Planning for non-planners

An overview of the NSW planning system in Queanbeyan-Palerang Regional Council

Ref: SF140018
C17134986

September 2017
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Introduction

The planning system is complex and it can be confusing for members of the community to understand the various layers to the system and how they relate to each other.

The purpose of this document is to provide an overview of the planning system in NSW and how it is implemented locally by Queanbeyan-Palerang Regional Council.

The document does not seek to provide guidance on preparing development applications or seeking amendments to planning instruments. Rather it is to provide members of the community with a relatively 'plain English' reference guide to the key elements of the planning system. Where members of the community are seeking further advice or actively considering a development proposal, this should always be discussed with council staff in the first instance.

Overview of the planning system

The principal legislation regulating planning in NSW is the Environmental Planning and Assessment Act 1979 (EP&A Act). The NSW Department of Planning and Environment (DPE) administer the Act. The Minister responsible for the Act is the NSW Minister for Planning. The EP&A Act allows various plans to be made to guide the process of development and to regulate competing land uses.

There are three (3) main elements to the legislative scheme that regulates planning and development in NSW. These are:

- The Environmental Planning and Assessment Act 1979 (EP&A Act), which set out the major concepts and principles, including Part 4 which deals with development applications,
- The Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), which contain many of the details for the various processes set out under the Act, and
- Environmental planning instruments (EPIs), which set out when development consent is required, and often nominate the consent authority for specific types of development. EPIs are drafted in accordance with the requirements of the EP&A Act and the EP&A Regulation.

The DPE provides strategic plans, circulars and guidelines to guide development and the actions of councils. Councils also produce their own strategic plans to guide local development. The following sections clarify the current difference between strategic plans and statutory plans.

Strategic plans

Strategic plans provide the long-term vision for land use planning. Relevant plans applying to the QPRC local government area (LGA) are set out below.
The DPE develops strategic plans for various regions throughout the State. These seek to guide and deliver on the key policy and planning objectives of the State Government.

**South East and Tablelands Regional Plan 2036**

The **South East and Tablelands Regional Plan 2036** (SETRP 2036) is the NSW Government’s strategy for guiding land use planning decisions for the region over the next 20 years, including for the Queanbeyan-Palerang LGA. The plan also applies to the eight other LGAs comprising Bega Valley, Eurobodalla, Goulburn-Mulwaree, Hilltops, Snowy Monaro, Upper Lachlan, Wingecarribee and Yass Valley.

The regional plan sets out four goals for the south east and tablelands:

- A connected and prosperous economy,
- A diverse environment interconnected by biodiversity corridors,
- Healthy and connected communities, and
- Environmentally sustainable housing choices.

Canberra and the south east and tablelands are intrinsically linked. Canberra’s transport connections, educational institutions, tertiary health services and employment will be accessed by people within NSW, while the region continues to offer a greater diversity of housing, experiences and opportunities beyond the ACT’s limits. Many ACT residents also work in Queanbeyan-Palerang and access its various services.

The **South East and Tablelands Regional Plan 2036** takes a cross-border approach to economic investment, infrastructure delivery, servicing provision and housing development. This will facilitate sustainable growth and optimise economic prospects. The plan includes a commitment to collaborate with the Australian Capital Territory (ACT) to leverage economic opportunities from a borderless region.

**Queanbeyan Residential and Economic Strategy Review 2015-2036**

Council’s **Queanbeyan Residential and Economic Strategy Review 2015-2036** outlines a 25 year residential and economic land use strategy for the former Queanbeyan City Council area. It provides a framework for the ongoing growth and prosperity of Queanbeyan whilst protecting environmental attributes important to the local community.

The Strategy identifies the key areas for new urban development. In addition the Strategy:

- Updates population and household projections,
- Identifies future areas of potential urban development,
- Reviews employment lands supply and demand,
- Provides a framework for protecting and enhancing the biodiversity of the area, and
- Considers infrastructure servicing issues relevant to new development areas.
Statutory plans

Statutory plans provide the rules and regulations that seek to ensure land uses and development are undertaken in a manner that delivers the strategic vision for the area.

