



# Planning for non-planners

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



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# Planning for Non-Planners

## 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 by Queanbeyan-Palerang Regional Council (QPRC).

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 *EP&A 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 various land uses.

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

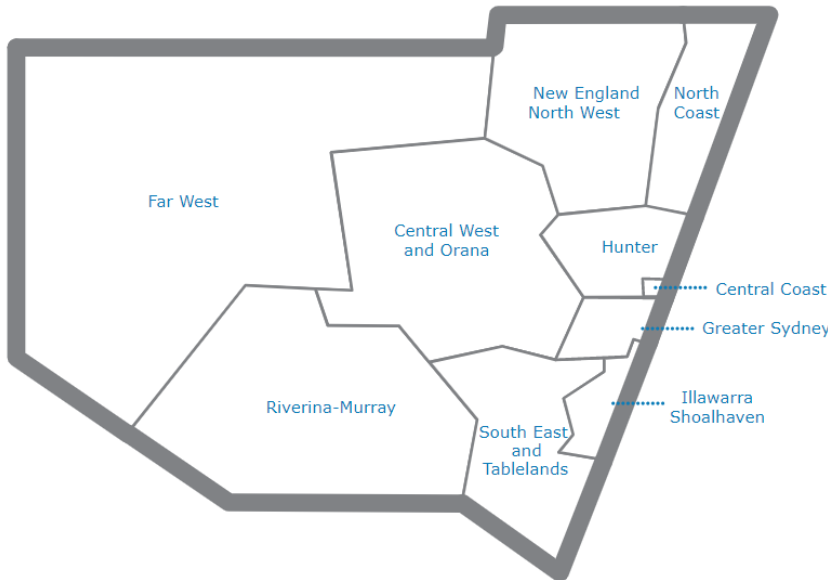
- The *Environmental Planning and Assessment Act 1979 (EP&A Act)*, which sets out the major concepts and principles, including Part 4 which deals with development applications,
- The *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)*, which contains much of the detail for the various processes set out under the *EP&A Act*, and
- Environmental planning instruments (EPIs) which establish various land use zones and set out controls for development. EPIs are drafted in accordance with the requirements of the *EP&A Act* and the *EP&A Regulation*.

DPE also provides strategic plans, circulars and guidelines to inform the preparation of EPIs by local councils. Councils also produce their own strategic plans to inform future planning and 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.

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 within each of the regions as indicated in Map 1 below. The relevant Regional Plan applying to Queanbeyan-Palerang LGA is the *South East and Tablelands Regional Plan 2036*.



**Map 1 NSW Regional Plans**

In addition, Council undertakes its own local strategic planning including preparing a Local Strategic Planning Statement (LSPS). The LSPS reflects Council's own priorities as identified in the Community Strategic Plan. The figure below demonstrates the relationship between regional and local strategic plans.



**Figure 1 Relationship of regional strategic plans with local plans**

Relevant plans applying to the QPRC local government area (LGA) are set out below.

***South East and Tablelands Regional Plan 2036***

The *South East and Tablelands Regional Plan 2036* is the NSW Government's strategy for guiding land use planning in 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.

### **Local Strategic Planning Statement (LSPS)**

The LSPS is the strategic road map to guide land use planning for the next 20 years within QPRC. Council is required to produce the LSPS under the *EP&A Act*. The LSPS pulls together Council's own land use planning priorities from the various plans, including the *Bungendore Structure Plan*, the *Queanbeyan Residential and Economic Strategy Review* and the *Community Strategic Plan* and implements the actions of the *South East and Tablelands Regional Plan 2036*. The LSPS will shape how the development controls in the Local Environmental Plan and Development Control Plan evolve over time to meet community expectations.

The LSPS also feeds back into the regional plan, influencing the delivery of infrastructure and services at the regional level. Figure 2 over demonstrates the relationship between the various QPRC local strategic and statutory plans.

