications for re-zoning particular parcels of land. LALCs should contact their Local Council or the Department of Planning to determine what information they need to submit with a re-zoning application.

All amendments to a LEP after 1 July 2009 need to go through the gateway process outlined below.

Challenging a LEP in court

Individuals are able to challenge a LEP in the Land and Environment Court. However, it is only under very specific circumstances that an appeal will be allowed. Appeals must be made within 3 months of a LEP being published on the NSW legislation website.

LALCs should contact the free advice line of the Environmental Defender's Office on 1800 626 239 if they are considering challenging a LEP.

Finding a copy of a LEP and other plans

Most Local Councils have a copy of their current LEP available on their website and will usually provide details about where they are up to in the LEP making process.

To find out what plans or EPIs affect a particular site, a LALC or individual can also obtain a 'planning certificate' from the Local Council. These certificates are also called 'section 149 certificates' as they are issued under section 149 of the EP&A Act.

Where to find out more

Copies of NSWALC Planning Fact Sheets can be downloaded from www.alc.org.au.

Contact details for all Local Councils are available from the Department of Local Government website at www.dlg.nsw.gov.au.⁵

Copies of all current LEPs and other EPIs are available from the NSW legislation website at www.legislation.nsw.gov.au.

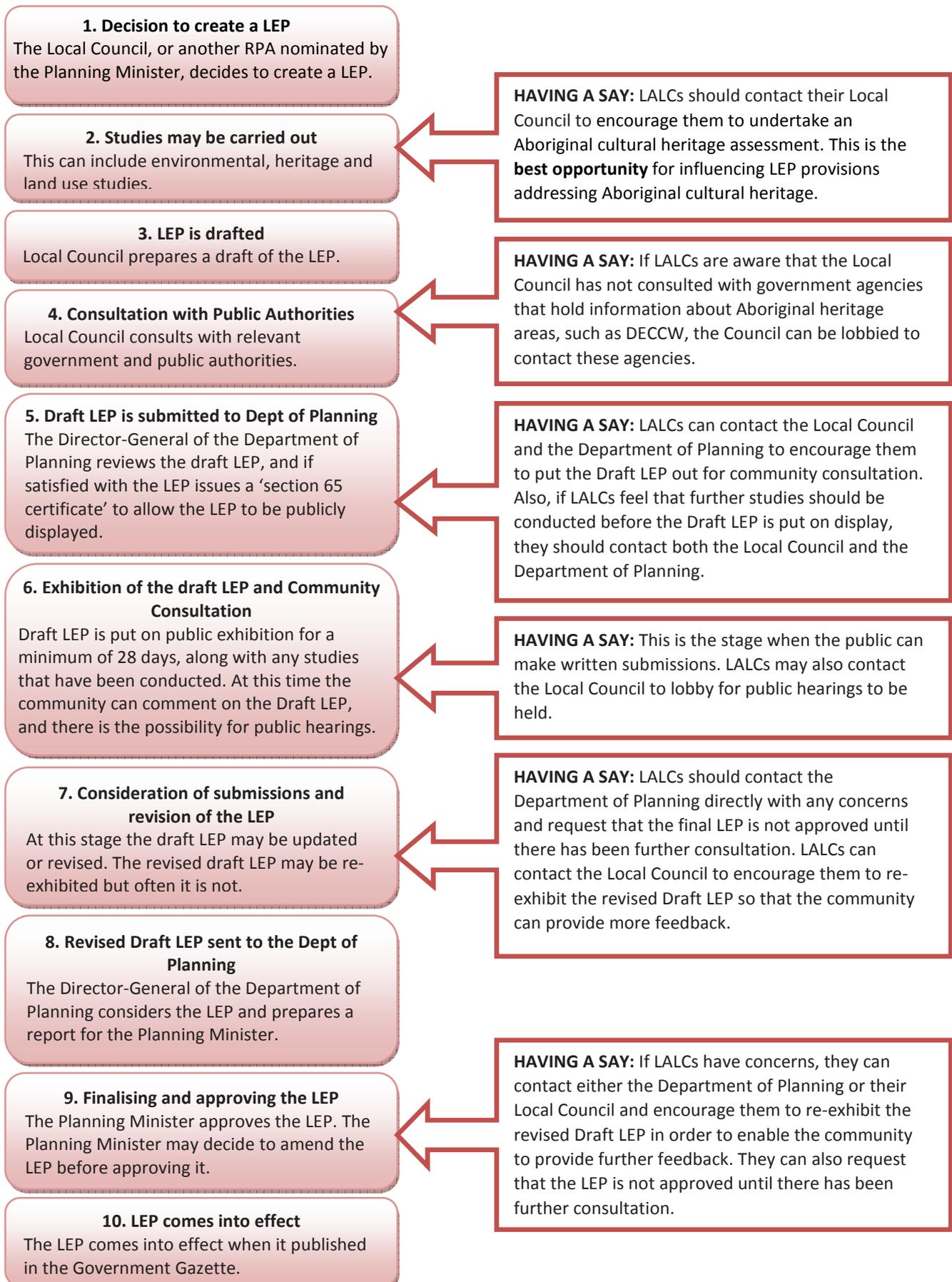


⁵ For the directory of local councils, go to the Department of Local Government website www.dlg.nsw.gov.au, click on the 'Local Government Directory', and then 'Local Councils.'

Where to find out more: Key Organisations and contacts

Organisation	Contact details
<p>Your Local Council – Most Councils have a copy of their LEP on their website. You can also apply to a Local Council for a “planning certificate” or “Section 149 certificate” which outlines what environmental plans operate in the area.</p>	<p>For the directory of local councils, go to the Department of Local Government website www.dlg.nsw.gov.au, click on the ‘Local Government Directory’, and then ‘Local Councils.’</p>
