



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

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Land zoning and Local Environmental Plans (LEPs)

This Fact Sheet provides information about land zoning and Local Environmental Plans (LEPs). 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 these Fact Sheets is current as of March 2011.

What is zoning?

Zoning is the division of land into categories. These categories determine what sorts of activities and development are allowed in the area that they cover. Zoning is guided by the provisions of the main planning law in NSW – the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

Zoning restrictions apply to both public and private land.

Zoning in Local Environmental Plans

A Local Environmental Plan, also known as a LEP, divides the Local Government Area into zones which specify what kind of development is allowed on a particular parcel of land.

For more information about the EP&A Act and LEPs see NSWALC Planning Fact Sheet 1 – *Introduction to NSW planning laws* and Fact Sheet 2 – *Introduction to LEPs*.

New standard rules for LEPs

In 2005, the NSW Government changed the law so that all LEPs had to be standardised to conform to a template called the 'Standard Instrument – Principal Local Environmental Plan' (the Standard Instrument).¹

Before then, LEPs in different Local Government Areas differed substantially in terminology, how zones were classified, and what was allowed in each zone.

These changes mean that any amendments to LEPs or new LEPs developed after 1 July 2009 must use the standard zones and terminology set out by the Department of Planning in the Standard Instrument.

The Standard Instrument LEP contains 34 different zoning categories. 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.

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 'EPis'. Click on 'S'.

Under the new rules a Local Council cannot create new zones, but must pick a zone from the 34 zones provided in the Standard Instrument.

However, the Local Council, or other Relevant Planning Authority (RPA), is allowed to add to the types of development that are permitted in a zone. Any additional objectives must be consistent with the core objectives set out in the standard 'land use table.'

Local Councils or RPAs are not allowed to remove any types of development from the zoning lists in the Standard Instrument.

Note: The Standard Instrument is currently under review by the Department of Planning, with several changes proposed to zone objectives and heritage issues.²

For more information see NSWALC's submission to the *Review Zoning in on Aboriginal Land and Heritage Protection* available at www.alc.org.au.

Can LALC land be re-zoned without LALC consent?

Local Councils must notify an owner of land before making any changes to the zoning of the land. The owner then has the opportunity to put forward their reasons as to why the land should not be re-zoned, if they object to the proposed re-zoning.

However, a Local Council can decide still re-zone land without a landowner's consent.

LALCs are urged to ensure that all notices relating to re-zoning from Local Councils are sent to a central contact person, such as the LALC's CEO, and are discussed and responded to promptly and within the timeframe specified by the Local Council. This will ensure that the LALC's views about any proposed re-zoning and its impact are clearly articulated to the Council in order to avoid any re-zoning that is not wanted.

Depending on the situation, a LALC may also wish to take independent legal advice about any proposed re-zoning.

² See the consultation draft of the 'Potential Amendments to the Standard Instrument', available at www.planning.nsw.gov.au under 'Local Environmental Plans'.

NSWALC is happy to assist LALCs who are having any issues with the re-zoning of their land without their consent. LALCs should also monitor potential re-zoning of land that has been granted to them under an Aboriginal Land Claim but where the title to that land has not yet transferred to the LALC.

Do LALCs have to hold a members meeting if a LALC wants to re-zone land?

If a LALC wishes to re-zone land that it owns as part of developing the land, it will need to make a development application to the Local Council.

The making of a development application is a 'land dealing' that will require the approval of the members of the LALC as well as the approval of the Council of the NSWALC before the development application can be lodged. Unless approval is received any development approval is void.

Further information about land dealings and NSWALC's policy on land dealings can be found at <http://alc.org.au/land-councils/lalc-land-dealings.aspx>.

For further information about land dealings and the approval process please also contact the NSWALC Commercial Unit on 02 9689 4444.

What are miscellaneous provisions?

The Standard Instrument LEP also contains miscellaneous provisions. These provisions guide a range of planning and development considerations such as:

- The classification and reclassification of public land,
- Development within the coastal zone,
- Heritage conservation, and
- Bush fire hazard reduction.

Some of these provisions are optional and some are compulsory.

What is the Land Use Table?

The Land Use Table is a section in the Standard Instrument LEP that sets out the objectives of each zone and the types of development that are allowed in each zone.