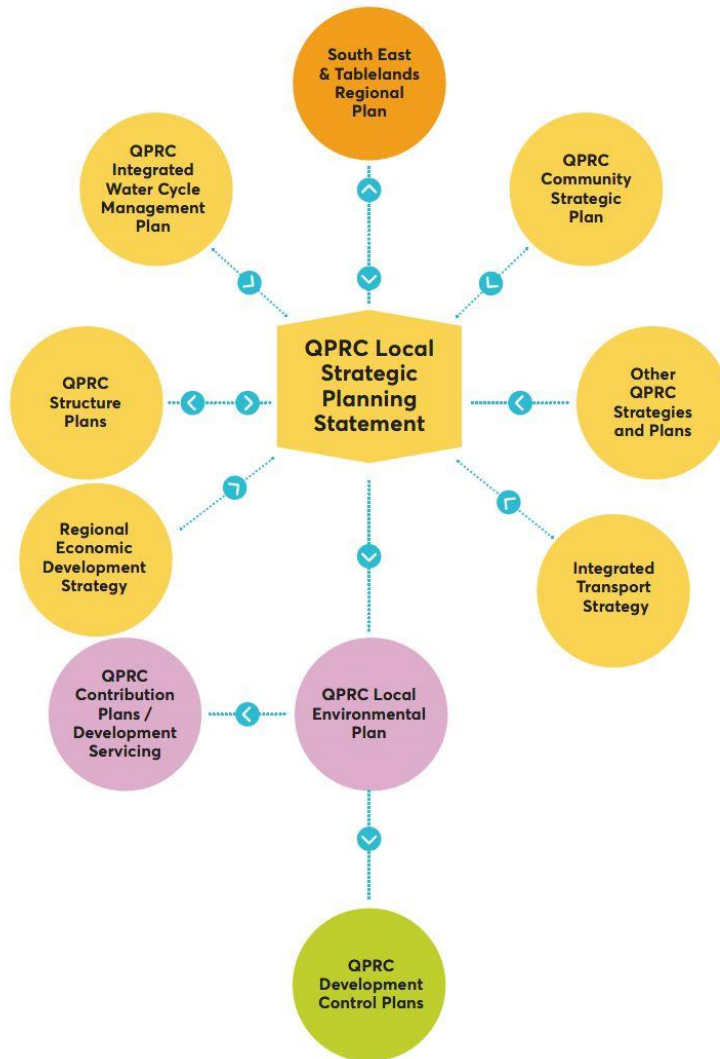


Figure 2 Relationship between LSPS and various strategic and local plans

### ***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.

### **Bungendore Structure Plan 2018-2048**

Council's *Bungendore Structure Plan 2048* was prepared to guide future residential growth in Bungendore in accordance with the community's land use vision for the village. It provides a framework for the ongoing growth of Bungendore over the next 30 years.

The Strategy identifies the areas for future residential development. In addition, the Strategy:

- Defines the future desired character of Bungendore,
- Identifies key development principles to minimise the impacts of development,
- Considers the growth implications on community and open space and employment and rural land, and
- Identifies potential areas of further investigation, including employment lands, native vegetation review, cemetery capacity, and transport.

## **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 various 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 homeowners and builders as it sets out a range of low impact developments that may be carried out without requiring any development consent, provided the specified standards and conditions are met. 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-Palerang Regional Local Environmental Plan 2022*, 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', 'conservation', and 'employment' 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.

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 s9.1 Directions. Councils must also use the format stipulated by the Minister, which is known as the *Standard Instrument - Principal Local Environmental Plan*. This format, also known as 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.

## Other types of plans

### ***Development Control Plans (DCPs)***

The *EP&A Act* allows a local council or the Secretary 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 2010.*
- *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 (e.g. 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 where 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 2021*. The Planning Minister can direct a local council to make, amend or revoke a DCP.

### **Contributions Plans**

The *EP&A Act* provides various mechanisms to allow councils to levy developers to contribute to local infrastructure such as parks, community facilities, local roads and stormwater management for the benefit of the community and may be implemented through either a contributions plan or planning agreements.

Under Sections 7.11 and 7.12 of the *EP&A Act*, Council is able to plan, identify and levy contributions where it has been established that the development is likely to result in increased demand for public services and amenities. These s 7.11 plans set out what infrastructure will be provided, approximately how much it will cost, and the contribution rate, usually charged per dwelling or by square metre and are published on Councils website. These plans were formerly known as Section 94 plans. Alternatively, contributions may be charged as a percentage, generally 1% of the estimated cost of the development. These plans are called Section 7.12 plans (formally s94A plans) and are also published on Council's website.

Council may also enter into an agreement with a developer to deliver services or facilities for the public good. These agreements are called voluntary planning agreements (VPA's) and are provided for under Section 7.4 of the *EP&A Act*.

## **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 Part 3 and Schedule 2 of *Queanbeyan-Palerang Regional Local Environmental Plan 2022*.

### **Complying Development**

Complying development is a form of planning approval that can be issued by an accredited private 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.

A Section 10.7 Planning Certificate from council will outline what planning controls apply and whether complying development could be considered on the land. Queanbeyan-Palerang Council Planning Certificates are available by applying online on Council's website:

<https://www.qprc.nsw.gov.au/Building-Development/Planning-Zoning/Planning-Certificates>

### **Requires Consent - Development Application (DA)**

In order to obtain a development consent, the person proposing the development must lodge a development application 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 usually 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 4.15 of the *EP&A 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 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 7.11 and Section 7.12 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.

### ***Part 5 Assessment***

A Part 5 assessment is completed for works that do not require development consent but do require 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.

## Further Information

All the plans discussed above are available online. Links provided below.

Southeast and Tableland Regional Plan

<https://www.planning.nsw.gov.au/Plans-for-your-area/Regional-Plans/South-East-and-Tablelands/South-East-and-Tablelands-regional-plan>

QPRC Local Strategic Planning Statement

<https://www.qprc.nsw.gov.au/Building-Development/Planning-Zoning/Planning-Studies-Strategies#section-2>

Queanbeyan Residential and Economic Strategy 2015-2031

<https://www.qprc.nsw.gov.au/Building-Development/Planning-Zoning/Planning-Studies-Strategies#section-4>

Bungendore Structure Plan

<https://www.qprc.nsw.gov.au/Building-Development/Planning-Zoning/Planning-Studies-Strategies#section-5>

State Environmental Planning Policies

<https://legislation.nsw.gov.au/browse/inforce#/epi/title/s>

Queanbeyan-Palerang Regional LEP 2022

<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2022-0600>

QPRC Development Control Plans

<https://www.qprc.nsw.gov.au/Building-Development/Planning-Zoning/Planning-Controls#section-3>

QPRC Contributions Plans

<https://www.qprc.nsw.gov.au/Building-Development/Planning-Zoning/Planning-Controls#section-6>