To facilitate the delivery of the vision outlined in the Strategic Plans, the EP&A Act allows two types of environmental planning instruments (EPIs) to be made. These are:

- State Environmental Planning Policies (SEPPs), and
- Local Environmental Plans (LEPs).

State Environmental Planning Policies (SEPPs)

State Environment Planning Policies (SEPPs) primarily address planning issues of State significance, for example the provision of infrastructure, affordable housing or coastal protection. As the name implies, these plans generally apply across the State.

The provisions of a SEPP usually override local controls put in place by a council. SEPPs can also make the Planning Minister the decision-maker (consent authority) for the types of development in some circumstances. Essentially SEPPs are policies that seek to deliver the State Government’s vision for land use and development across NSW.

SEPP (Exempt and Complying Development Codes) 2008 is particularly important to home owners and builders as it sets out a range of low impact developments that may be carried out without requiring any development consent. Equally important, it also sets out a range of developments where development consent may be issued by a ‘private certifier’ rather than by the Council, including for new dwelling in some circumstances.

Local Environmental Plans (LEPs)

LEPs, such as the Queanbeyan LEP 2012 and Palerang LEP 2014, control development at a local level and set out how land is to be used. The plans do this by allocating 'zones' to different parcels of land such as 'rural', 'residential', 'industrial', 'open space', 'environmental', 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 specifies which developments are permitted with consent, permitted without consent, or prohibited.

QPRC currently oversees the following LEPs:

- Palerang Local Environmental Plan 2014.
- Queanbeyan Local Environmental Plan 2012.
- Queanbeyan Local Environmental Plan 1998.
- Queanbeyan Local Environmental Plan 1991 (QLEP 1991 can only be viewed in hard copy).
- Queanbeyan Local Environmental Plan (Poplars) 2013.
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 planning instrument.

While LEPs are key documents, 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 certain 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.

When councils prepare LEPs, they must follow directions issued by the Minister for Planning. These are called s117 Directions. Councils must also use the format stipulated by the Minister, which is known as the Standard Template LEP. The Standard Template LEP, stipulates the zones councils can use and the dictionary of terms and uses.

The overall effect is to introduce standardisation across council areas in NSW, but it can restrict the ability of councils to include provisions that address local issues.

Council will be looking to merge its respective LEPs into one single plan in the near future.

**Other types of plans**

**Development Control Plans (DCPs)**

The *EP&A Act* allows a local council or the Director-General of Planning and Environment to make development control plans (DCPs). The QPRC currently administers the following DCPs:

- Braidwood Development Control Plan 2006.
- Palerang Development Control Plan 2015.
- Queanbeyan Development Control Plan 2012.
- Googong Development Control Plan 2014.
- South Jerrabomberra Development Control Plan 2015.

A DCP is primarily a guideline that deals with particular aspects of LEPs in more detail than the LEP may contain. For example, a DCP can:

- impose additional requirements (to those under the *EP&A Act*) as to when a development application must be advertised or publicly notified (eg to neighbours) by declaring something to be ‘advertised development’, or
- identify criteria that a council must consider when assessing a development application e.g. building setbacks, solar access, parking provision etc.
Unlike LEPs and SEPPs, DCPs are not environmental planning instruments or statutory documents.

Regardless, a consent authority such as a local council must take a DCP into account when considering a development application. However, a council can vary the standards prescribed in a DCP, if sufficient justification for a variation is provided and has merit.

LEPs and SEPPs take priority over a DCP. The process for making and approving DCPs, including the requirements for public exhibition, is set out in the EP&A Regulation 2000. The Planning Minister can direct a local council to make, amend or revoke a DCP.