For each zone, development is divided into three categories:

- Permitted with consent,
- Permitted without consent, and
- Prohibited.

Developers wanting to undertake developments which are 'permitted with consent' in a zone must apply to the Local Council or other RPA to gain approval before the development can go ahead.

Unzoned land

The Standard Instrument LEP also contains a compulsory clause relating to unzoned land.³ The purpose of this clause is to capture any land that has not been allocated a zone.

Development may only be carried out on unzoned land with consent. Before granting consent, the consent authority, usually the Local Council, must consider the impact of the development on adjoining land and must be satisfied that the development is compatible with land uses in adjoining land.

Can zoning categories be changed once a LEP is finalised?

Yes. Zoning categories can be changed; however, it may be difficult to do so. Once a LEP has been adopted the only way that a property owner can seek an exemption to the requirements and limitations is to either:

- Amend the LEP, or
- Apply for a special permit to use the land in a way not set out in the LEP.

In both cases, the amendment or application may be opposed by the Local Council on the grounds that permitting special exceptions for specific properties is inconsistent with the overall land use plan.

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, including

applications for land re-zoning. The Local Council, or other RPA, may accept or reject the request.

If the request is accepted, a planning proposal will need to be prepared. The planning proposal must outline the intended effect of the amendment to the LEP and reasons for making it. The planning proposal must also address a range of matters including environmental, social or economic impacts, and include maps, plus proposed details of any community consultation to be undertaken.

For more information about the process for amending an LEP see NSWALC Planning Fact Sheet 2 – *Introduction to Local Environmental Plans*.

What is 'spot rezoning'?

Spot rezoning is when members of the community apply to the local council to change the zoning of a particular area. Spot rezoning does not require that all zones be changed, only a specific area.

In order for a zone to be changed, the LEP needs to be amended. It is important to note that Local Councils may charge various fees for spot rezoning.

Developers who want to undertake work that is not allowed in the zone need to lodge an application for spot rezoning, along with their development application. If the spot rezoning is approved, the development application can be approved at the same time.

What is a split zone?

Where the Local Council (or other RPA) wishes to acknowledge different land capabilities on a single allotment, they may consider applying more than one zone across the land. For example, if a piece of land contains environmental qualities, yet the land has other values too, the Local Council can apply more than one zone across the land.

Overlays

Planning overlays can be used by Local Councils in their LEPs in order to impose controls on land in addition to zoning provisions. Overlays can be used where there are 'multiple natural resources values' applying to one area of land. Some overlays might recognise that land is, for example, in a catchment area, or contains a wildlife corridor. Others may recognise that the land is naturally constrained or

³ See clause 2.4 in the 'Standard Instrument – Principal Local Environment Plan', referenced above.

is prone to a particular hazard, such as floods or bush fires.

Any overlay provisions will apply in addition to the objectives and Land Use Table for the zone, but must be consistent with any applicable State Environmental Planning Policies (SEPPs) and the relevant LEP. An overlay can be applied to land that lies in several different zones. The provisions can set out extra considerations that a decision-maker must take into account before approving development in that zone.

When commenting on a draft LEP or planning proposal, you can recommend the use of overlays to recognise particular values of specified land, such as culturally sensitive land, where that land is zoned for other purposes.

What to look for when commenting on a draft LEP or planning proposal

Commenting on draft LEPs or planning proposals involves looking at the maps to see how land is zoned. The maps should indicate which of the 34 zones applies to a given parcel of land.

By looking at the Land Use Table you can identify the objectives for the zone which will give you a general idea of what is planned for that piece of land. You can also see what types of development are going to be allowed in that zone and which developments (if any) are going to be prohibited.

Challenging a LEP or zoning 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.

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

To find out what environmental planning instruments 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

NSWALC Fact Sheets, including the 'Site Protection' series, are available from www.alc.org.au, or by calling the NSWALC Policy and Research Unit on 02 9689 4444.

- Fact Sheet 1 – *Introduction to NSW Planning Laws*
- Fact Sheet 2 – *Introduction to Local Environmental Plans*
- Fact Sheet 3 – *Planning Laws and Aboriginal Cultural Heritage*
- Fact Sheet 4 – *Part 3A Developments*
- Fact Sheet 5 – *Local Councils and Public Land*
- Fact Sheet 6 – *Land Zoning and Local Environmental Plans*

