



# fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales  
Aboriginal Land Council

## Introduction to NSW Planning Laws

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This Fact Sheet provides information about planning laws in NSW. 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 the key planning law in NSW?

The key planning law in NSW is the *Environmental Planning and Assessment Act 1979*, also known as the EP&A Act<sup>1</sup>. This law is administered by the NSW Department of Planning.

The EP&A Act sets out how land in NSW is to be developed and managed, including the process for making environmental plans.

### Environmental Planning Instruments

The EP&A Act allows environmental plans to be made that guide development and regulate land use. The EP&A Act allows two different types of environmental plans to be made. These are:

- Local Environmental Plans, or **LEPs**, and
- State Environmental Planning Policies, or **SEPPs**.

Both kinds of plans are called Environmental Planning Instruments (or **EPis**).

LEPs apply to a particular area, generally the whole, or part of, a Local Government Area. SEPPs can relate to part, or the whole of, NSW.

<sup>1</sup> A copy of the *Environmental Planning and Assessment Act 1979* can be accessed on the NSW legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au). To find the Act click on 'Browse', under heading 'Browse in Force', see sub-heading 'Acts' and click on 'E'.

State plans generally override local plans and more than one SEPP can apply in the same area.

*Note:* Previously the EP&A Act also allowed Regional Environmental Plans to be made, but recent amendments mean that Regional Environmental Plans no longer exist, or are 'deemed' to be SEPPs.

### Local Environmental Plans (LEPs)

LEPs outline what landowners can and cannot do with their land in a particular Local Government Area. LEPs may provide for the protection of open space, heritage and environmentally sensitive places.

LEPs divide the Local Government Area they cover into zones (such as rural, residential, industrial, business, environmental protection, recreational, or waterways) which specify what kind of development is allowed over a particular parcel of land.

LEPs also include specific heritage provisions, including Aboriginal heritage provisions.

### Recent changes to LEPs

Under recent changes to the EP&A Act, Local Councils are required to update their LEPs to conform to a new standard template known as the **Standard Instrument**.

**There are limited opportunities for the community to comment when a new LEP is being developed. LALCs are strongly encouraged to contact their Local Council to find out whether a new LEP is being developed in their area, and what stage it is up to.**

*Note:* Amendments to the Standard Instrument template were proposed in 2010, and some

amendments were gazetted in February 2011. Some of the changes relate to the compulsory Aboriginal heritage provisions.

NSWALC prepared a submission in response to these proposed amendments entitled *Zoning in on Aboriginal Land and Heritage Protection*. This submission and updates are available at NSWALC's Planning webpage at [www.alc.org.au](http://www.alc.org.au).

### Development approvals

There are three broad categories of development under the EP&A Act:

- Development that does not need consent,
- Development that needs consent, and
- Development that is prohibited.

Development can involve anything from major construction to small-scale works such as erecting a fence or a sign. Whether a particular development requires consent or is prohibited depends on what is outlined in the LEP or other Environmental Planning Instrument (EPI) for a particular area.

If a development requires consent then the developer must put in a development application (also known as a **DA**). For most types of development a DA will need to be lodged with the Local or Shire Council, but an increasing number of developments require the approval of a regional panel or the NSW Planning Minister.

### Exempt and complying development

To speed up the time it takes to undertake development, the NSW Government has created a list of common developments for which a development consent is not needed. These kinds of developments are known as '**exempt or complying**' developments, and include backyard swimming pools, flagpoles and sheds.

Exempt development is development classified within EPIs as being of 'minimal environmental impact', and does not require consent.

Complying development is classified as minor development as designated within EPIs, that requires consent, but is subject to a more streamlined approval process. Here, consent can be obtained in the form of a 'complying development certificate' rather than through the DA process.

It is important to note that there are several SEPPs which contain lists of various types of development, including infrastructure, that has been classed as exempt or complying development.

### Environmental and Heritage Assessments

In some cases a developer will need to undertake some form of environmental or heritage impact assessment to submit with their DA. The kind of assessment that is needed depends on things like what part of the EP&A Act the development falls under, and what kind of consent is needed.

An environmental impact assessment provides information to the Local Council, Planning Minister or other decision maker about the effect that the development will have on both environment and heritage, including Aboriginal cultural heritage.

### Part 3A developments

The EP&A Act includes specific provisions for projects which are 'major projects' or 'critical infrastructure' projects (also known as Part 3A projects).

Part 3A projects do not need to comply with the normal rules for environmental and heritage assessments. This includes the requirement for an Aboriginal Heritage Impact Permit under the *National Parks and Wildlife Act*. Examples of Part 3A projects include hospitals, mining projects or commercial projects worth more than \$100 million. The Planning Minister is the consent authority (decision maker) for all major projects and critical infrastructure.

### Where to find out more

More information about planning laws is available from the NSWALC Planning Fact Sheets series (listed below), which can be accessed from [www.alc.org.au](http://www.alc.org.au), or by calling the NSWALC Resource Centre 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 Culture and Heritage*
- Fact Sheet 4 – *Part 3A Developments*
- Fact Sheet 5 – *Local Councils and Public Land*
- Fact Sheet 6 – *Land Zoning and Local Environmental Plans*