Development Applications

If someone wants to build a structure or use land and buildings for a particular purpose, they will often need some form of approval before starting the activity. The different types of approval reflect the potential impact that new buildings or uses may have. Something that has the likelihood of little or no impact may only need a licence.

Exempt Development

Many types of renovations and minor building projects do not need approval from a council or private certifier. This is called exempt development. As long as the building project meets specific standards and land requirements (e.g. as defined in the Exempt and Complying SEPP or an LEP), the project will be considered exempt development. Relevant provisions can be found in SEPP (Exempt and Complying Development Codes) 2008 and in the various QPRC LEPs.

Complying Development

Complying development is a form of planning approval that can be issued by an accredited certifier or a council in the form of a complying development certificate (CDC). This certificate combines approval for use of the land and building construction. The building project must meet specific standards and land requirements (e.g. as defined in the Exempt and Complying SEPP or an LEP), to be considered complying development. Approvals under complying development are faster and new homes can usually be approved in under 10 days where they meet the relevant criteria.

Some types of complying development are subject to local exclusions or variations - these are listed in Schedules 3 and 5 of SEPP (Exempt and Complying Development Codes) 2008. A Section 149 Planning Certificate from council will outline what planning controls apply and whether complying development could be considered on the land.
Requires consent - Development Application (DA)

In order to obtain development consent, the person proposing the development must lodge a DA with the consent authority. Once a DA has been lodged and the environmental assessment and public participation procedures completed, the consent authority (decision-maker) can consider the application.

In most cases, the consent authority will be the local council. However, the EP&A Act, the Regulations, or an EPI (LEP or SEPP) can specify a different consent authority, such as:

- The Planning Minister,
- The Planning Assessment Commission (PAC),
- A Joint Regional Planning Panel (JRPP), or
- A public authority (other than the council).

The consent authority is often the local council, although councillors may delegate power to determine certain standard or non-contentious applications to the General Manager or other council officers. Nearly 95% of applications are determined under delegation at QPRC.

The consent authority (decision-maker) decides whether to grant or refuse consent.

When deciding on a development application, the consent authority must take into consideration the matters outlined under section 79(c) of the Act, including:

- The provisions of any SEPP, LEP or DCP,
- Any proposed environmental planning instrument, which has been placed on public exhibition,
- Any planning agreement,
- Any additional matters set out in the Regulations, such as the need for fire safety,
- The likely impacts of the development, including the impacts on the natural, built, social and economic environment,
- The suitability of the site for the development,
- Any public submissions made in accordance with the legislation, and
- The public interest.

Consents are usually issued with a range of conditions that the development must abide by. This may include hours of operation, waste disposal, regulation of noise, managing pre-existing contamination, meeting flood floor planning levels and so on. The Act states that conditions must be reasonable and relate specifically to the development.

Developments that lead to an increase in the local population will usually be required to pay development contributions (Section 94 contributions) to upgrade physical, recreational and community facilities.
Designated development

Designated development is development that is specifically listed by an environmental planning instrument or by Schedule 3 of the EP&A Regulation. It generally relates to development that is likely to have significant impacts on the environment, such as concrete batching plants. If development is Designated Development, an Environmental Impact Statement (EIS) is to be prepared and submitted with the DA.

Not requiring consent but requires an assessment under Part 5 of the EP&A Act

Public authorities, such as the State Government, are generally permitted to carry out development without consent, however, those authorities are still required to assess the environmental impacts of their activities. Activities that can be considered under Part 5 are usually identified in an LEP or a SEPP, but often it will be necessary for a planner to guide or navigate a non-planner through this part of the planning system.

The purpose of Part 5 of the EP&A Act is to ensure public authorities fully consider environmental issues before they undertake or approve activities that do not require development consent. This is called a review of environmental factors. Part 5 has commonly been used to assess activities such as roads, railways, dredging and forestry works, which do not require consent. If these activities are judged by the relevant public authority to significantly affect the environment, then a review of environmental factors (REF) or an environmental impact statement will need to be prepared and considered by this authority.