

Topic 1 – Land Use Planning

Key legislation

- **Environmental Planning and Assessment Act 1979 (NSW)** – the Act establishes a comprehensive system of environmental planning and assessment for New South Wales. Section 1.3 states the objects of the Act (to promote social and economic welfare through coordinated environmental planning and sustainable development) and s 1.5 defines “development” (use of land, subdividing land, erecting or demolishing a building or carrying out work). The Act distinguishes between exempt development (s 1.6), complying development (s 1.7) and other categories of development.
- **Environmental Planning and Assessment Regulation 2021** – provides procedural requirements for development applications, planning certificates and environmental assessment.
- **State Environmental Planning Policies (SEPPs)** – instruments made by the Minister that apply statewide (e.g., Exempt and Complying Development Codes 2008, Planning Systems 2021, Resilience and Hazards 2021, Biodiversity and Conservation 2021, Transport and Infrastructure 2021, Sustainable Buildings 2022). SEPPs can declare development to be exempt or complying and may override local controls.
- **Local Environmental Plans (LEPs)** – made by local councils for their local government areas (e.g., Inner West LEP 2022, Mosman LEP 2012). They set zoning and development standards and must be consistent with SEPPs.
- **Other controls** – Ministerial directions under s 9.1 of the Act (formerly s 117(2)) require planning authorities to consider strategic matters; Development Control Plans (DCPs) provide detailed planning and design guidelines at a local level (e.g., Marrickville DCP 2011, Ashfield DCP 2016).
- **Planning certificates (s 10.7 EP&A Act)** – local councils must issue certificates stating how planning instruments apply to particular land. Schedule 2 of the Regulation 2021 prescribes the information to be included.

Meaning of “development”

Section 1.5 of the EP&A Act defines development to include:

1.5 Meaning of “development”

- (1) For the purposes of this Act, **development** is any of the following—
 - (a) the use of land,
 - (b) the subdivision of land,
 - (c) the erection of a building,
 - (d) the carrying out of a work,
 - (e) the demolition of a building or work,
 - (f) any other act, matter or thing that may be controlled by an environmental planning instrument.
- (2) However, development does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).
- (3) For the purposes of this Act, the **carrying out of development** is the doing of the acts, matters or things referred to in subsection (1).

1. **Use of land** – employing land for a purpose. Cases illustrate the breadth of this term:
2. *Warringah Council v Swain* – long-term storage of a commercial fishing vessel on residential land constituted a use of land.
3. *North Sydney Council v Ligon 302 Pty Ltd* – parking heavy transport equipment and storing fill on residential land constituted use of the land.
4. *Hill Top Residents Action Group Inc v Minister for Planning* – using land for a mine that would extract sand and sandstone was a use of land.
5. *Newcastle City Council v Royal Newcastle Hospital* – operating a hospital outside the permitted use zone was a use of land.
6. **Erecting or demolishing a building** – s 1.4 defines “erection of a building”; demolition also falls within development. Relevant cases:
7. *Benz v Blacktown Municipal Council* – erection includes structural alterations such as enclosing a verandah.
8. *Mulcahy v Blue Mountains City Council* – building a retaining wall and deck was the erection of a building.
9. *Coleshill and District Investment Co Ltd v Minister for Housing* – demolition means pulling down a substantial part of a structure; removal of interior fittings alone is not demolition.
10. **Subdivision of land** – s 6.2 requires consent for subdivisions. *Smith v Randwick Council* and *Broker Pty Ltd v Shoalhaven City Council* confirm that dividing land into separate lots is development even where no physical works occur.
11. **Carrying out a work** – constructing, altering or maintaining works (roads, pipelines, mines). *Parramatta City Council v Brickworks Ltd* and *Hill Top Residents Action Group Inc v Minister for Planning* illustrate that constructing a brickworks or extracting resources is carrying out a work.
12. **Other categories** – certain activities such as placing temporary structures or minor works may still constitute development; cases like *Najask Pty Ltd v Palerang Council*, *Cohen v Wyong Shire Council* and *Jambrecina v Blacktown City Council* examine whether temporary structures, sheds or carports constitute development.

Types of planning instruments

The EP&A Act distinguishes between different planning instruments:

- **State Environmental Planning Policies (SEPPs)** – statewide instruments made by the Minister that can declare development to be exempt or complying and override local plans.
- **Local Environmental Plans (LEPs)** – prepared by councils and set out zoning, land-use tables and development standards within the municipality.
- **Development Control Plans (DCPs)** – provide detailed controls on design and land-use within a local area; DCPs cannot override an LEP but are considered in development assessment.

These instruments operate within the hierarchical framework established by the Act.

Planning certificates

A planning certificate under s 10.7 of the EP&A Act certifies how planning instruments apply to land and discloses matters such as heritage listing, easements and development restrictions. The certificate assists purchasers and developers to understand constraints on the land. Schedule 2 of the Regulation 2021 prescribes the information to be included.