<p>Environmental Defenders Office (EDO) – The EDO is a community legal centre which has a free law advice line. They also publish a range of materials and fact sheets on environmental, Indigenous and planning laws.</p>	<p>Telephone: (02) 9262 6989 Web: www.nsw.edo.org.au Freecall: (NSW only) 1800 626 239 Subscribe to the EDO weekly online bulletin for updates on LEPs: http://www.edo.org.au/edonsw/site/bulletin/bulletin.php</p>
<p>NSW Department of Planning - Regional Department of Planning offices may be able to provide advice on important planning developments in your area and what environmental plans operate in an area.</p>	<p>Web: www.planning.nsw.gov.au Head Office: Sydney: (02) 9228 6111 Email: information@planning.nsw.gov.au</p>
<p>NSW Heritage Office (part of the Department of Planning) - The Heritage Office’s role includes maintaining the State heritage Register, providing advice about heritage issues and providing funding for Aboriginal Heritage projects.</p>	<p>Web: www.heritage.nsw.gov.au Phone: (02) 9873 8500 Email: heritage@planning.nsw.gov.au</p>
<p>NSW Department of Environment, Climate Change and Water (DECCW) - DECCW employ Aboriginal Heritage Officers who may be able to provide advice about protecting Aboriginal culture and heritage.</p>	<p>Web: www.environment.nsw.gov.au Head Office – Hurstville Phone: (02) 9995 5000 Email: info@environment.nsw.gov.au</p>
<p>NSWALC NSWALC is the peak body representing Aboriginal people in NSW. NSWALC is established under the NSW <i>Aboriginal Land Rights Act</i> with key responsibilities for the acquisition and management of land for the benefit of Aboriginal people in NSW, and the protection and promotion of Aboriginal cultural heritage.</p>	<p>Web: www.alc.org.au Head Office – Parramatta Phone: (02) 9689 4444 Email: policy@alc.org.au</p>
<p>LALCs There are 119 Local Aboriginal Land Councils (LALCs) in NSW. LALCs are autonomous bodies that are also governed by locally elected boards. LALCs’ roles include advocating for the interests of the local Aboriginal community, protection and promotion of Aboriginal culture and heritage within their boundary areas, and acquisition and management of land for the benefit of the local Aboriginal community.</p>	<p>Contact details for all LALCs in NSW are available on the NSWALC website www.alc.org.au under the ‘Land Councils’ tab, or by contacting NSWALC.</p>

Stages in the development of a LEP: OLD PROCESS



Stages in the development of a LEP: NEW PROCESS

